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Directors' Remuneration Report - Guide

January 2017

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Directors’ Remuneration Report Guide - Introduction

Although 2017 will be the fourth year of the ‘new’ remuneration reports regime, for many companies it is another first: the first renewal of pay policies. Strictly, it is not a renewal; companies which presented their first policy for the binding shareholder approval in 2014 will need to present their policy again in 2017. This could be totally new, but more likely it will be the 2014 policy revised to a greater or lesser extent.

Alongside the policy, companies will also need to present their annual remuneration report on payments made during their 2016 financial year for the advisory shareholder vote. The 2016 AGM season, though not that turbulent, has highlighted some important issues for companies to consider when preparing their reports.

As ever, we are here to help. Like its predecessors, this Guide sets out the legislative and regulatory requirements including investors’ guidelines and market practice. This provides a comprehensive checklist with which you can ensure you are complying with ‘say-on-pay’ rules and practice[1]. But we also have a new section on the issues you need to take into account in preparing your remuneration reports and formulating your new policies, and the developments likely to occur in the 2017-2020 cycle of these policies.

We hope you will find this Guide useful. If you have any questions or comments, or would like to use our compliance service to help you comply with the rules, please contact Gillian Chapman, Alex Beidas, Graham Rowlands-Hempel or your usual Employment and Incentives contact.

The Employment and Incentives Team

Linklaters LLP©

November 2016

[1] This updated Guide covers the Executive Remuneration Working Group Final Report of July 2016; the latest version of the Investment Association’s Principles of Remuneration, issued on 31 October 2016; Hermes Investment Management’s Remuneration Principles, issued on 20 November 2016, the Pensions and Lifetime Savings Association’s Corporate Governance Policy and Voting Guidelines, issued on 18 January 2017; the ISS’s Proxy Voting Guidelines issued on 21 December 2015 and November 2016 and the GC100 and Investor Group Guidance 2016 (published on 15 August 2016).

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Preparing 2016 pay reports and 2017 policies

Lessons from the 2016 AGM season

Set out below are the main investors' concerns from 2016. Companies will want to be sensitive to these when reporting on pay in 2016 (although they are of course bound by their current policies). More importantly, they should be kept in mind when considering changes to the policy for 2017:

- **Increases in base salary, particularly where these are in excess of those being offered to employees as a whole.** Any such increase impacts on bonus and long term incentive arrangements, which are typically expressed as a multiple of basic salary. The general principle emerging is that there should be an explicit rationale for increases above inflation or those of the workforce in general.
- **Insufficient disclosure of performance targets, particularly for bonuses.** It has become clear that investors expect full disclosure on a retrospective basis if upfront disclosure is considered commercially sensitive (and this must be justified).
- **Exercises of discretion (frequently resulting in increased pay outs) without sufficient or convincing explanation**. The law requires disclosure of exercises of discretion and how the resulting level of award was determined. But what is typically missing is adequate explanation. Careful drafting should ensure the potential exercise of discretion is specifically delineated.

Overall, the biggest concern appears to be quantum. We look at this further below.

2017 policies – what's relevant?

Unlike the annual advisory vote on pay, the vote on the remuneration policy is binding. Companies will want to avoid a proposed policy being voted down. A vote against a policy means that the previously approved policy (usually in 2014) continues to apply (but this is unlikely to be desirable). Neither shareholders nor the company will want this. It is expected that there will be increased consultation and companies will want to start the process earlier.

It is unlikely that any company will simply present its 2014 policy for renewal, without any changes. At a minimum, the remuneration committee will need to show it is reviewing its policy in the light of changing circumstances since 2014 and what they foresee may happen in the next three years. In practice, most companies will need to 'correct' some aspects of their current policy, and draft their new policy to take into account potential developments since 2014, some of which may impact pay in the future.

We consider below some such issues:

1 The Executive Remuneration Working Group

The Executive Remuneration Working Group's final report on executive pay (the **'Working Group Report'**) suggests some different ways companies might approach remuneration design.

Its findings should be taken into account – the Working Group was made up of industry leaders and was set up in response to mounting concern from investors, as well as companies and executives themselves, that pay structures are too complex. But it remains to be seen to what extent companies will be prepared to move away from well-established market practice, certainly in the short term, given the level of engagement and scrutiny that that will involve.

The revised version of the Investment Association's (IA) Principles of Remuneration which came out on 31 October reflects the proposals of the Working Group Report: it no longer promotes a single remuneration structure and discusses possible alternative structures. But there is no suggestion that companies must totally overhaul their existing arrangements. On the other hand,

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Hermes Investment Management's 'Remuneration Principles – clarifying expectations' (November 2016 – the '**Hermes Principles**') takes up and gives shape to the Working Group's suggestions: It proposes a model which includes higher fixed pay on the basis that it is offset by lower awards under a single incentive plan which combines short and long term incentives and stricter shareholding requirements.

The main points which could affect 2017 remuneration policies are as follows:

- **Pay structures:** The Working Group Report identifies LTIPs as the tricky part of pay, with their complex performance conditions, malus and clawback and complicated leaver provisions. This leads to opaqueness and uncertainty (exacerbated by Brexit issues), devaluation, and an increase in fixed pay and grant levels to compensate for this.

  The Working Group Report says that remuneration committees should choose the most suitable pay structure for their company, bearing in mind its strategy and business needs. Traditional LTIPs may not be appropriate and the Working Group suggests deferral of bonuses into shares or restricted shares as alternatives. As these would not be subject to performance conditions (only continued employment) there should be a significant discount (50% is suggested) on the value of LTIP awards with long-term performance conditions which are currently offered. The model suggested by the Hermes Principles is along similar lines.

  Companies may welcome the opportunity to set a structure that suits them most, but there will be challenges: shareholders are familiar with the current model so may take some convincing. It will be harder for shareholders to compare remuneration across companies (one of the main aims of the current disclosure rules). To address these issues, remuneration committees will need to build a relationship of trust with investors and properly justify any changes to the pay structure.

  The final Working Group Report came out in July and the Hermes Principles in November – ostensibly with an eye to the 2017 remuneration policies. But that leaves limited time to get internal agreement on a new proposal, engage with shareholders and agree a final package in time for the 2017 vote. The Working Group Report specifically highlights the need to have sufficient time for proper engagement, instead of presenting a pay structure to shareholders to be accepted rather than discussed, so this will be a challenge. Plans which reduce or eliminate long-term performance measures may be a hard 'sell' to investors accustomed to pay being tightly linked to long-term performance - even if overall potential quantum is reduced.

  Companies should also review their plan rules. Changes may be needed, or a whole new plan (with separate shareholder approval) to ensure that awards can be granted on any new basis.

- **Justification of maximums in policy:** The Working Group Report says that boards should explain why the chosen maximum set out in the remuneration policy is appropriate for the company, using both external and internal (such as a ratio between the pay of the CEO and median employee) relativities. This explanation is presumably expected to be included in the policy itself. Companies which have expressed their maximum by reference to employee pay may have trouble justifying that maximum by reference to external relativities and vice versa. The Hermes Principles go further, suggesting an approved "ex-ante" (i.e. based on forecasts rather actual results) total cap on overall pay.

- **Ratio of CEO to median employee pay:** The Working Group Report and the Hermes Principles also suggest that the ratio between the pay of the CEO and median employee be made public. (Curiously, this is followed in the covering letter for the revised IA

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Principles of Remuneration but not in the Principles themselves. They only refer to the ratio as a 'reference point' when judging whether the level of pay is appropriate.) As US regulators and companies have found out, determining a consistent method for calculating this ratio is, in practice, quite complicated. If companies are free to determine the ratio without set rules, it will be impossible to make meaningful comparisons between companies. Even with a consistent methodology, the ratio can be misleading: a company which contracts out parts of its workforce will have a lower ratio than an identical one which keeps all functions in-house. So published ratios may provide little meaningful information.

- **Disclosure of bonus targets:** The Working Group Report notes the importance of retrospective disclosure of bonus targets (which most companies are already doing). Failure to disclose them or to indicate when they will be disclosed will, according to the IA, lead to the report being 'red-topped' by IVIS. There should also be thorough explanation as to why personal or strategic targets have paid out, not just a description of the non-financial performance indicators. Failure to do this is likely to lead to the report being 'amber-topped'. The report also suggests that companies should provide more information on how the bonus targets are set – whether against budget levels or against consensus estimates. This will, they say, allow companies to show the robustness of their target setting approach and how challenging the bonus targets are.

2 Brexit

While the UK's exit from the European Union is unlikely to have any immediate direct impact on remuneration (see our recent note), the volatility in foreign exchange and share markets has caused many companies to look carefully at the averaging periods for share prices and exchange rates for the purposes of performance conditions and grant levels. In some cases, it may even be necessary to consider adjusting performance conditions for existing awards.

Companies should consider whether and how pay policies could be drafted to allow for these changes and bear in mind the required disclosure in remuneration reports. Plan rules should also be reviewed for any changes to allow for this.

3 More regulation on board pay

Theresa May has signalled last year that reform of board pay will be one of her priorities. In particular, she proposed:

- introducing a binding vote on the payments made to directors each year. This is likely to be in addition to the existing three-yearly binding vote on policy;
- requiring companies to state the ratio between the CEO's pay and that of the average worker (see above);
- simplifying the way bonuses are paid so that directors' incentives are better aligned with the long-term interests of the company and its shareholders; and
- requiring full disclosure of bonus targets.

In November, the government published its Green Paper on reforming corporate governance, executive pay, accountability to shareholders and ensuring employees' (and the wider stakeholders') voices are heard in the boardroom. Click here for our client briefing for details of options on which the government is consulting.. The closing date for comments on the Green Paper is 17 February 2017. Whatever proposals emerge, this will not occur in time for companies' 2017 policies to reflect them. It is more likely that the proposals will have effect in the medium term. The timing for any rules to have effect should take the current regime into account, so

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hopefully companies will not need to revise any 2017 policies mid-cycle. However, some prudent wording in those policies may be advisable.

4 Shareholders' Rights Directive (SRD)

The EU-wide 'say on pay' proposals in the SRD now been finalised, and are due to be formally agreed, possibly by the end of March 2017. Member states will then have two years to implement the measures into national laws. Timing is key here, and as the possible Brexit timetable may dovetail this deadline. Whether and to what extent the UK in fact transposes the SRD into UK law may depend on the Brexit negotiations. However, there may be a period during which companies will need to comply with some additional policy and disclosure provisions emanating from the SRD. We will know more once the timetable for the UK's leaving the EU is made public. Again, it may be prudent to include some flexibility in 2017 policies to cover this.

Other top tips for your 2017 policy

1 Clawback

More than 90% of FTSE100 companies have introduced malus and clawback provisions. The remainder should include them.

Under the revised Corporate Governance Code, companies are expected to be able to claw back (and/or withhold payment of) variable pay where appropriate.

There has been a general lack of clarity with many companies not going into detail about how their malus and clawback provisions work, including the trigger events. Companies may want to consider including more detail to manage shareholder expectations.

2 Consistency with plan rules and service contracts

Check service contracts and incentive plan rules against 2017 policy.

Many companies have found that their existing policies do not fully reflect their practices or their directors' legal rights or expectations. This can cause problems because the company cannot make a payment which is inconsistent with its policy. Areas which have caused the most problems are:

- notice periods and payments in lieu of notice
- payment of an out-going director's legal fees, outplacement fees, retirement gifts
- D&O insurance policies
- staff discounts
- relocation and repatriation expenses
- reimbursement of travel expenses
- recruitment awards
- provisions in 'grandfathered' contracts from before 2014 which were not adequately disclosed
- changes of control, variations of capital and other corporate transactions
- levels of pay (and pay increases) to non-executive directors

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3 Link to strategy

Ensure that the 2017 remuneration policy accurately reflects 2017 business strategy

The remuneration policy should give effect to the company's strategy as outlined in its strategic report. Ideally, the policy table should cross-refer or quote the strategic report when explaining the rationale for each component of the remuneration package. If the company's strategy has changed since 2014, the policy (or at least the way it is presented) will also need to change. The fact that Brexit could occur during the next three-year policy, should also be considered.

4 Maximum for each component

Include an ascertainable maximum for each component of remuneration.

The remuneration policy must state a maximum for each component of remuneration. This does not have to be a fixed amount but could be linked to, for example, RPI or company-wide increases. Most companies did not include a clearly ascertainable maximum in their 2014 policies. This led to criticism and some companies were asked to publicly clarify their intentions. The Executive Remuneration Working Group and the GC100 in their latest Guidance have emphasised the importance of the maximums in the policy and suggested that they should be justified. The IA, in the letter accompanying the revised Principles of Remuneration, remind companies that investors expect to see maximum limits, but this is not in fact set out in the Principles. Instead it says that boards should explain why the chosen maximum is appropriate. The PLSA do not comment on the requirement to state a maximum. But in a new section in their Guidelines, they comment on quantum: they state that pay policies should ensure that maximum pay-outs remain in line with the expectations of shareholders and other stakeholders.

5 Salary increases

Limit basic salary increases – perhaps by reference to inflation and/or average increase in the group.

As noted above, one of the main shareholder complaints during the 2016 AGM season has been about basic salary increases above inflation or increases made for employees in the group in general. In this context, the 2017 policy may be criticised if it enables significant increases. (New recruits can be dealt with separately if necessary.)

The Working Group points to a growing feeling amongst shareholders that directors should not receive regular salary increases – especially since directors' short and long-term incentives are generally expressed as a multiple of basic salary. The PLSA Guidelines state that an excessively generous salary may lead to a vote against the remuneration policy.

6 Vesting and holding periods

Review performance and holding periods for long-term incentives.

Traditionally, long-term incentives have vested over a three-year period. However, the expectation that performance and holding periods should together cover at least five years has strengthened considerably since 2014. Investors will expect 2017 policies to reflect this.

7 Exceptional awards

Clarify the ability to make awards outside the policy.

Many 2014 policies allowed companies to make awards in exceptional circumstances (e.g. on recruitment or retention) in excess of the maximum in the policy. These were criticised particularly

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where those awards were not themselves subject to a maximum. At the very least, clarification should be provided as to exactly how and when discretions would be used.

8 Clarifications

Ensure the 2017 policy reflects any public clarifications of the current policy.

A number of companies were asked to provide public clarifications of their 2014 policies, particularly where they allowed for exceptional awards such as recruitment awards. Those companies should ensure that those clarifications form part of their 2017 policy to enable any resulting payments to be made.

9 Grandfathering and 2014 policy awards

Ensure the 2017 policy allows pay-outs of existing awards

Companies can only make payments within an approved policy. Therefore, any grants made under the 2014 policy which are not consistent with the 2017 policy must be 'grandfathered into' it so payments may be made on vesting during the 2017-2020 cycle. If any provisions of the 2014 policy need to continue to apply, this must also be set out fully. (See section 5.5 of Part A of the Guide for more details.)

10 Disclosure of performance measures

Consider full disclosure but retain flexibility

As mentioned above, investors expect greater disclosure of performance measures applying to variable remuneration. Therefore, companies should consider providing as much disclosure as possible (after taking into account commercial sensitivities) but, ideally, retaining flexibility (subject to points made above on discretion) to change the performance measures if necessary, such as if Brexit may have a substantial effect on the company's performance.

11 Operation of LTIPs before AGM

Some companies may wish to operate their LTIPs in the spring (on the usual grant date) but based on the new policy before the AGM. There are a number of ways this can be done and we would be happy to discuss.

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What does the Guide cover?

The table below sets out the documents which are covered in the Guide, the abbreviations used to refer to them and whether or not they are legally binding.

In general, where the regulations require a disclosure which is also recommended by guidance of an investor group, we have not mentioned it separately in the Guide.

Abbreviation	Document	Legally binding?
Accounts Regulations	The Large & Medium-sized Companies and Groups (Accounts & Reports) Regulations 2008. These regulations are enacted under the Companies Act 2006.	✓
BIS	The Department for Business, Innovation & Skills' Frequently Asked Questions (March 2013) which were issued shortly before the changes to the Accounts Regulations were finalised.	✕
CA 06	Companies Act 2006, relevant provisions of which set out how often companies have to produce a remuneration policy and report, how the shareholders' votes work and the consequences of failing to follow an approved remuneration policy.	✓
CGC	The UK Corporate Governance Code. The Listing Rules require premium-listed companies to either comply with this or explain why they have not done so.	**Comply or explain**
GC100	The GC100 and Investor Group's 'Directors' Remuneration Reporting Guidance' (August 2016) . This is a group formed by GC100 (representing FTSE100 companies) and the Corporate Governance Forum (a network of leading institutional investors). Their guidance sets out their views on the interpretation of the Accounts Regulations and their expectations on what companies should include in their remuneration reports. Their guidance is supported by the Investment Association. The original guidance was issued in 2013 and supplemented in 2014.	✕
Hermes	Hermes Investment Management's 'Remuneration Principles – clarifying expectations' (November 2016)	✕
IA (formerly the ABI and IMA)	The Investment Association's Principles of Remuneration (31 October 2016). These Principles express the IA's views on remuneration.	✕
IAS	International Accounting Standard 24 in relation to disclosure of compensation of "key management personnel" (relevant for companies listed on a European Union regulated market for accounting periods beginning on or after 1 January 2005).	✓
IA 2014 Letter	The covering letter to the IA's 2014 Principles of Remuneration, dated 20 October 2014 (issued under the previous name of "IMA").	✕
IA 2015 Letter	The covering letter to the IA Principles of Remuneration, dated 11 November 2015.	✕

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Abbreviation	Document	Legally binding?
IA 2016 Letter	The covering letter to the IA Principles of Remuneration, dated 31 October 2016.	✗
ISS	ISS Proxy Voting Guidelines for UK and Ireland as updated in November 2016 by their EMEA 2017 Benchmark Policy Recommendations (effective for Meetings on or after 1 February 2017). The ISS's approach is aligned with the five remuneration principles of PLSA/Hermes, and they build on the PLSA approach. They also acknowledge that the Investment Association's Principles of Remuneration and the GC100 Guidance influence their approach.	✗
LR	The Listing Rules. The LR were amended in October 2013 to remove many of the disclosure requirements which duplicated the CA 06 ones.	✓
PLSA (formerly NAPF)	The Pensions and Lifetime Savings Association's Corporate Governance Policy and Voting Guidelines 2017. These set out the views of the PLSA on remuneration and corporate governance in the form of comments on the remuneration provisions of the CGC. The PLSA represents over 1,300 pension schemes with20 million members and have £1 trillion in assets.	✗
PLSA/Hermes	"Remuneration principles for building and reinforcing long-term business success". These principles were jointly produced by Hermes EOS, the PLSA (issued under the previous name of NAPF), BT Pension Scheme, RPMI Railpen Investments and Universities Superannuation Scheme in November 2013. They are intended to provide high-level guidance to companies about expectations of their remuneration structures and practices.	✗
Schedule 5	Schedule 5 to the Accounts Regulations.	✓
Schedule 7	Schedule 7 to the Accounts Regulations.	✓
Schedule 8	Schedule 8 to the Accounts Regulations. This sets out in detail the contents of the remuneration report. Schedule 8 was changed in 2013 to introduce the new disclosure regime.	✓

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Part A – Overview of how the rules work

1 To whom do the rules apply?

The rules relating to remuneration reports apply to UK-incorporated companies which are listed on the London Stock Exchange, an EEA exchange, the New York Stock Exchange, or NASDAQ.

In practice, many London listed companies which are incorporated outside the UK produce remuneration reports as if they were UK companies and the IA recommends that they do this. For these companies, the vote on the remuneration policy is not technically binding: the company may agree to seek approval for a revised policy if the report is voted down but there are no general constraints on their ability to pay directors in the meantime. Even if they chose not to do this, they will have to comply with the Corporate Governance Code or explain any non-compliance.

In addition, there are some UK-incorporated companies which are not listed in London, but on another EEA exchange, the New York Stock Exchange, or NASDAQ. They are caught by the rules and need to comply.

2 Where are the rules?

The rules are set out in regulations made under the Companies Act 2006, in Schedule 8 to the Accounts Regulations. These were amended by the Large and Medium-sized Companies and Groups (Accounts and Reports) Regulations 2013 to insert the new rules. The provisions relating to shareholders' binding and non-binding votes are in the Companies Act, again, amended last year to insert the new rules.

3 What goes in the remuneration report?

The directors must prepare a remuneration report complying with the legislation. Any failure to do so is an offence punishable by an unlimited fine. Directors past and present must also provide the necessary information to the company to prepare the report.

Each year, the remuneration report should consist of:

- an annual statement from the chair of the remuneration committee; and
- an implementation report (partly audited) (also called "annual report on pay") setting out details of the directors' pay for the financial year under review.

A remuneration policy section containing details of the company's remuneration policy must also be included *every third year* or more frequently if the policy has changed, or if the implementation report was rejected by shareholders in the previous year – see 4.2 below for details.

If the remuneration policy is not being put to shareholders, the company need only include in the remuneration report a weblink to the current remuneration policy (as well as the date of its approval). However, the GC100 have suggested that the remuneration policy *should* be included every year and both the IA (in the IA 2014 Letter) and the GC100 (in the GC100 Statement) would like annual disclosure of the policy *table*, so shareholders can easily locate the current policy and consider how it has been implemented. The GC100 Statement says that sufficient information should be included to help shareholders easily assess the reported remuneration in the context of relevant aspects of the policy and remuneration committees should also consider whether any additional policy summary or extract is also required to improve clarity. Market practice is developing on this: in 2015, 58% of FTSE 350 companies (50% of FTSE 100) which did not put their policy to shareholders included the full policy in their annual reports and 40% (47% of FTSE

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100) included only a summary of the policy[2]. So it looks like for the FTSE 100 companies which did not put the policy to the vote, market practice was fairly evenly divided between full and summary disclosure.

In 2017, it is likely that most companies, which have 2014-approved policies, will be putting new policies to the binding shareholder vote. References to policy in their remuneration report would not be relevant for them.

The remuneration report must be approved by the board and signed on its behalf by a director or company secretary. This signature must appear on the copy of the report sent to the registrar. Each copy of the report which is issued or laid before the company in general meeting should then state who signed it. It is an offence to omit the signature or name of the signatory as described. This is punishable by fines on the company and its officers.

In practice, the duties in relation to preparation and approval of the report are delegated by the board to the remuneration committee.

4 How does the vote on the implementation report work?

4.1 How often is a vote required on the implementation report

An advisory vote on the implementation report is required every year.

4.2 What happens if shareholders vote against the implementation report?

The vote on the implementation report is not binding on the company. If it is voted down, this has no effect on payments made to directors but the remuneration policy must be put to a binding vote at the next AGM. However, this vote will not be needed if, at the same AGM at which the implementation report was *voted down*, shareholders voted on the remuneration policy (whether or not it was passed).

If shareholders vote against *both* the implementation report and remuneration policy, the vote against the implementation report will have no separate consequences as in any event in practice the policy will go back to a new shareholders' vote at the next AGM.

So the only practical effect of a vote against the implementation report is to enable shareholders to requisition a binding vote on the remuneration policy (at the next AGM) in years where the company would not otherwise have one (and assuming a remuneration policy was not presented at the AGM where the implementation report was voted down). In most cases this will only provide something additional to shareholders once every three years (in the middle year of a three-year cycle). Depending on how the remuneration policy overlaps with the financial year, there may be little to gain by voting against the implementation report more frequently, since the company will have to put the policy to a binding vote at every third AGM in any event.

If, as stated, 2017 is the first year of a new three-year cycle for policies, shareholders are likely to consider how to vote on the policy and the implementation report on their own merits.

4.3 What does the resolution for the vote on the implementation report look like?

There is no set form but here are a couple of suggestions:

> "That the remuneration report **[**other than the remuneration policy**]** (as set out on pages ● to ● of the Annual Report for the financial year ended ●) be approved."

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[2] Practical Law: Annual Reporting and AGMs 2015 What's Market Practice, November 2015

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“That the Annual Statement by the Chairman of the Remuneration Committee and the Annual Report on Remuneration (as set out on pages ● to ● of the Annual Report for the financial year ended ●) be approved.”

5 How does the vote on the remuneration policy work?

5.1 How often is a vote required for the remuneration policy?

A binding vote on the remuneration policy is required:

- if it is being changed; or
- whether or not it is being changed, at the AGM in the third complete financial year after it was approved; or
- if shareholders voted against the implementation report in the previous AGM.

So assuming the company is planning no changes and has a calendar financial year, a remuneration policy adopted by shareholders at the AGM in April 2014 (to apply for the financial year 2015, or from the end of the 2014 AGM) would have to be approved again at the AGM in April 2017.

Companies can seek approval for a policy for a shorter period but most companies have not done so. The GC100 specifically say that they do not wish companies to put policy to the vote annually and the PLSA consider that policies ‘should on the whole be put to a vote on a triennial rather than an annual basis’.

Last year only 16 companies in the FTSE 100 put a revised policy to the vote. The main reason was introduction of malus/clawback though this was generally coupled with other reasons, such as increases in LTIP/bonus maximums or changes to performance conditions and introduction of post-vesting holding periods.

5.2 Can the company just ignore the policy?

If the company makes any payment or promise which is not consistent with the last remuneration policy approved by shareholders, then:

- any promise made ‘has no effect’;
- the director has to give back any money or other assets and holds them on trust for the company in the meantime; and
- any director who authorised the payment must indemnify the company for any loss which results from the payment. If proceedings are brought against the director to enforce the liability and the court considers that the director has acted honestly and reasonably and in the circumstances ought to be relieved of the liability to indemnify, it may do so.

There is no power in the regulations for shareholders subsequently to ratify any payments made outside of the policy.

In view of the protection in the legislation, there should be less concern about whether the directors’ indemnity insurance covers such liability. Companies may still wish to consider their insurance cover on the basis that only a court could relieve the director of this liability, although in practice an action is unlikely to be brought against any directors who clearly acted honestly and reasonably. Much would depend on the facts of each case. In view of this, it is important to check the directors’ delegated authorities to ensure that the board is comfortable with the powers it has delegated, as directors will wish to be able to demonstrate that they have acted appropriately. The

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terms of reference of remuneration committees should certainly be reviewed to ensure they properly reflect the additional requirements.

The legislation does not include an exemption (from the payment having no effect and the other consequences set out above) for payments required by law. For example, payments ordered by a court such as damages. We understand that BIS take the view that where a court has ordered a payment the legislation will not prevent the company from paying it. Alternatively, companies may wish to address this in the remuneration policy.

5.3 When will a new remuneration policy take effect?

Once the company has had shareholder approval for its first policy, any subsequent policy will have effect from the date of its shareholder approval (say at the AGM three years later) unless the company decides that it would have effect from a later date – for example, the start of its next financial year.

5.4 What happens if shareholders vote against the remuneration policy?

If the remuneration policy is not approved at the AGM, the previously approved policy will continue to apply (even if more than three years have passed since that policy was approved) so the company will have to go back to shareholders with a revised new policy (or possibly the same policy if it has managed to convince shareholders of its benefits), either at a special general meeting, or the next AGM. The company could also continue to operate under the last approved policy and seek separate shareholder approval for any specific remuneration or loss of office payments which are not consistent with that policy.

So it cannot safely be assumed that a remuneration policy will only last three years: the policy, once approved, continues in effect until the company and its shareholders can agree on another policy – theoretically indefinitely if there is no agreement. For this reason, it is very important to get the remuneration policy right and build in as much flexibility as possible.

5.5 Grants and vesting under different policies

All remuneration has to be within an approved policy at the time it is paid to the director. Bonuses and incentive awards may often be promised under one policy but by the time they vest another policy may be in place.

Companies can deal with this potential difficulty by including in a policy being put for shareholder approval a reference to their intention to make payments under the relevant incentive awards granted in previous years and approved under previous policies. They will also need to state which provisions from the previously approved policy will therefore continue to apply. In this way a company can ensure that payments are always within its last approved remuneration policy. The GC100 include some useful commentary on this (in 4.1.1) and clearly consider it vital that companies ensure they have the right to honour existing and previous contractual obligations.

5.6 What does the resolution for the vote on the remuneration policy look like?

There is no set form but something along the following lines would suffice:

> "That the remuneration policy section of the remuneration report (as set out on pages ● to ● of the Annual Report for the financial year ended ●) be approved".

6 Disclosure in the strategic report

The Strategic Report Regulations require that the Strategic Report includes "*that part of the directors' remuneration report which sets out the single total figure table in respect of the company's directors' remuneration*". This appears to require that the whole of the implementation

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report is set out. However, emerging market practice appears to limit the disclosure to the single figure table, sometimes also including the statement from the chair of the remuneration committee. The Strategic Report Regulations do not mention the policy report at all. However, following the Listing Rules requirements on contents of circulars, the remuneration policy report would also need to be sent since shareholders would be voting on it. It would be up to companies to decide whether the whole of the policy report or only parts of it should be provided.

Companies may not necessarily have to *send* the strategic report to each shareholder. If they have actual or deemed consent (under the Companies Act 2006 procedures) from a shareholder to use electronic communications, they may put it instead on their websites. However, it is still necessary to send shareholders a letter or email (if there is separate consent to use email) telling them that the documents are available on the website.

The company must also put a copy of the documents on its website and keep them there for a year (i.e. until the next set of report and accounts put on the website).

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Part B – Remuneration Policy – detailed rules

Number	Disclosure	Reference
1	**Remuneration policy**	
1.1	Format The remuneration policy must be set out in a separate part of the report from the implementation part of the report.	Schedule 8, paragraph 24(1)
1.2	Compliance with the legislation The policy report must include all matters needed to comply with the new legislation on shareholders' voting rights in the Companies Act[1].	Schedule 8, paragraph 24(3)
1.3	Revised remuneration policy Where a company presents a revised remuneration policy to shareholders, its format must comply with the legislation and it must include all the provisions which the legislation requires to be covered in the policy report[2].	Schedule 8, paragraph 42-43
1.4	Previous approved policies The policy must state which provisions of any previously approved policy are to continue to apply after the new policy receives shareholder approval and for what period of time it is intended that those provisions should continue to apply[3].	Schedule 8, paragraph 24(2)
1.5	Remuneration policy table	

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1 The intention of this requirement is to ensure companies include in the policy any payments they may wish to make to directors, such as retention payments. This will assist companies in avoiding having to get shareholder approval to revised remuneration policies unnecessarily, or specific shareholder approval to specific remuneration promises which are not covered in the policy.

2 This provision is intended to ensure that even where a policy is only revised in parts, the whole policy must be set out, and not just the amended parts. Small revisions may be made more frequently than once every three years, but once a company has obtained approval to its first policy, all subsequent policies will be revised versions of it, whatever the extent of the revisions.

The **GC100** states (4.2) that if a company wishes to present a policy for a vote mid-cycle (i.e. before three years are up from the previous vote) shareholders generally expect a coherent rationale as to the reasons for doing this.

3 A payment must be within the policy at the time it is made. Many incentive awards are likely to be granted under one approved policy but vest under another, which may not necessarily include that form of award because the company's policy has changed due to market practice. To ensure that the payment is lawfully paid under an approved policy, companies need to include in the subsequent policy a reference to their intention to make payments under the awards granted under previously approved policies. They will also need to identify which provisions in the previously approved policy will continue to apply to enable these payments to be made and for how long those provisions will apply e.g. until vesting of those awards.

Most companies will broaden this wording to cover other commitments made under one policy which fall to be honoured under another (e.g. promises to make grants or termination payments) and also commitments made before a person became a director or before the new rules on remuneration policies came into effect (though most will have probably paid out or lapsed by 2017).

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Number	Disclosure	Reference
1.5.1	A table[4] setting out:	
•	A description of each component of the remuneration package for the company's directors[5].	Schedule 8, paragraph 25(1)
•	For each component, the table has to show: • how it supports the company's (or group's) short and long term strategy[6]; • how it operates, whether and how clawback applies (pre or post vesting)[7]; • the maximum that may be paid in respect of that component[8]*;*	Schedule 8, paragraph 26(1) CGC Schedule A Para 1

4 This requirement will apply both to executive and non-executive directors. Paragraph 4(2) allows for a separate table for non-executive directors and many companies have taken advantage of this. The table for non-executive directors should describe the company's approach to setting their fees, any additional fees for other duties provided to the company and for any other remuneration payable to them. Companies need not comply with any provisions which are not appropriate for non executive directors, though the reason for doing so must be set out (Paragraph 2(4)) (e.g. non-executive directors do not receive variable remuneration as it jeopardises their independence and is contrary to the CGC). Paragraph 28 states that the non-executive directors' table should set out the company's approach to determining fees, additional fees for "other duties" (e.g. chairing committees) and other remuneration items.

Remuneration for non-executive directors should be determined by the board (CGC D.2.3) and should reflect the commitments and responsibilities of the role. It should not include share options (CGC D.1.3). If, exceptionally, options are granted, prior shareholder approval is needed and any shares so acquired must be held until at least one year after the non-executive director leaves the board (CGC D.1.3). In addition, a director is not considered "independent" if he participates in a share option plan (CGC B.1.1).

This table does not have to deal with policy for new recruits. See section 1.6 below.

5 The components are those relevant for the single figure table (see below) i.e. fixed pay, benefits, bonus, long-term incentives, pensions, but may include others. The **IA** have stated that the use of allowances as part of fixed pay is not favoured as it goes against the spirit of simplicity, clarity and pay for performance. If allowances are used, this should be clearly justified and explained. This information is not required on an individual basis, although in practice many companies have disclosed the maximum potential value on an individual basis. Where the disclosure is for all directors generally, any specific arrangements for individual directors should be disclosed.

6 The **GC100 Statement** says that the link between pay and company strategy applies to the policy table, but should be supplemented by relevant disclosures in the implementation report. As the strategic report regime was introduced at the same time as the remuneration report reforms, the need to explain the link "invites cross referencing and alignment between these two reports". They refer to the FCA Guidance on the Strategic Report and the Financial Reporting Lab insight report on clear and concise reporting, which both encourage companies to produce a "joined up" report.

7 The FCA and PRA Remuneration Codes require higher Proportionality Level financial services companies to include deferral, performance adjustment and clawback provisions for their variable remuneration. This requirement does not strictly apply to other sectors, but increasingly investors are expecting to see similar provisions in other sectors: The revised CGC requires companies to include both performance adjustment (malus) and post-vesting clawback provisions and specify the circumstances in which the committee would consider it appropriate to act. The CGC uses the same terminology as here, to avoid any inconsistency.

Similarly, the **IA** (section A (4)) state that incentive structures should include malus and clawback provisions, the basis of which should be agreed and documented before awards are made.

The **PLSA** (section 2.3) state that a vote against the remuneration policy may be warranted if there are no clawback or malus provisions. The trigger events should go beyond just material misstatement of the financial statements. The **GC100 Statement** in 2014 recognised that most then current remuneration policies were drawn up and approved under the 2012 Corporate Governance Code and were not then due for renewal for two to three years (i.e. generally until 2017). They left it to companies to decide how to deal with the new CGC requirements in consultation with investors. Companies which have introduced malus/clawback provisions without approval of an amended policy now need to include these in the revised policy presented for a vote.

8 "Maximum" can be expressed in monetary terms or otherwise. So, for example, it could be expressed as:

- a maximum percentage increase in any year;
- by reference to an index;
- as an aggregate amount for the whole board;

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Number	Disclosure	Reference
	• any framework used to assess performance including details of performance measures and periods[9] and relative weightings if there is more than one measure;[10] and	

• by reference to a clearly defined comparator – e.g. no more than the median pay of finance directors in the FTSE 250.

More than 90% of FTSE100 companies included no clearly ascertainable maximum (or no maximum at all) for one or more components in their 2014 policy reports or allowed the remuneration committee to exceed the limit. While there was some criticism, none of these remuneration policies was voted down. There is no clear view about whether such a policy and so any payment made under would be compliant with the legislation. However, the **GC100 Statement** clarifies their view of the legislative requirement: disclosure of the potential maximum for each pay component, at the individual director level. The IA 2016 Letter emphasises the need for a clear maximum for each element and for justification of the chosen maximum. Hermes goes further and suggests a published ex-ante cap on total pay.

The **GC100** (4.3) state that companies could consider including a generic director policy if a new director role could be created during the policy period. This should be read in the context specifying a maximum for each pay component, but if companies follow this, they should ensure this ties in with their recruitment policy.

Companies which gave the remuneration committee discretion to make awards in exceptional circumstances (e.g. on recruitment or retention) were also criticised particularly where those awards were not themselves subject to a maximum – in 2014, 24 such companies were asked by the ABI (now **IA**) to provide clarification and still received an 'amber top' for their policy. (There have been no such clarification requests in 2015, partly because most companies have not put policies to shareholders' vote.) While the Listing Rules do allow companies to adopt plans in those circumstances without the shareholder approval normally required by the Listing Rules, this would not allow grants which are inconsistent with the remuneration policy. The **IA** (Section A(12)) note that special grants, particularly for continuing management, indicate poor planning by the remuneration committee but may be acceptable when, for example, a new team is brought in to turn around a company. The remuneration committee should justify any such awards.

The **IA** suggest that 'the scope of any future salary increases' should be outlined. So increases could relate to an amount above inflation or to increases in line with the general workforce. In relation to LTIP awards, they suggest that both normal and maximum grant levels should be disclosed. The **IA 2014 Letter** states that the reason for any salary increase in excess of inflation or the increase for the general workforce should be clearly explained. It also states that the reason for any increase to maximum variable pay should be clearly explained, and that an increase in the size of the company is not sufficient rationale in itself for this. The **IA 2015 Letter** reiterates this and refers to a growing number of investors considering that executive directors should not receive regular salary increases given the overall structure of their pay packages.

The **ISS** (page 15) consider that any increases in total executives' pay should not be out of line with general increases at the company. Remuneration committees are discouraged from market benchmarking for pay reviews, unless it is applied infrequently (at no more than three-to-five year intervals) and then only as one part of an assessment of the remuneration policy. The **PLSA** point out that ever widening pay differentials are often difficult to justify credibly and boards should be aware of the possible negative impact on corporate culture and staff morale of widening inequality within the organisation. Excessively generous salary or performance-related pay awards may warrant a vote against the policy. This may also be warranted if the pay policy would bring the company into disrepute or would foster internal resentment due to its being too generous. (2.4)

The **GC100** include some detailed guidance on formulating the policy (4). They recognise that the policy needs to be flexible enough to allow companies to respond to changed circumstances without the need to amend the policy but provide sufficient detail to enable investors to understand what will be paid in different circumstances. They also say (1.3) that given that the policy should be able to last for three years, it is not unreasonable for the policy to contain some discretion in "genuinely unforeseen and exceptional circumstances". They add that there may be circumstances where a company will need to go "outside of the policy". Care needs to be taken as a company cannot make a payment outside of the policy (so it may need specific shareholder approval which would not be desirable or practical), but there is genuine recognition that some flexibility will be needed. The **ISS** (page 20) states that it will recommend a vote against any policy which does not operate within fixed overall limits or where the remuneration committee may make open-ended changes to the policy.

9 The **IA** (Section C(2)(i)) state that for variable pay awards, post-vesting holding periods are now "commonly expected", so performance and holding periods together cover at least five years. Previously, the **IA** only asked companies to consider using additional holding periods. This stance supports Fidelity's requirement of five year 'retention periods'. Fidelity have said that they would vote against any non-compliant LTIP.

10 This requires a discussion of performance measures (i.e. the metrics against which performance is judged) but not targets (i.e. the level of performance required). So, the fact that awards vest based on earnings per share growth should be explained but there is no need to specify what level of EPS growth will be required – though it should be explained how those levels will be set (paragraph 27(a)).

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Number	Disclosure	Reference
	• amounts payable for achieving the minimum level of performance and for any further levels of performance.	
	• The extent of any discretion the directors have in relation to any aspect of the remuneration policy.[11]	Schedule 8, paragraph 24(4), IA Section A(5)
1.5.2	Notes to the table should disclose: • How the remuneration policy for directors differs from remuneration policy for other employees;	Schedule 8, paragraph 27

The legislation does not specify how detailed the description of the measures has to be. In 2014 reports, most companies committed to specific measures for LTIPs for the duration of the policy but many were a lot less specific about bonus measures. For example, they might just specify that targets will be x% financial and y% personal and leave the remuneration committee to set the details each year. Arguably, this is not compliant with the legislation but it does accord with market practice and did not seem to attract much adverse comment provided that the company undertook to disclose the targets in the implementation report for that year. Far fewer policy reports were put to the vote in 2015 but for 2015 implementation reports inadequacy of performance targets and lack of disclosure of targets was the main reason for 'amber topping' so it would seem that companies' practice is continuing.

Where non-financial objectives are used as part of the performance conditions, The **ISS** (page 15) expect the majority of the payout to be triggered by the financial performance conditions.

Companies can decline to disclose **"commercially sensitive"** information in relation to measures and targets (paragraph 2(5)) but they must explain that they have done so and why and indicate when the information will be disclosed (paragraph 2(6)). As in 2014, in their 2015 reports, many companies claimed commercial sensitivity for performance measures for bonuses. The **GC100** (2.1) acknowledge the difficulty of determining what is commercially sensitive (the legislation provides no definition) and leaves this to remuneration committees. It does suggest that one possible interpretation is that a matter is commercially sensitive if its disclosure would 'be likely to damage the commercial interests' of the company. It also suggests that once a measure or target ceases to be commercially sensitive, investors expect it to be disclosed in the next remuneration report. The **IA** specifically reject the idea that performance conditions could be permanently commercially sensitive. The **IA** (Appendix 1 paragraph 4) state that companies must explain why any targets are considered commercially sensitive and indicate when they will be disclosed in the future. The **IA 2014 Letter** expresses concern at the lack of retrospective disclosure in many 2014 reports and emphasises that this is important in demonstrating the link between pay and performance. The **IA 2015 Letter** requires retrospective disclosure of bonus targets where they are not disclosed upfront (see Note 40) for the expected timing of disclosure). The **PLSA** state that failure to disclose or retrospectively disclose variable pay or annual bonus performance conditions, may warrant a vote against the policy (and therefore also) implementation report (2.3). The **GC100 Statement** supports the **IA** stance and also emphasises that they expect retrospective disclosure once commercial sensitivity no longer applies. They refer to the CGC as requiring greater demonstration to shareholders on how pay is aligned with long term company success through extra emphasis on issues which companies should consider when making decisions on commercial sensitivity. The **ISS** cite lack of disclosure of performance metrics (with no commitment to disclose those in the future) as one of the reasons for a recommendation to vote against the remuneration report.

[11] The **GC100** (1.3) say that the limits of discretions need to be clearly set out, but do not necessarily need to be numerical, as the maximum on each component set out in the policy and the disclosure on the way each component operates will constrain the discretion. Similarly, the **IA** state (Section A(5)) that discretion should only be exercised within the previously agreed and disclosed boundaries and maxima and warns that remuneration committees will be held accountable for the way discretion is used. The **PLSA** cite an excessive amount of flexibility being provided for 'exceptional circumstances' as a reason for considering a vote against the policy (section 2.4).

The policy should balance investors' need for sufficient information to approve it, knowing there will be no unpleasant surprises, against flexibility to tailor remuneration over the term of the policy, without it becoming a shopping list, and should recognise the need for some discretion to be used in genuinely unforeseen and exceptional circumstances. The **GC100** do not favour a general statement that all elements of remuneration are subject to adjustment at the discretion of the remuneration committee. The **GC100 Statement** emphasises that broad discretions are more likely to be approved if drafted and explained to make investors confident it will be only be used if and as genuinely required and within an acceptable maximum (either the general one, or a higher exceptional, maximum).

Note that this applies to discretions in relation to termination and recruitment as well as the on-going remuneration policy.

Judgement as opposed to discretion does not, according to the **GC100**, fall within this. For example, they consider assessment of the level of satisfaction of a bonus objective based on progress against an aspect of strategy is a matter of judgement rather than the exercise of a discretion.

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Number	Disclosure	Reference
	• For variable remuneration (e.g. bonuses, incentive awards) an explanation of why the specific performance measures were chosen and how any targets are set, or, if there are no such measures, the reasons for this[12]; • Whether any changes have been made to any feature of the package which was included in the last approved policy and why[13]; and • any new feature[14] of the package since the last approved remuneration policy and the reason for its inclusion.	
1.5.3	Where there are TSR performance measures, local currency TSR should only be used for non-UK members of the comparator group if there are compelling reasons and this approach should be fully explained.	IA, Section C(2)(ii)
1.5.4	Any differences in pension contribution rates for executives and the general workforce should be disclosed and justified[15]. If there is no justification, there should be an explanation as to how the company intends to reduce the difference.	IA, Section B(2)
1.5.5	An explanation as to why the chosen maximum is appropriate for the company.	IA, Principles, 3(a)
1.6	**Recruitment policy**	
1.6.1	A statement of the principles applying to any remuneration package[16] for new directors, including the components in the package and the company's approach to each component.	Schedule 8, paragraph 29 IA 2016 Letter

[12] The **PLSA** state that a vote against the remuneration policy may be warranted if there are inappropriate metrics or insufficiently stretching targets for annual bonuses or LTIPs and/or no link between the metrics used and the company's strategy (2.4). Similarly, there may be a vote against if the policy includes guaranteed, pensionable, discretionary or 'one off' annual bonuses, or for failure to disclose (or retrospectively disclose) performance conditions (2.4).

[13] The **IA** have indicated that when the policy is being put to the vote, any changes in policy should be clearly outlined and explained. The **GC100** suggest (paragraph 2.2) that this might be done in the Chairman's statement. (See Note 29.)

[14] The **PLSA** state that a vote against the remuneration policy may be warranted if the policy includes any layering of new share award schemes on top of existing schemes (2.4), so these will need to be properly justified.

[15] The **IA 2015 and 2016 Letters** express concern at the large increase in pension amounts and the complex pension arrangements of executive directors which differ from the pension arrangements for the rest of the workforce. They state that investors expect pension arrangements to be in line with those for the rest of the company. The PLSA state that a vote against the remuneration policy may be warranted if it includes pension (or pension allowance) payments worth more than 50% annual salary (2.4). BlackRock's letter to FTSE 350 companies in January 2017 expressed a similar view to the IA on pension contributions.

[16] The **PLSA** state that a vote against the remuneration policy may be warranted if the recruitment policy is vague or provides unlimited or substantial headroom over and above existing plans (2.4). The IA 2016 Letter notes that recruitment policies will be scrutinised carefully and any additional recruitment limits should be carefully justified.

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Number	Disclosure	Reference
	The maximum level of variable remuneration (typically bonuses or LTIP awards) for new directors, excluding buy-outs of awards from the previous employer[17]. Any additional recruitment limits should be clearly justified[18]. A description of the types of awards that could be made, the potential use of performance criteria and holding periods, and any application of recovery or withholding policies.	ISS, page 19
1.7	**1.8 Directors' service contracts and letters of appointment**	
1.8.1	A description of any obligations (not disclosed elsewhere in the report): • included in all service contracts of the directors or in specific contracts of any director(s); or • which it is proposed to include in any future service contract on the basis of the policy[19] which impact on remuneration or loss of office payments. Unless the service contracts (or letters of appointment) are available for inspection at the company's registered office, details of where they are available and a website link if appropriate[20].	Schedule 8, paragraph 30-32
1.9	**Maximum pay graph**	

[17] As with components in the remuneration policy table, the maximum for variable remuneration need not be expressed as a monetary amount. Some companies have given themselves the flexibility to make awards to new recruits in excess of the normal limit – though, to be compliant, this should be subject to a maximum. (See Note 8 above for more discussion on maxima.) The **IA** asked a number of companies for clarification where they considered that there was no clear maximum in their recruitment policy and confirmation that 'golden hellos' would not be paid (though properly constructed buy-out awards would be acceptable).

No maximum is required for salary, benefits or pensions payable to new recruits. In addition, buy-out awards, often given to new recruits to compensate them for loss of any incentive awards when leaving a former employer, can be excluded from the limit on variable remuneration. The **GC100** say (4.6) that it would be inadvisable for companies to be too prescriptive when describing the sign-on policy for unknown future situations but the **IA** (Section A(9)) require that payments should be "on a comparable basis, taking account of performance achieved or likely to be achieved, the proportion of performance period remaining and the form of the award". The **ISS** say that the potential to offer buy-out awards should not be open-ended, and that they should be subject to specific caps.

[18] The **IA 2015 Letter** states that it is not appropriate for newly recruited executives to be protected against the risk of a fall in company value through re-grants of buy outs/sign on awards. The **IA**'s view is that both the company and the executive take on risk in a recruitment situation and it is inappropriate for the executive to be shielded from such risks. See also Note 22 on the **IA**'s views on notice periods for new executive recruits. The IA 2016 Letter states that normally they would expect the remuneration policy to contain sufficient flexibility to recruit individuals (i.e. that additional provisions or greater limits would not be needed). The **ISS** (page 23) do not support special awards (e.g. sign-on bonuses or one-off share awards) for new joiners except in exceptional circumstances and only if accompanied by an appropriate explanation.

[19] This would cover, for example, an obligation to make awards at a particular level, to treat LTIP awards in a particular way on leaving or on a change of control, or to pay minimum bonuses for a period. The **GC100** note (4.7) that this would cover oral commitments as well as written contractual terms. More generally, this requires the policy to point out areas in which the current arrangements are not consistent with the policy.

[20] Companies are required to make contracts available to shareholders at their registered offices under section 228 CA 06. The **PLSA** cites absence of service contract for any executive director (in the absence of sufficient explanation) as one of the factors which may lead a shareholder to vote against the remuneration report (3.1). LR9.8.8 requires companies to make a statement in the annual report if any director proposed for election or re-election (which, for most companies, covers all directors) does not have a directors' service contract.

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Number	Disclosure	Reference
	A bar chart showing for each executive director what he would receive under the remuneration policy, *in the first year in which the policy applies*, in three scenarios: • minimum of pay receivable including salary, benefits and pension; • pay receivable if the director were performing in line with expectations in relation to any performance measures (including bonuses and incentive awards); and • maximum pay receivable if the variable elements paid out in full[21].	Schedule 8, paragraph 33-35
1.10	**Termination payments**	
1.10.1	Set out the policy[22] on setting contractual notice periods.	Schedule 8, paragraph 36
1.10.2	Set out the principles for determining payments for loss of office including: • how each component of the payment will be calculated[23];	Schedule 8, paragraph 37

[21] Each bar of the chart must show separately fixed pay, bonuses and long term incentive awards and the percentage of each component as well as the total remuneration expected for each (Paragraph 34(3)). Companies must describe the basis of calculation and assumptions used to compile the bar charts - such as what assumptions are made about actual salary, bonus and award levels, share price, dividends. Most companies have assumed a constant share price and ignored dividends. This requirement is forward looking and therefore applies to directors as at the time of signing off the report, so would catch promotions and new recruits taking place after the end of the reporting year.

The **GC100** give some helpful detailed guidance (4.8) on how companies may wish to deal with this obligation including how to deal with the value of awards and options.

[22] This information is not required on an individual basis but will have to cover non-executive directors as well as executives. The **CGC** requires notice periods to be set at one year or less. If it is necessary to offer longer periods to new directors recruited from outside the company, such periods should reduce to one year or less after the initial period (CGC D.1.5). The Joint Statement on Executive Contracts and Severance by the **ABI** and **PLSA** (February 2008) suggests that a one-year notice period is not to be seen as a minimum. It encourages boards to consider contracts with a shorter notice period. The **IA 2015 Letter** states that new directors' service contracts should have equal notice periods for both the company and the director. Also, the contracts should allow for withholding of pay in lieu of notice where the director is under regulatory, disciplinary or misconduct investigation.

Some companies will have a policy on notice periods which is different from that specified in one or more directors' contract (e.g. many older contracts do not provide for periodic payments of pay in lieu of notice and mitigation). Where this is the case, the differences should be clearly disclosed under paragraph 30 of Schedule 8 (discussed at section 1.8 above) or the company will only be able to make payments in accordance with the policy, as if the policy had unilaterally amended the contract. To the extent that companies may not have accurately reflected the terms of existing contracts in their policy, these inaccuracies may cause difficulties in the future.

[23] This covers almost all payments which would be made on or in connection with termination and if the payment is not mentioned it cannot be paid. Quite a range of payments are customarily made on termination which may inadvertently be omitted here, for example: directors' legal or outplacement expenses, accrued holiday pay, payments for non-compete restrictions and relocation expenses. BIS consider that it also encompasses both awards which are accelerated on termination and those which continue until the end of the original performance period even though the latter do not involve any immediate payment, just a continuation of a right which might otherwise have lapsed.

The **GC100** suggest (4.9) that companies may wish to consider disclosing:

- That the contractual entitlements of terminated directors will be honoured.
- The length of service contract and notice periods applicable from the company and the director.
- Details of any limitations, parameters, or guarantees applied to severance payments (for example, contractual).

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Number	Disclosure	Reference
	• any pre-existing contractual commitment (before 27 June 2012)[24] which could affect the amount of pay out; • whether and how the circumstances of the director's loss of office and his performance are relevant to any exercise of discretion[25].	
1.11	**General employee pay and conditions**	
1.11.1	A statement of how pay and employment conditions of employees of the group (apart from directors) were taken into account when setting the policy for the directors' remuneration and whether and how the company consulted with employees on this.[26] Whether and details of and how any comparison measurements were taken into account[27].	Schedule 8, paragraph 38-39
1.12	**Shareholders' views**	
	A statement of whether and how the shareholders' views on remuneration expressed to the company have been taken into account when setting the directors' remuneration policy[28].	Schedule 8, paragraph 40

- How the remuneration committee classifies leavers. It would be advisable to make it clear that the good and bad leaver scenarios are examples and not a definitive list of scenarios. This will mean that the remuneration policy has the flexibility to cover future termination situations which are similar to, but not exactly the same as, one of the scenarios.
- How the remuneration committee assesses salary, short-term incentives, long-term incentives, pension and other benefits for each category of leaver and any reductions that may apply to these remuneration components in "normal" circumstances.
- Policies applied in "exceptional" circumstances including change of control.
- Whether there is a policy of requiring mitigation, and a summary of how that policy would work in practice.

The **GC100** recognise that this goes beyond the legislative requirements, but says that for many companies these disclosures will promote effective engagement between investors and companies.

The **PLSA** state that a vote against the remuneration policy may be warranted if there are guaranteed, pensionable, discretionary or 'one off' termination payments (2.4).

[24] Contracts entered into before 27 June 2012 are not subject to the legislation, unless they are amended after that date (section 82(3)&(4) Enterprise and Regulatory Reform Act 2013). However, the policy needs to disclose what companies are doing with respect to termination payments in contracts entered into before the regulations come into force.

[25] The **IA** suggest that the definitions of good and bad leavers for LTIPs and other incentive plans should be disclosed, together with the approach taken to benefits under those plans on leaving. This ties in with the requirement in the regulations to disclose how the director's performance may affect any exercises of discretion. The **IA 2015 Letter** states that remuneration committees should take a firm approach when deciding leaving arrangements and fully justify the treatment of leavers particularly where a departing director is deemed to be a good leaver. See, however, Note 23 on the **GC100** view on dealing with good and bad leaver scenarios in the policy.

[26] The IA set out specific points of reference against which the remuneration committee and the board may consider and judge the appropriate levels of pay (Section A(1)). A new reference point in the 2016 Principles is remuneration paid to groups of employees including the median employee and the "Executive Committee", through the use of pay ratios.

[27] It is not at all clear what measurements this refers to. Since the requirement appears with other disclosures on pay of employees generally, it might be assumed to relate to remuneration comparison measurements used for the purposes of setting employee pay generally. However, this information is likely to be of little interest to shareholders. The **GC100** suggest that they would be more interested in remuneration comparison measurements 'used in determining the quantum and structure of the directors' remuneration' (paragraph 4.10).

[28] The **GC100** suggest (paragraph 4.11) that companies give a summary of:

- the actions taken by the company and investors to engage with each other
- the broad topics discussed and an indication of investors reactions

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Part C – Implementation Report – detailed rules

	Number	*Disclosure*	Reference
	1	**Chair's statement**	
		The chair of the remuneration committee must include in the report a statement of the major decisions on directors' remuneration, the major changes during the year and the context in which the changes occurred and decisions have been taken[29].	Schedule 8, paragraph 3
		Outline how the chosen remuneration approach aligns with the company's strategic goals and key performance indicators.	ISS, page 14
	2	**Reference to policy** If the remuneration policy is not included in the remuneration report (because e.g. it is unchanged from the one approved within three years), the report must state the date of approval of the last policy and where on the company's website (or elsewhere) a copy of that policy is available for inspection.[30]	Schedule 8, paragraph 1(3)
	3	**Implementation report**	

- any changes to remuneration policy made as a result of the engagement.

Again, this goes beyond the legislative requirements, but according to the **GC100**, will promote effective engagement between investors and companies. In the **GC100 Statement**, they comment that the quality of remuneration reporting has improved, but companies should continue to focus on clarity and conciseness. The Statement gives some examples: considering feedback from shareholders on the previous report, what might make it easier for shareholders to assess and understand each part of the report, whether the report clearly explains the thinking and purpose behind the committee's decisions and choices. The **Executive Remuneration Working Group** highlights the need to improve engagement between companies and their shareholders on board pay, so this provision should be carefully followed. See also Note 70 on the requirement to explain the reasons for any significant votes against the remuneration policy.

[29] The **GC100** give guidance (2.2) on what the annual statement should cover. This includes: comments on stakeholder engagement, a summary of discretions applied during the year, key challenges, remuneration philosophy underpinning decisions and the link between pay and company strategy including how the overall package balances rewarding for performance and a share in the company's success or failure. They also give guidance on what they consider "discretion" to mean for the purposes of the rules (1.3).

Decisions on remuneration and changes to policy and the context in which they were made must be set out and according to **PLSA/Hermes**, explained and appropriately justified; particularly in the case of an upward discretion.

If the remuneration committee has no chair, this statement must be from a director nominated by the directors.

Strictly, the chair's annual statement is not part of the implementation report, though the advisory shareholders' resolution covers it. It is usually set out as the first part of the remuneration report.

[30] The **IA** (**IA 2014 Letter**) and the **GC100** (2.1) have suggested that the policy should be included every year, so shareholders can easily locate the current policy and consider how it has been implemented. If this is done, it should be made clear that the policy is not subject to a vote at the particular AGM. But the GC100 also say that a summary or extract of the policy may be sufficient to provide clarity for the remuneration report. The IA have not repeated this in 2016. This may be because most companies will be presenting revised policies in 2017 so this is not relevant for their 2017 remuneration report.

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	Number	*Disclosure*	Reference
	3.1	**Single figure[31] for remuneration**	
	3.2	A table[32] setting out the following information for each person (on a named basis) who has served as a director (executive and non-executive) at any time during the year:	Schedule 8, paragraph 4
Audited	**3.2.1**	total amount of salary and fees received for services as a director during the year. ["a"][33]	Schedule 8, paragraph 7(1)(a)
	3.2.2	taxable benefits[34] ["b"].	Schedule 8, paragraph 7(1)(b), 11(1) and 12(1)
	3.3	Performance-related bonuses[35] paid for the period under review, including amounts deferred ["c"].	Schedule 8, paragraph 7(1)(c), 8 & 12

[31] The table in Part D sets out in detail what the legislation requires to be included in the Single Figure Table of the implementation report, with statutory references and comments.

The **GC100** recommend (3.1) that companies obtain written confirmation from each director that they have not received anything in addition to that disclosed, to ensure that all required items are being disclosed. It is not clear whether this will help in practice though as the director may not have all relevant information to hand.

[32] The table is prescribed in the regulations, as to both format and details to be included ("a" to "f" – plus some other catch-all columns which are not given a letter). The **GC100** (3.1) recommend that a separate table be provided for non-executive directors (this is permitted by paragraph 4(2) of Schedule 8). Each named director's figures are set out in each row, with a total figure column, as follows:

	a		**b**		**c**		**d**		**e**				**f**	
	Salary		**Benefits**		**Bonus**		**LTIP**		**Pension benefits**		**Other**		**Total**	
	This year	Last year	This year	Last year	This year	Last year	This year	Last year	This year	Last year	This year	Last year	This year	Last year
Director 1	£●	£●	£●	£●	£●	£●	£●	£●	£●	£●	£●	£●	£●	£●
Director 2	£●	£●	£●	£●	£●	£●	£●	£●	£●	£●	£●	£●	£●	£●

There may be additional columns as described in paragraph 0 below

Companies can include sub-totals (e.g. a sub-total excluding pensions) and other information which they consider necessary to assist the understanding of the table. Where they do so, they should explain in the notes why the information is included and how it is determined. They can also change the orientation of the columns and the rows if they wish (which may make sense given that most companies only have two or three executive directors).

Where a director joins part of the way through the year, only remuneration attributable to his service as a director is disclosable. Where it is not possible to distinguish (e.g. for bonus or long term incentives), the amounts paid could be pro-rated with an explanation of the basis on which this was done.

[33] The reasons for any increase in base pay should be fully disclosed and justified with clear and explicit rationale. (**IA** Section B(1) and IA 2016 Letter). The **IA** caution against 'chasing a perceived median' level of pay and require committees to be sensitive to the prevailing mood regarding executive remuneration, to take into account the effect of executive pay levels on all stakeholders and the multiplier effect that increases in base pay have on the overall quantum of remuneration, in increasing levels of variable remuneration. The **IA 2014 Letter** states that the reason for any salary increase in excess of inflation or the increase for the general workforce should be clearly explained. The **PLSA** (paragraph 3.1) note that annual pay increases in excess of inflation or those of the workforce in general will cause concern and may trigger a voting sanction in the absence of sufficient explanation.

[34] "Taxable benefits" are defined as including benefits in kind. Taxable benefits received for services as a director would include, for example, school fees and tax equalisation payments. The **GC100** (3.1) suggest that any grossing-up of directors' tax should also be included here. It is not entirely clear whether benefits which are taxable but not actually taxed (e.g. because of an exemption) need to be included here. The **GC100** (3.1) suggest that they should be included under the catch-all heading. See also the requirements of paragraph 12 discussed at 0 below.

[35] This covers remuneration that becomes receivable as a result of the achievement of conditions relating to performance in the reporting year, that is, bonuses awarded in respect of the reporting period – even if they are paid after the end of the year. It would not include bonuses which were not subject to any performance conditions (which would be caught by the 'catch-all' provision – see paragraph 0 below).

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	Number	*Disclosure*	Reference
	3.4	Vesting of awards (e.g. under long term incentive plans or share options)[36] including any dividends or dividend equivalents paid or payable. ["d"]	Schedule 8, paragraph 7(1)(d) and 10(1)(d)
Audited	**3.4.1**	This covers only awards: • subject to performance conditions tested over a period (of more than one financial year) which ended during the year under review (or where the conditions were "substantially completed" before the end of the year); and • where the final value is not subject to further performance conditions.	Schedule 8, paragraph 7(1)(d), 8
	3.4.2	The aggregate of: • the amount of money paid to or receivable by directors under long-term incentive schemes; and • the net value of assets (other than money and	Schedule 5, paragraph 1(1)(c)

If the condition for the bonus runs after the end of the financial year but is 'substantially completed' before the end of the year, the bonus can be included in the number for the financial year or the next year at the choice of the company. (See paragraph 8 of Schedule 8.)

If the bonus is paid in shares and/or deferred, the amount deferred would normally be included in this figure. The report should specify whether the deferral is in cash or shares, the percentage deferred and whether the deferred portion was subject to any conditions other than performance conditions (including, presumably, clawback).

The amount deferred should be included here even though it is subject to reduction (and so may never be received) or clawback in some circumstances. However, if the deferral is subject to further performance conditions then it may be appropriate to treat the deferral as a long-term incentive award and disclose it on vesting instead (see paragraph 0 below). There is no clear distinction between a clawback and a performance condition though it is normally fairly clear. In cases of doubt, companies should draw a "sensible and consistent distinction" (**GC100**, 3.1).

If any deferred bonus or other award is actually clawed back or reduced in the reporting period, the amount clawed back or reduced can be included as a negative figure in a separate column and deducted from the total. The reason for clawback should be shown in a note (although companies will want to consider carefully if the disclosure might be commercially sensitive).

The **GC100** (3.1) note that there is no requirement to disclose deferral of a long term incentive award (i.e. a holding period following vesting): vesting of the award at the start of the holding period will be disclosed but not the end of the holding period. They do say that investors generally expect that such deferral would be explained.

[36] LTIP awards are valued on the basis of the share price on the date of vesting, less the exercise price, in the case of options (paragraph 10(4)). If the performance conditions for LTIPs or bonuses run into the next year but are "substantially complete"' by the end of the reporting year, the figure can be estimated (paragraph 8), in the case of share awards, on the basis of an average market value over the last quarter of the year under review (paragraph 10(3)). The basis for the calculation must be explained and the same award must not be included for the next year. This could happen, for example, where a performance condition for a grant made one month after the end of a financial year had a condition tested over three calendar years. In that situation, the performance condition would run to one month after the end of the financial year and the vesting could be included in the report for either financial year. In the following year's report, the actual vesting figure has to be included in the column for the year under review (i.e. the column headed 'Last Year' in our example table at Note 32) and the details of the calculation of that figure must be included. (See paragraph 9(2).) The **GC100** (paragraph 3.1, "Estimated and actual amounts") suggest that where any difference is substantial, companies may wish to consider publication on their website to ensure timely disclosure to the market.

Note that any awards which are not subject to performance conditions should not be included here but in the catch-all, at the time of grant – see paragraph 0 below.

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	Number	*Disclosure*	Reference
		share options) received or receivable by directors.[37]	
	3.5	Pension related benefits including payments in lieu of pension benefits [“e”]. The amount disclosable for pension contributions is the “aggregate pension input amount” across all pension schemes of the group for the year.	Schedule 8, paragraph 7(1)(e) and 10(2)(e)

[37] These amounts are required to appear in the notes to the accounts though may well replicate information in the implementation report.

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	Number	Disclosure	Reference
		Further columns must be included setting out details of "any other amounts in the nature of remuneration" which are not set in columns 'a' to 'e'[38] and are not payments to past directors (see 0 below).	Schedule 8, paragraph 6(1)(a)
Audited	**3.6**	A column for each director with the total amount of the values set out in each of "a" to "e" and any other columns in paragraph 6(1)(a).	Schedule 8, paragraph 7(1)(f)
	3.7	The figure for the previous financial year for each of the columns in the table, including the total. The previous year figures need not be included in the first year in which a company prepares a report as a quoted company.[39]	Schedule 8, paragraph 9
	3.8	**Details of taxable benefits** There must be a table setting out the kinds of taxable benefits included in the disclosure in section 'a'. (see 0 above), setting out the types of benefits and the values, where significant.	Schedule 8, paragraph 12(1)
	3.9	**Details of performance conditions for bonuses paid and LTIP awards vesting**	
		For each of the bonus and LTIP award included in the single figure, the following additional information[40]:	Schedule 8, paragraph 12(2)

[38] This general catch-all will cover any awards granted or amounts paid in the year which are not subject to performance conditions. This could cover, for example, recruitment, retention or transaction bonuses, SAYE options and awards of free shares under a Share Incentive Plan though some companies have chosen to disclose these on receipt of the shares, rather than on grant. It is not clear how such benefits should be quantified where they are options, awards or other contingent rights. See Part D for more details. The **GC100** (3.1) lists some examples including pre IPO shares converted into shares at IPO (though companies will need to ensure these are "remuneration").

Paragraph 12(5) requires notes to the table which:

- explain the basis on which the figures were calculated;
- set out such other details as are necessary for an understanding of the amounts;
- set out any performance conditions or, if there are none, explain why not.

[39] If any deferred bonus or other award is actually clawed back or reduced in the reporting period, the amount must be included as a negative figure in a separate column and deducted from the total. The reason for clawback should be shown in a note. (See paragraph 8(2)). The **GC100** suggest that the vesting of an option when it is underwater or the lapse of a vested but unexercised share option on termination should be reported as an amount clawed back in this way. (See section 0 above.) It is surprising that a lapse should be treated in this way since the general approach of the legislation is to treat the vesting of an option as the payment and ignore the exercise. The logical extension of this is that the lapse of a vested option would also be ignored.

Where there has not been any clawback or reduction in a year, the **GC100** suggest including a statement as to whether or not the remuneration committee has considered whether or not one would have been appropriate.

[40] "LTIP awards" include share options. This information is normally provided as notes to the single figure table.

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	Number	Disclosure	Reference
		3.9.1 Details of performance measures and relative weighting of each. **3.9.2** For each measure, the targets set and the potential value[41]. **3.9.3** For each measure, how the company performed against the targets set.[42] **3.9.4** How any discretion was exercised in relation to any award and how the resulting level of award was determined.[43]	
		3.9.5 The circumstances leading to the exercise of any discretion and why it was required.	IA, Section A(5) and Paragraph 1.2 GC100

Disclosure is only required following the end of the final performance period. The **IA** (Section C(1)) normally expects disclosure within a year or, at the latest, two years of payment of the bonus and IVIS will issue a red-top (financial targets) or amber top (personal and strategic targets) for any report which does not include retrospective disclosure of targets or state when the disclosure will be made. Where there is more than one performance period, the **GC100** (3.3) suggest that the different periods should be explained.

If the directors think that information is commercially sensitive, it does not have to be disclosed but the report must give particulars of the information and the reasons why it has not been disclosed and should indicate when (if at all) it will be reported to shareholders. (See paragraph 2(5) and (6)). The **GC100** (2.1) say that the decision to withhold disclosure should not be taken lightly and that investors expect prospective (although it is recognised this is often not possible for bonuses) and retrospective disclosure, If there is still sensitivity, there should be a commitment to disclose later on, at a specified time. Companies may wish to keep a record of information which has been withheld on this basis as a reminder to ensure that information about previous years is disclosed appropriately after it ceases to be commercially sensitive. The **PLSA** state that failure to disclose performance conditions retrospectively may lead to a vote against the remuneration report (2.4). . See Note 10 on the **IA**'s views on disclosure of performance targets (the expected timetable for disclosure as set out above is only expressed in the 2016 Letter to apply to bonuses).

[41] This requires disclosure of the potential maximum for the award, whether or not in fact that is the amount finally determined for the award. The **IA 2014 Letter** is concerned at the level of amounts payable for threshold vesting levels, as they can still be substantial. Absolute amounts will be considered, not just the portion of the award which vests.

[42] This requires an explanation of the extent to which the target was actually achieved (e.g. EPS growth exceeded inflation by x%) not just a statement of the level of vesting which resulted from an application of the performance condition. The IA (Section C(1)) expect a detailed rationale for payments under personal or strategic measures –though companies may decline to disclose achievement of personal targets on the basis that they will be commercially sensitive - see Note 40. Only 13% of FTSE 100 companies claimed commercial sensitivity for LTIP targets in 2014 but a much higher proportion claimed it for annual bonus targets (and this trend continued in 2015 –see Note 10). The **IA 2014 Letter** expressed concern about this (see Note 10) but **ISS** note an expectation among investors of retrospective disclosure.

[43] This could, for example, apply where there is a discretionary override – even if the performance condition has been satisfied, the remuneration committee must consider that the company's performance warrants vesting. It could also apply where changes are made to the performance targets or the comparator group within a discretion given by the policy. Any application of clawback would also need to be disclosed. The **IA 2014 Letter** states that they do not support any retrospective changes to performance conditions, such as to take account of exchange rate changes. The **PLSA** state that inappropriate use of discretion, for example, not scaling back awards in light of wider factors relating to the company and its conduct, reputation and relationship with key stakeholders, may warrant a vote against the implementation report (3.1).

The **GC100 state** (1.3) that investors will scrutinise exercise of discretion which should be carefully explained and may require prior dialogue with them in some cases. There is particular concern where performance measures are fully met but the company's financial performance over the same period is not commensurate with this. Remuneration committees should consider, in these cases, exercising discretion to moderate the formulaic outcome (i.e. reduce the payments) so the amount received balances management performance and the shareholder experience.

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	Number	Disclosure	Reference
	3.9.6	An explanation of any adjustment to reported metrics and details of the impact on the outcome.[44]	IA, Section C(2)(ii)
	3.9.7	An overview of how the financial performance targets have been set[45].	IA 2016 Letter
Audited	**3.10**	**Final salary pensions[46]**	
		For each person who has served as a director at any time during the financial year under review and rights to defined benefits or cash balance benefits in respect of services as a director:	Schedule 8, paragraph 13
		3.10.1 Details of any accrued benefits under a defined benefit pension scheme as the end of the year, [47] **3.10.2** the director's normal retirement date. **3.10.3** a description of any additional benefit on any early retirement. **3.10.4** If there are rights in more than one pension scheme, the above details for each scheme.	
		3.10.5 for money purchase and defined benefit schemes, the number of directors (if any) to whom retirement benefits are accruing under such schemes.	Schedule 5 - Para (2)

[44] This could include, for example, adjustments to performance conditions of 'in-flight' awards to take account of rights issues or transactions. Whether adjusting elements of methodology will need to be disclosed will depend on details previously given.

[45] This is part of the IA's tougher stance on disclosure of bonus targets (see Note 40). The IA 2016 Letter states that further to the Executive Remuneration Working Group's recommendations, the IA expect this overview disclosure. It appears to be limited to financial (rather than personal and strategic) targets.

[46] Companies are required to disclose details of each of the defined benefit and cash balance rights to which directors are (prospectively) entitled. Details to be provided are:

- details of the rights at the end of the year, including the director's normal retirement date (i.e. the date at which the director becomes entitled to take an unreduced pension without employer or trustee consent);
- a description of any additional benefit payable on early retirement;

This information is to be provided separately in relation to each pension arrangement. "Defined benefit" and "cash balance" include hybrid arrangements which include these type of benefits. According to the **GC100** (3.2), this should be done in a way which aids understanding of the figures and companies should take the opportunity to explain the key features of pension entitlements where the single figure does not capture the full entitlement. Changes in status (e.g. joining or leaving the scheme) should also be disclosed.

[47] These amounts are required to appear in the notes to the accounts but could be included as part of the remuneration table.

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	Number	Disclosure	Reference
		3.10.6 the aggregate amount of emoluments paid to or receivable by directors.	Schedule 5, paragraph 1(1)(a)
		3.10.7 the aggregate value of any contributions paid (or treated as paid) to a pension scheme that affect the calculation of the rate or amount of any money purchase benefits that may become payable. [47]	Schedule 5 - Paragraph (1)(d); Schedule 8, paragraph 13(3)
		3.10.8 changes in membership status (e.g. joining or leaving) **3.10.9** The transfer value at the end of the year under review, assuming the director retires at the earliest opportunity	GC100 3.2

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	Number	Disclosure	Reference
Audited	**3.11**	**Payment to past directors** Details of any money or other assets paid in the year under review to any former director – other than: **3.11.1** payments for loss of office (see 0 below); **3.11.2** any payments disclosed in a previous remuneration report under the new rules; **3.11.3** payments which are below de minimis threshold set by the company;[48] **3.11.4** pensions payments commenced in a previous year; **3.11.5** dividend payments in respect of LTIP awards; **3.11.6** payments in respect of employment with or services provided to group members (other than as a director);[49] **3.11.7** any amounts included in the single figure table.[50]	Schedule 8, paragraph 15
	3.12	**Payments for loss of office[51]**	
		For each person who has served as a director at any time during the year or any previous year:	Schedule 8, paragraph 16

[48] Companies will need to set a minimum threshold below which they will not disclose payments to former directors or payments for loss of office and state what that is in the report. The **GC100** state (3.4) that investors do not expect immaterial amounts to be disclosed. If the threshold is changed companies should explain this (and presumably the reasons for the change).

[49] There is no requirement to disclose arrangements under which former directors provide services to the group otherwise than as a director. However, the **GC100** (3.5) recommend that companies explain any such arrangements.

[50] This means that amounts actually paid out to somebody who was a director during the year would not have to be disclosed here.

The **GC100** state (3.4) that, where companies do not make any payments to past directors, they may consider making a "nil return", that is, a statement confirming there have been no payments during the year. .

[51] This paragraph requires disclosure of amounts paid to or receivable by the director or former director in respect of the year under review.

Companies will also be required to put details of any payments for loss of office or remuneration payments to be made after leaving on their website as soon as practicable after a director leaves (s. 430(2B) CA 06). This would include LTIP awards which will vest or bonuses which will be paid after leaving. The **GC100** recommend that this disclosure form the basis of the disclosure in the remuneration report (3.5). Companies are also expected to disclose termination payments in an RNS announcement at the time of leaving and explain any differences between the disclosure in the RNS announcement and the disclosure in the remuneration report.

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	Number	Disclosure	Reference
Audited		**3.12.1** The amount of any payment for loss of office equal to or above a *de minimis* threshold set by the company and stated in the report; **3.12.2** A breakdown of the components of the payment and the value of each **3.12.3** An explanation of how each component was calculated; **3.12.4** The treatment of any incentive awards that vest on or following termination; **3.12.5** How any discretion allowed for in the policy on exit payment was exercised.	
	3.13	**Recruitment Awards**	
		A full explanation, breakdown and justification of recruitment awards.[18]	IA Section A(9)
	3.14	**Service contracts** Details of the unexpired term of the service contract of any director proposed for election or re-election at the AGM. [52]	LR 9.8.6(7) and 9.8.8
	3.15	**LTIP awards made during the year**	
		A table setting out details of awards[53] made:	Schedule 8, paragraph 14
		3.15.1 type of award; **3.15.2** the basis on which the award was made; **3.15.3** face value of the award;[54]	

[52] Most companies put all directors up for re-election every year. If any director proposed for election or re-election does not have a director's service contract, a statement to that effect must be included.

[53] "LTIP awards" include share options. The legislation uses the term "scheme interests". This applies to any right to acquire cash or other assets, with service or performance conditions stretching over more than one financial year (it does not need to include single-year amounts as they would appear in the single figure table). It would include options or awards subject only to service conditions (e.g. SAYE options). Bonuses, pensions and payments for loss of office are specifically excluded.

[54] Face value is the value of the maximum number of shares that would vest if all performance conditions were met in full, multiplied by the share price at the date of grant or the average price used to determine the number of shares awarded. The share price used for these purposes has to be disclosed and the date of grant and, if it is an average price, the period over which the average is taken. The **GC100** (3.3) point out that this does not take account of the exercise price of any option (which may significantly reduce the economic value of the award) and suggest that companies may wish also to disclose a fair value. Where they do so, they should also explain the methodology for arriving at the fair value.

However, the **GC100** state that companies must disclose if the maximum achievable award at vesting is larger than face value. The intention here is no doubt to catch 'kicker' arrangements under which the initial number of shares subject to award can be increased if certain targets are met. Dividend equivalents could also result in participants receiving more than the face value of the award but it will be difficult to estimate the value of these. The **GC100** (3.3) suggest that these be dealt with by way of a note and so presumably do not have to be factored into the face or maximum value figures.

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	Number	Disclosure	Reference
Audited		**3.15.4** the percentage[55] that would vest if minimum performance were achieved; **3.15.5** in the case of an option, an explanation of any discount in the exercise price;[56] **3.15.6** the end of the period[57] over which performance measures are tested of, if there is more than one, the one which ends the latest; and **3.15.7** summary of performance measures (if not set out elsewhere).	
	3.16	**TSR performance and CEO pay**	Schedule 8, paragraph 18(1)
		3.16.1 A line graph comparing the company's Total Shareholder Return with that of a broad equity market index selected by the company, over the period of seven financial years ending with the year under review. That period increases by one year each year up to ten years for the fifth report under the new rules.[58] The name of the index and the reason for choosing it must also be disclosed.	
	3.17	**CEO pay**	
		3.17.1 A table setting out, for each of the years in the period described above:	Schedule 8, paragraph 18(2)

[55] This is presumably the minimum level of performance which would result in any vesting – otherwise the figure would almost always be zero. Where vesting starts at zero and rises on a straight-line basis, companies will still have to assume a minimum vesting level of zero but should perhaps explain how this works.

[56] This covers any discount to the price used to determine the 'face value' (see Note 54 above). This would seem to catch nil-cost options – though it would probably be sufficient to state that the option is intended to be a free share award and is only structured as an option to give the participant more flexibility as to the timing of the benefit.

[57] The **ISS** state that they would consider recommending a vote against the implementation report if there are any variable pay awards with performance periods of less than three years. See Note 9 on the **IA**'s views on the length of vesting and holding periods.

[58] Where the company has not completed the necessary number of financial years (as a quoted company), the graph must cover all of its financial years as a quoted company.

The period over which the disclosure is required will not require companies to go back further than 2009 so recalculating figures on this basis should not be too onerous. For years in which the new rules did not apply, companies can use 'suitable corresponding figures'. The **GC100** (3.7) suggest that companies explain here the method for determining TSR – e.g. whether the opening and closing prices are averaged and the treatment of currency differences. If the comparator group used for the company's performance conditions performed worse than the index chosen for this graph, the **GC100** suggest that this should be explained and whether the performance measure was expressly approved by shareholders. It is difficult to see how this information could be helpful to shareholders.

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	Number	Disclosure	Reference
		(i) the total remuneration of the CEO determined on the same basis as for the single figure;[59] **(ii)** the bonus paid to the CEO in the year as shown in the single figure expressed as a percentage of the maximum possible bonus; and **(iii)** the CEO's LTIP awards vesting in the year, as shown in the single figure as a percentage of the maximum number of shares which could have vested.	
		3.17.2 The percentage change in[60]: • the salary, fees, taxable benefits and bonuses, as shown in the single figure disclosed for the chief executive; and • in salary, fees, taxable benefits and bonuses for group employees generally (or another comparator group of employees if more appropriate, with an explanatory statement) [61] between the year under review and the previous year.	Schedule 8, paragraph 19
	3.18	**Spend on pay**	

[59] Where there is more than one CEO in a year, the **GC100** (3.7) suggest separate figures be included for each CEO. Because the single figure normally only counts LTIP awards when they vest, figures for a new CEO will usually be deceptively low (since LTIP awards will not vest for the first two or more years). In most cases, it will also vary a great deal with share price at the time of vesting.

[60] This information has to be presented "in a manner which permits comparison" – presumably between the CEO and group employees. It may be quite difficult to identify separately the costs of salary, bonuses and taxable benefits for employees since they will be recorded and accounted for in different ways in different countries and possibly different business units.

[61] The **GC100** (3.8) acknowledge that the whole workforce may not always be an appropriate comparator but companies could consider a comparator group defined by geography business unit or level. If the group changes from year to year, this should be explained. Some companies have focussed on UK employees or even head office employees to try to provide a meaningful comparison but there has been some criticism where the critics considered that the comparator group was too small (e.g. some companies used groups which represented only 1% of employees).

The **GC100** also state that investors and other stakeholders (presumably employees) generally expect a meaningful comparator group and not a narrow group of senior managers.

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	Number	Disclosure	Reference
		A graph or table showing, for the year under review and the previous year the amounts of: • remuneration[62] paid to employees of the group; • distributed profits by way of dividends and share buybacks; • other significant distributions and payments or other uses of profit or cash flow deemed by the directors to assist in understanding the relative importance of spend on pay with an explanation of why they were chosen and how they were calculated.[63] and the difference in those amounts between the year under review and the previous year.	Schedule 8, paragraph 20
	3.19	**Directors' shareholdings**	
		3.19.1 Any requirements on directors to own company shares whether or not those requirements have been met;[64]	Schedule 8, paragraph 17(a)
		The GC100 recommend that this should include the following:	GC100 paragraph 3.6

[62] According to the **GC100** (3.9) this should be taken from the note to the accounts related to staff and employee costs as required by the CA 06.

[63] It is not clear what items should be included here. The **GC100** (3.9) expect the comparisons to be 'suitable and relevant', have a longer term focus and should be consistent over time. As stated in the regulations, any changes in the items from year to year should be explained. The choice will depend on the company's size and stage in its life cycle. The **GC100** give the following examples: retained profits, capital expenditure, expenditure on research and development, debt repayments or tax payments. (Tax was specifically included in the draft regulations.) The legislation requires an analysis of relative spend on pay but leaves it to the directors to answer the question 'relative to what?'. So far compliance with this requirement appears to be patchy.

[64] Some companies have chosen to include their shareholding requirements in their remuneration policy rather than the implementation report. This may raise questions about how it can be changed in the future (see Note 65). While shareholding requirements are not obligatory, the **IA** (Section A(2)) expect senior executives to build up significant shareholdings and to acquire some using their own resources. The IA also wants companies to consider requiring executives to hold a proportion of their shares for a period after leaving (Section A(2)). The **PLSA** (paragraph 2.4) and **ISS** (page 16) consider that any shareholding requirement below 2 x salary (or higher for higher levels of reward) shows insufficient alignment with shareholders and, in the **PLSA**'s view, may warrant a vote against the remuneration policy. According to the **IA**, shares should not count if they are subject to any further performance or employment conditions but may if they are subject only to a holding period and/or clawback. Companies need to ensure that their shareholding guidelines and any retention requirements set out in the remuneration report are all consistent, taking into account the **IA** position.

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	Number	Disclosure	Reference
		(i) the percentage of salary or other amount required to be held; (ii) whether the provision is a requirement or a guideline; (iii) the consequences of non-compliance; (iv) the timeframe for compliance; (v) whether shares acquired on vesting of awards or exercise of options must be held until the requirement is met[65]; (vi) the extent to which the requirements apply after leaving; (vii) what shares will count (e.g. shares subject to unvested awards, unexercised options etc.)	

65 The **GC100** (3.6 and 4.3.4) state that investors generally expect this also to be disclosed in the future policy table, in the section on "how that component [i.e. the short term and/or the long-term incentive component] of the remuneration package operates".

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	Number	Disclosure	Reference
Audited		**3.19.2** A table showing, for each person who was a director during the year, details of: (i) the total number of options and awards under LTIPs, differentiating between those which were and were not subject to performance conditions and between share awards and options (but not describing the performance conditions); (ii) details of those options and awards;[66] (iii) details of share options which are exercisable but have not been exercised; and (iv) details of options which were exercised in the year under review.	Schedule 8, paragraph 17(b)
		(v) the total number of interests in shares in the company owned by the director or his connected persons at the end of the year;[67]	Schedule 8, paragraph 17(b) and LR9.8.6
		(vi) all changes in the interests of directors or connected persons that have occurred between the end of the period under review and a date not more than one	LR 9.8.6(1)

[66] Details of options and awards granted or vesting in the year and options which have previously become exercisable will already be disclosed elsewhere so this will cover only continuing awards. There is no guidance on what details are required but it should be sufficient to disclose the number of shares, the date of grant and the expected vesting date. The **GC100** (3.6) suggest the date of grant, vesting date, the share price and grant and any exercise price.

[67] The requirement to disclose 'interests in shares' would seem to require disclosure of options and awards under share plans. However, since those items are dealt with separately, companies could probably justify dealing with those options and awards by a cross-reference. The **GC100** (3.6) suggest that all awards under incentive plans and even 'cash-settled long term incentives' (but, confusingly, not phantoms) should be included. Strictly, the directors' interests in all the unallocated shares held by the company's employee share trusts and non-beneficial holdings (e.g. if the director is a trustee of an employee share trust) would have to be included. However, companies may choose either not to include these in this disclosure, or deal with the interests in shares under employee trusts in one note applying to all directors. The Listing Rules requirement (LR 9.8.6(1)) to disclose in the annual report all the directors' interests and those of their connected persons by reference to the requirements of the Market Abuse Regulation will still apply, so companies will have an element of duplicated disclosure here.

This is one of the only remaining overlaps between the Listing Rules and Schedule 8. Most companies comply with both requirements in a single table.

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	Number	Disclosure	Reference
		month before the date of the AGM notice or a negative statement;[68]	
		3.19.3 the aggregate of the amount of gains made by directors on the exercise of share options	Schedule 5 - Para 1(1)(b)
		3.19.4 details of any policies regulating the hedging of awards or using shares as collateral	GC100 3.6
		3.19.5 any use of any directors' shareholdings in hedging arrangements or as collateral for loans	IA, Section A(2)
	3.20	**Shareholder voting**	Schedule 8, paragraph 23
		A statement setting out[69]:	
		3.20.1 How shareholders voted on the latest remuneration policy put to shareholders and a percentage of votes cast for, against, and withheld; **3.20.2** How shareholders voted on the implementation report at the AGM held during the reporting period and a percentage of votes cast for, against, and withheld; **3.20.3** If there was a 'significant percentage' of votes against either	IA, Section A(11)

[68] This is required by the LR but not Schedule 8 so does not have to be in the implementation report – though that would be a logical place for it. The **GC100** also suggest (3.6) that companies might wish to include on their website a periodically updated version of this table to include significant changes after the report is published.

[69] Companies will need to set out how shareholders voted on the latest remuneration policy put to shareholders' vote, and on the implementation report presented at the AGM held in the reporting year. This means they will disclose shareholder reaction to the remuneration paid two years ago, and the last policy presented for shareholders' vote, which may have been in a different year. This can get quite confusing.

The **GC100** suggest (3.12) that companies should disclose the number of votes cast for and against the resolution and not just the percentages. They also include a suggested format for the information in tabular form and that other relevant resolutions be included such as resolutions to approve share plans and those to approve payments outside of the policy. Where there has been a significant vote against in a previous meeting and where changes were made to address shareholder concerns have resulted in shareholder support for the same resolution at the next general meeting, the **GC100** say companies may wish to report this to highlight that the directors have identified and addressed shareholders' concerns. The reason given for this additional disclosure is that it would be helpful for companies to adopt a common approach to the reporting of voting outcomes to *ensure* data is comparable. It remains to be seen to what extent companies will provide these additional extensive disclosures.

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	Number	Disclosure	Reference
		resolution,[70] the reasons for that, where known;	
		3.20.4 Details of any action taken by the remuneration committee in response[71].	
	3.21	**Remuneration committee details**	Schedule 8, paragraph 22
		3.21.1 If a board committee[72] has considered matters relating to directors' remuneration for the relevant financial year, the report must include:	
		• the name of each director who was a member of the committee at any time when it was considering any such matter; • the name of any person other than an employee who provided to the committee advice or services (other than legal advice on compliance with any relevant legislation) that materially assisted the committee in its consideration of any matter. [73] If this person is not a director, the nature of any other services that he has	

[70] "Significant" is not defined. It can be interpreted differently by different companies, and its meaning may alter over time. The **IA** (Section A(11)) and the **GC100** suggest (3.12) that votes against in excess of 20% should be regarded as significant and include in this votes which have been withheld. In relation to the **CGC** requirement (see Note 71), the **ISS** stated that a consensus figure would be in the range of 20%-30% as the threshold, though market practice is bound to evolve.

[71] The **CGC** (section E.2.2) states that, if the company board consider that a significant proportion of shareholders have voted against *any* resolution, when announcing the results, the company should explain the actions it intends to take to understand the reasons behind the result. There are a number of distinctions with the Schedule 8 requirements: this applies to any resolution, not simply those relating to pay, and immediate company action is needed, rather than in the next implementation report. The CGC requirement is about disclosing how the company intends to *engage* with its shareholders, not how they intend to *respond* to the concern. In 2015, 17 FTSE 350 companies (five FTSE 100 and 12 FTSE 250) received a vote of more than 20% against at least one resolution and four complied early with the CGC provision and included a statement as to the action the board intends to take or has taken in their results announcement.

[72] The **GC100** suggest (3.11) that companies disclose the factors they took into account in determining that the advice received was appropriate, objective and independent.

The terms of reference of the remuneration committee must also be made available. "Making available" means including the information on the company's website and providing it on request (CGC D.2.1).

[73] Companies should consider carefully whether assistance provided by advice was material in the context of the focus of the regulations – i.e. the setting and payment of directors' remuneration.

The **GC100** suggest (3.11) that fees for lawyers who have, for example, drafted plan documentation and who have advised on remuneration, should be disclosed even though this is not required by the regulations.

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	Number	Disclosure	Reference
		provided to the company during the relevant financial year by whom he was appointed whether or not he was appointed by the committee, and how he was selected; • how the committee satisfied itself that the advice was objective and independent; • the amount of fees or other charges paid by the company to that person for the services to the committee and the basis on which the services were charged.	
		This also applies to any committee considering remuneration issues relating to an individual's nomination as a director.	
		3.21.2 The number of meetings of the remuneration committee during the financial year and individual attendance by directors[74].	CGC A.1.2 PLSA 5.6
	3.22	**Implementation of policy in the following year**	Schedule 8, paragraph 21
		The report must state how the company intends to implement the remuneration policy in the year after the year under review[75] including:	

[74] The **PLSA** say that shareholders will take low attendance at meetings into account when considering the re-election of directors if no satisfactory explanation is provided.

[75] Since the remuneration policy is not required to set out performance targets, this will be the only forward-looking disclosure about them. Companies can decline to disclose details of measures or targets if they are commercially sensitive under paragraph 2(5) of Schedule 8 and many companies have done so, often undertaking to disclose them retrospectively in the implementation report for the relevant year.

The **GC100** (3.10) (and Schedule 8) require that 'significant' changes should be explained and the **GC100** would regard any changes in performance targets, levels of grant or basic salary as 'significant'. If there are no changes, companies should consider stating this. The **GC100** suggest including:

- Any change in basic salary;
- Any change in the maximum short-term and long-term incentive awards, even if the new maximum is in accordance with the award maximums set out in the future policy table;
- Any change in the target short-term and long-term incentive awards, even if the new target is in accordance with the target award levels set out in the future policy table;
- Any change to scheme interests to be awarded compared to the reported year (as set out in the statement on scheme interests awarded during the reported year, required by paragraph 14 of the Schedule 8);

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	Number	Disclosure	Reference
		3.22.1 performance measures to be used and the relative weightings; and **3.22.2** performance targets and how awards will be calculated; and **3.22.3** any significant differences between the way the policy was implemented in the year under review and the next year (if the same policy applied in both years).	
	3.23	**Diversity** Companies should explain "what steps they are taking to bring diversity in all its guises to their boardroom, including gender diversity" setting targets and demonstrating progress towards achieving them.[76]	PLSA 1.11
	3.24	**Remuneration waived** Details of any arrangements under which a director has waived or agreed to waive any emoluments or future emoluments.[77]	LR9.8.4(5) and (6)
	3.25	**Compliance with CGC**[78] **3.25.1** A narrative statement of how the company has applied the main principles set out in the relevant provisions of the CGC, providing explanation enabling shareholders to evaluate how the principles have been applied. **3.25.2** A statement as to whether or not the company has complied throughout the accounting period with section 1 of the CGC and if it has not, the CGC provisions with which it has	LR 9.8.6(5) and (6)

- Any other changes in the way that the approved remuneration policy will be implemented even if it is in accordance with the approved future policy table.

Companies which continue to grant on a financial year cycle will be reporting on how they intend to implement the remuneration policy, even though they are likely to have taken the key decisions (e.g. on performance conditions and maximum grants) by the time the remuneration report is prepared.

It is not necessary to repeat in this disclose anything which is in the remuneration policy.

[76] This would normally appear in the Corporate Governance Statement, rather than the remuneration report. If disclosure is poor, the **PLSA** suggest that shareholders may wish to consider voting against the report and accounts. If there is no clear evidence that diversity is being sufficiently considered by the board, they suggest that shareholders may choose to vote against the company Chair. The **PLSA** (1.12) also say that shareholders should consider voting against the report and accounts if the diversity statement is not disclosed, or is considered unsatisfactory. They expect the momentum towards achieving the Davies target of 25% of women on FTSE 100 boards to be maintained. The mandatory reporting of information on gender pay differences for large employers will no doubt greatly affect this type of disclosure, but not for 2016 reports.

[77] This does not need to be in the remuneration report.

[78] This would normally be in the Corporate Governance Statement, rather than the remuneration report.

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	Number	Disclosure	Reference
		not complied, the reasons why and, if applicable, the period of the non-compliance.	
	3.26	**External directorships**[79] Where an executive director serves as a non-executive director elsewhere, a statement as to whether or not the director will retain the non-executive director's fees and, if so, the total amount of these fees.	CGC D.1.2
	3.27	**Key management personnel** Compensation paid to "key management personnel"[80] must be disclosed in total and for each of the following categories: • short-term employee benefits; • post-employment benefits; • other long-term benefits; • termination benefits; and • share-based payment.	IAS 24
	3.28	**Trusts** The company strategy in relation to the use of any employee trusts for share plans should be explained. The number of shares held by any employee trust should be disclosed.	IA, Section C(2)(xii)

79 The **ISS** EMEA 2017 Benchmark Policy Recommendations contain guidelines on when they may recommend a vote against (re-election of a director) for 'overboarding' (i.e. holding too many external directorships). There will be a vote against re-election of the following:

- Directors who hold more than five non-chair non-executive director positions.
- A non-executive chairman who, in addition to this role, holds (i) more than three non-chair non-executive director positions, (ii) more than one other non-executive chair position and one non-chair non-executive director position, or (iii) any executive position.
- Executive directors holding (i) more than two non-chair non-executive director positions, (ii) any other executive positions, or (iii) any non-executive chair position.

The recommended vote against will not be issued where the director is the chair or CEO, but may be issued for the other boards where the individual serves as director.

The **PLSA** (4.16 and 5.19-20) consider that the role of non-executive directors is an increasingly demanding one particularly for chairing key committees. Shareholders should take into account the size of the company, its circumstances and the director's other commitments in forming a view as to whether the director is over-committed. The **PLSA** consider that for a complex company, a holding of more than four directorships (two more directorships for heavily regulated industries, or for key committee chairs) may lead to a vote against the re-election of that director. The chair's time commitment may be questioned if they are directors of more than four companies, or a chair of two or more highly complex companies. The Executive Remuneration Working Group suggests that a non-executive director should be on the remuneration committee for at least a year before becoming its chair.

80 "Key management personnel" are those having authority and responsibility for planning, directing and controlling the activities of the company directly or indirectly, including all executive and non-executive directors. Some companies interpret this to cover the same group as persons or directors with managerial responsibility (under the Disclosure & Transparency Rules, i.e. PDMRs). This disclosure is not required to appear in the remuneration report.

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	Number	Disclosure	Reference
	3.29	**Involvement of employees in company performance**[81] If the company had, on average, more than 250 UK employees in each week in the year[82], the directors' report should include a statement describing the action that has been taken during the year to introduce maintain or develop arrangements aimed at encouraging the involvement of employees in the company's performance through an employees' share scheme or other means.	Schedule 7, paragraph 11(3)(c)
	3.30	**Voting and change of control provisions** The directors' report must include for all plans (whether or not approved by shareholders)[83] • a description of any restrictions on the transfer of shares: (e.g. bonus deferral plans which offer forfeitable shares, co-investment plans and share incentive plans); • a description of change of control provisions in any 'significant plan';[84] and • a description of voting rights that are not directly held by employees[85].	Part 6 of Schedule 7
	3.31	Any agreements between the company and its directors *or employees* providing for compensation for loss of office or employment (whether through resignation,	Schedule 7, paragraph 13(2)(k)

[81] Often no separate disclosure will be required here as the relevant information will have been provided under other headings. However, it is not sufficient to describe only the plans in which only directors participate.

[82] Note that only employees of the company (not its subsidiaries) count for these purposes.

[83] The format of the disclosures is not prescribed in the legislation but "detailed information" is required. Once a company has have made a disclosure for one year, it should only be necessary to change it for future years if it adopts or amends a plan

[84] It is not clear what 'significant' means but, in our view, it is likely to be relevant for any arrangement where significant numbers of shares are under award (e.g. a large sharesave or executive plan) or plans in which directors participate (even if, as a percentage of share capital, the awards are not significant).

[85] This would apply to shares held by an employee trust but only where the shares were held for particular employee but the trustee was able to vote them without reference to the employee. This does not arise often in practice.

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	Number	Disclosure	Reference
		purported redundancy or otherwise) that occurs because of a takeover bid.[86]	

[86] This only covers arrangements for additional payments on leaving employment because of the takeover bid (as opposed to a payment on the takeover itself). Such arrangements are quite unusual in the UK. However, note the breadth of the provision: It covers *all* employees and applies even if the employee resigned because of the takeover bid.

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Part D – Single Figure Table details

Click here to return to note 31

This table sets out elements in a remuneration package, whether the new rules require their inclusion in the single figure table of the implementation report and in which year, and includes statutory references and comments.

Element of remuneration	Included in single figure?			Reference in regulations	Amount included in single figure
	Granted in the year[1]	Continuing in the year[2]	Vested in the year[3]		
Salary and benefits					
Salary	✓	-	-	7(1)(a), 10(1)(a)	Cash paid in or for the year. Only covers pay while a director.
Benefits e.g. car, medical insurance, accommodation.	✓	-	-	7(1)(b), 10(1)(b), 11, 12(1)	Cash equivalent (i.e. the taxable value).
Pensions					
Pay in lieu of pension	✓	-	-	7(1)(e)(i), 10(1)(e)(i)	Amount of payment.
Money purchase pension plan	✓	-	-	7(1)(e)(ii), 10(2)(e)	Aggregate pension input amount
Defined benefit pension plan	✓	-	-		

1. Further details of awards granted in the year are required under paragraph 14 if the award involves service or performance conditions tested over more than one year (e.g. LTIP awards). "Year" in this table refers to a reporting year.
2. Awards which are neither granted nor vest in the year are not included in the single figure. They would, however, be disclosed under paragraph 18.
3. This covers awards with performance conditions which were tested over a period of more than one year ending in the year under review or shortly after. Further details are required under paragraph 11.

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<table>
<tr><th rowspan="2">Element of remuneration</th><th colspan="3">Included in single figure?</th><th rowspan="2">Reference in regulations</th><th rowspan="2">Amount included in single figure</th></tr>
<tr><th>Granted in the year[1]</th><th>Continuing in the year[2]</th><th>Vested in the year[3]</th></tr>
<tr><td colspan="6">Bonuses</td></tr>
<tr><td>Bonus</td><td>✓</td><td>✕</td><td>✕</td><td>7(1)(c), 8 and 12</td><td>Amount of cash bonus plus any deferral (in cash or shares) which is not subject to further performance conditions – see below.[4]
Include bonus <u>for</u> the year, even if paid in a later year (in which case, it is not included in the later year).</td></tr>
<tr><td>Bonus deferral into shares with no further performance conditions[4]
Bonus deferral in cash with no performance conditions[4]</td><td>✓</td><td>✕</td><td>✕</td><td>7(1)(c), 8 and 12</td><td>Include amount of cash deferred or cash value of shares on deferral in the cash bonus number (see above) for the year to which the bonus relates.
The award is not included as a separate award in the year in which it is actually granted.
Notes to show percentage deferral and whether it was in cash or shares.
No distinction between voluntary and mandatory deferral.</td></tr>
</table>

[4] The company will need to decide (depending on the terms of the clawback) whether or not any clawback provisions are performance conditions meaning that the deferred element is disclosed later, on vesting. We have assumed that clawback would not be treated as a performance condition for the purposes of the single figure table. See Note 31 in Part B.

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Element of remuneration	Included in single figure?			Reference in regulations	Amount included in single figure
	Granted in the year[1]	Continuing in the year[2]	Vested in the year[3]		
Bonus deferral into shares with performance conditions	×	×	✓	7(1)(c), 8 and 12	Market value of shares on vesting. The value of the shares at the time of deferral would not be included in the cash bonus number for the year for which the bonus is awarded.
Matching award in respect of voluntary or mandatory bonus deferral with no performance conditions	[✓]	×	[✓]	6(1)(a)	There are two possible approaches: • face value or possibly fair value of award included at time of award; or • value of shares on vesting included at time of vesting. If there are no service conditions, then inclusion at grant is probably more appropriate. Otherwise, we think that companies could take either approach provided they are consistent and explain their approach. We believe BIS intend companies to disclose the award at the time of grant.
Matching award in respect of voluntary or mandatory deferral with performance conditions	×	×	✓	7(1)(d), 9(1)(d), 12(2)	Market value of shares on vesting.

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Element of remuneration	Included in single figure?			Reference in regulations	Amount included in single figure
	Granted in the year[1]	Continuing in the year[2]	Vested in the year[3]		
Long term incentives					
Awards or options with performance conditions	×	×	✓	7(1)(d), 9(1)(d), 12(2)	Market value of shares on vesting and marked value, less exercise price or fair value in the case of options (with an underwater option included at zero). Dividend equivalents, should not be included but mentioned in a note)
Awards or options with no performance conditions (e.g. recruitment awards)	[✓]	×	[✓]	6(1)(a)	There are two possible approaches: • face value or possibly fair value of award included at time of award; or • value of shares on vesting included at time of vesting. If there are no service conditions, then inclusion at grant is probably more appropriate. Otherwise, we think that companies could take either approach provided they are consistent and explain their approach. We believe BIS intend companies to disclose the award at the time of grant.
All-employee plans					
Sharesave options	[✓]	×	[✓]	6(1)(a)	There are two possible approaches:

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Element of remuneration	Included in single figure?			Reference in regulations	Amount included in single figure
	Granted in the year[1]	Continuing in the year[2]	Vested in the year[3]		
					• face value, less exercise price or possibly fair value of options included at time of grant; or • value of shares on exercise, less exercise price included at time of exercise. We think that companies could take either approach provided they are consistent and explain their approach.
Free shares under Share Incentive Plan[5]	✓	-	-	6(1)(a)	Value of free shares, possibly with a discount for any possibility of forfeiture. If subject to performance conditions, only include on allocation (i.e. at the end of the performance period).
Matching Shares[5]	✓	✕	✕	6(1)(a)	Face value of shares, possibly with a discount for any possibility of forfeiture. Included in catch-all because of the lack of performance conditions.
Partnership Shares with no accumulation period[5]	✕	✕	✕	-	No disclosure as partnership shares are acquired at market value so no element of remuneration.

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Element of remuneration	Included in single figure? Granted in the year[1]	Continuing in the year[2]	Vested in the year[3]	Reference in regulations	Amount included in single figure
Partnership Shares with accumulation period[5]	✓	✕	✕	6(1)(a)	Any difference between the market value of the shares on allocation and the amount paid for the shares.

[5] Even if they are included in the single figure, shares held under a Share Incentive Plan, whether free, partnership or matching, will also have to be included in the directors' shareholding figures required under paragraph 18. The GC100 requires these numbers to be included but gives no assistance on when or on what basis. See Note 31.

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Part E – Relevant sections of the changes to the Companies Act

Click here to return to the "**Where are the rules?**" section

1 Companies

(1) In the Companies Acts, unless the context otherwise requires–

"company" means a company formed and registered under this Act, that is–

(a) a company so formed and registered after the commencement of this Part, or

(b) a company that immediately before the commencement of this Part–

(i) was formed and registered under the Companies Act 1985 (c. 6) or the Companies (Northern Ireland) Order 1986 (S.I. 1986/1032 (N.I. 6)), or

(ii) was an existing company for the purposes of that Act or that Order,

(which is to be treated on commencement as if formed and registered under this Act).

(2) Certain provisions of the Companies Acts apply to–

(a) companies registered, but not formed, under this Act (see Chapter 1 of Part 33), and

(b) bodies incorporated in the United Kingdom but not registered under this Act (see Chapter 2 of that Part).

(3) For provisions applying to companies incorporated outside the United Kingdom, see Part 34 (overseas companies).

PART 10

A COMPANY'S DIRECTORS

180 Consent, approval or authorisation by members

(1) In a case where–

(a) section 175 (duty to avoid conflicts of interest) is complied with by authorisation by the directors, or

(b) section 177 (duty to declare interest in proposed transaction or arrangement) is complied with,

the transaction or arrangement is not liable to be set aside by virtue of any common law rule or equitable principle requiring the consent or approval of the members of the company. This is without prejudice to any enactment, or provision of the company's constitution, requiring such consent or approval.

(2) The application of the general duties is not affected by the fact that the case also falls within Chapter 4 or 4A (transactions requiring approval of members), except that where either of those Chapters applies and–

(a) approval is given under the Chapter concerned, or

(b) the matter is one as to which it is provided that approval is not needed,

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it is not necessary also to comply with section 175 (duty to avoid conflicts of interest) or section 176 (duty not to accept benefits from third parties).

(3) Compliance with the general duties does not remove the need for approval under any applicable provision of Chapter 4 or 4A (transactions requiring approval of members).

(4) The general duties–

(a) have effect subject to any rule of law enabling the company to give authority, specifically or generally, for anything to be done (or omitted) by the directors, or any of them, that would otherwise be a breach of duty, and

(b) where the company's articles contain provisions for dealing with conflicts of interest, are not infringed by anything done (or omitted) by the directors, or any of them, in accordance with those provisions.

(5) Otherwise, the general duties have effect (except as otherwise provided or the context otherwise requires) notwithstanding any enactment or rule of law.

190 Substantial property transactions: requirement of members' approval

(1) A company may not enter into an arrangement under which–

(a) a director of the company or of its holding company, or a person connected with such a director, acquires or is to acquire from the company (directly or indirectly) a substantial non-cash asset, or

(b) the company acquires or is to acquire a substantial non-cash asset (directly or indirectly) from such a director or a person so connected,

unless the arrangement has been approved by a resolution of the members of the company or is conditional on such approval being obtained. For the meaning of "substantial non-cash asset" see section 191.

(2) If the director or connected person is a director of the company's holding company or a person connected with such a director, the arrangement must also have been approved by a resolution of the members of the holding company or be conditional on such approval being obtained.

(3) A company shall not be subject to any liability by reason of a failure to obtain approval required by this section.

(4) No approval is required under this section on the part of the members of a body corporate that–

(a) is not a UK-registered company, or

(b) is a wholly-owned subsidiary of another body corporate.

(5) For the purposes of this section–

(a) an arrangement involving more than one non-cash asset, or

(b) an arrangement that is one of a series involving non-cash assets,

shall be treated as if they involved a non-cash asset of a value equal to the aggregate value of all the non-cash assets involved in the arrangement or, as the case may be, the series.

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(6) This section does not apply to a transaction so far as it relates–

(a) to anything to which a director of a company is entitled under his service contract, or

(b) to payment for loss of office as defined in section 215 (payments to which the requirements of Chapter 4 or 4A apply).

215 Payments for loss of office

(1) In this Chapter a "payment for loss of office" means a payment made to a director or past director of a company–

(a) by way of compensation for loss of office as director of the company,

(b) by way of compensation for loss, while director of the company or in connection with his ceasing to be a director of it, of–

(i) any other office or employment in connection with the management of the affairs of the company, or

(ii) any office (as director or otherwise) or employment in connection with the management of the affairs of any subsidiary undertaking of the company,

(c) as consideration for or in connection with his retirement from his office as director of the company, or

(d) as consideration for or in connection with his retirement, while director of the company or in connection with his ceasing to be a director of it, from–

(i) any other office or employment in connection with the management of the affairs of the company, or

(ii) any office (as director or otherwise) or employment in connection with the management of the affairs of any subsidiary undertaking of the company.

(2) The references to compensation and consideration include benefits otherwise than in cash and references in this Chapter to payment have a corresponding meaning.

(3) For the purposes of sections 217 to 221 (payments requiring members' approval)–

(a) payment to a person connected with a director, or

(b) payment to any person at the direction of, or for the benefit of, a director or a person connected with him,

is treated as payment to the director.

(4) References in those sections to payment by a person include payment by another person at the direction of, or on behalf of, the person referred to.

(5) Nothing in this section or sections 216 to 222 applies in relation to a payment for loss of office to a director of a quoted company other than a payment to which section 226C does not apply by virtue of section 226D(5A).

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216 Amounts taken to be payments for loss of office

(1) This section applies where in connection with any such transfer as is mentioned in section 218 or 219 (payment in connection with transfer of undertaking, property or shares) a director of the company–

(a) is to cease to hold office, or

(b) is to cease to be the holder of–

(i) any other office or employment in connection with the management of the affairs of the company, or

(ii) any office (as director or otherwise) or employment in connection with the management of the affairs of any subsidiary undertaking of the company.

(2) If in connection with any such transfer–

(a) the price to be paid to the director for any shares in the company held by him is in excess of the price which could at the time have been obtained by other holders of like shares, or

(b) any valuable consideration is given to the director by a person other than the company,

the excess or, as the case may be, the money value of the consideration is taken for the purposes of those sections to have been a payment for loss of office.

217 Payment by company: requirement of members' approval

(1) A company may not make a payment for loss of office to a director of the company unless the payment has been approved by a resolution of the members of the company.

(2) A company may not make a payment for loss of office to a director of its holding company unless the payment has been approved by a resolution of the members of each of those companies.

(3) A resolution approving a payment to which this section applies must not be passed unless a memorandum setting out particulars of the proposed payment (including its amount) is made available to the members of the company whose approval is sought–

(a) in the case of a written resolution, by being sent or submitted to every eligible member at or before the time at which the proposed resolution is sent or submitted to him;

(b) in the case of a resolution at a meeting, by being made available for inspection by the members both–

(i) at the company's registered office for not less than 15 days ending with the date of the meeting, and

(ii) at the meeting itself.

(4) No approval is required under this section on the part of the members of a body corporate that–

(a) is not a UK-registered company, or

(b) is a wholly-owned subsidiary of another body corporate.

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218 Payment in connection with transfer of undertaking etc: requirement of members' approval

(1) No payment for loss of office may be made by any person to a director of a company in connection with the transfer of the whole or any part of the undertaking or property of the company unless the payment has been approved by a resolution of the members of the company.

(2) No payment for loss of office may be made by any person to a director of a company in connection with the transfer of the whole or any part of the undertaking or property of a subsidiary of the company unless the payment has been approved by a resolution of the members of each of the companies.

(3) A resolution approving a payment to which this section applies must not be passed unless a memorandum setting out particulars of the proposed payment (including its amount) is made available to the members of the company whose approval is sought–

  (a) in the case of a written resolution, by being sent or submitted to every eligible member at or before the time at which the proposed resolution is sent or submitted to him;

  (b) in the case of a resolution at a meeting, by being made available for inspection by the members both–

    (i) at the company's registered office for not less than 15 days ending with the date of the meeting, and

    (ii) at the meeting itself.

(4) No approval is required under this section on the part of the members of a body corporate that–

  (a) is not a UK-registered company, or

  (b) is a wholly-owned subsidiary of another body corporate.

(5) A payment made in pursuance of an arrangement–

  (a) entered into as part of the agreement for the transfer in question, or within one year before or two years after that agreement, and

  (b) to which the company whose undertaking or property is transferred, or any person to whom the transfer is made, is privy, is presumed, except in so far as the contrary is shown, to be a payment to which this section applies.

219 Payment in connection with share transfer: requirement of members' approval

(1) No payment for loss of office may be made by any person to a director of a company in connection with a transfer of shares in the company, or in a subsidiary of the company, resulting from a takeover bid unless the payment has been approved by a resolution of the relevant shareholders.

(2) The relevant shareholders are the holders of the shares to which the bid relates and any holders of shares of the same class as any of those shares.

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(3) A resolution approving a payment to which this section applies must not be passed unless a memorandum setting out particulars of the proposed payment (including its amount) is made available to the members of the company whose approval is sought–

(a) in the case of a written resolution, by being sent or submitted to every eligible member at or before the time at which the proposed resolution is sent or submitted to him;

(b) in the case of a resolution at a meeting, by being made available for inspection by the members both–

(i) at the company's registered office for not less than 15 days ending with the date of the meeting, and

(ii) at the meeting itself.

(4) Neither the person making the offer, nor any associate of his (as defined in section 988), is entitled to vote on the resolution, but–

(a) where the resolution is proposed as a written resolution, they are entitled (if they would otherwise be so entitled) to be sent a copy of it, and

(b) at any meeting to consider the resolution they are entitled (if they would otherwise be so entitled) to be given notice of the meeting, to attend and speak and if present (in person or by proxy) to count towards the quorum.

(5) If at a meeting to consider the resolution a quorum is not present, and after the meeting has been adjourned to a later date a quorum is again not present, the payment is (for the purposes of this section) deemed to have been approved.

(6) No approval is required under this section on the part of shareholders in a body corporate that–

(a) is not a UK-registered company, or

(b) is a wholly-owned subsidiary of another body corporate.

(7) A payment made in pursuance of an arrangement–

(a) entered into as part of the agreement for the transfer in question, or within one year before or two years after that agreement, and

(b) to which the company whose shares are the subject of the bid, or any person to whom the transfer is made, is privy, is presumed, except in so far as the contrary is shown, to be a payment to which this section applies.

220 Exception for payments in discharge of legal obligations etc

(1) Approval is not required under section 217, 218 or 219 (payments requiring members' approval) for a payment made in good faith–

(a) in discharge of an existing legal obligation (as defined below),

(b) by way of damages for breach of such an obligation,

(c) by way of settlement or compromise of any claim arising in connection with the termination of a person's office or employment, or

(d) by way of pension in respect of past services.

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(2) In relation to a payment within section 217 (payment by company) an existing legal obligation means an obligation of the company, or any body corporate associated with it, that was not entered into in connection with, or in consequence of, the event giving rise to the payment for loss of office.

(3) In relation to a payment within section 218 or 219 (payment in connection with transfer of undertaking, property or shares) an existing legal obligation means an obligation of the person making the payment that was not entered into for the purposes of, in connection with or in consequence of, the transfer in question.

(4) In the case of a payment within both section 217 and section 218, or within both section 217 and section 219, subsection (2) above applies and not subsection (3).

(5) A payment part of which falls within subsection (1) above and part of which does not is treated as if the parts were separate payments.

221 Exception for small payments

(1) Approval is not required under section 217, 218 or 219 (payments requiring members' approval) if–

(a) the payment in question is made by the company or any of its subsidiaries, and

(b) the amount or value of the payment, together with the amount or value of any other relevant payments, does not exceed £200.

(2) For this purpose "other relevant payments" are payments for loss of office in relation to which the following conditions are met.

(3) Where the payment in question is one to which section 217 (payment by company) applies, the conditions are that the other payment was or is paid–

(a) by the company making the payment in question or any of its subsidiaries,

(b) to the director to whom that payment is made, and

(c) in connection with the same event.

(4) Where the payment in question is one to which section 218 or 219 applies (payment in connection with transfer of undertaking, property or shares), the conditions are that the other payment was (or is) paid in connection with the same transfer–

(a) to the director to whom the payment in question was made, and

(b) by the company making the payment or any of its subsidiaries.

222 Payments made without approval: civil consequences

(1) If a payment is made in contravention of section 217 (payment by company)–

(a) it is held by the recipient on trust for the company making the payment, and

(b) any director who authorised the payment is jointly and severally liable to indemnify the company that made the payment for any loss resulting from it.

(2) If a payment is made in contravention of section 218 (payment in connection with transfer of undertaking etc), it is held by the recipient on trust for the company whose undertaking or property is or is proposed to be transferred.

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(3) If a payment is made in contravention of section 219 (payment in connection with share transfer)–

(a) it is held by the recipient on trust for persons who have sold their shares as a result of the offer made, and

(b) the expenses incurred by the recipient in distributing that sum amongst those persons shall be borne by him and not retained out of that sum.

(4) If a payment is in contravention of section 217 and section 218, subsection (2) of this section applies rather than subsection (1).

(5) If a payment is in contravention of section 217 and section 219, subsection (3) of this section applies rather than subsection (1), unless the court directs otherwise.

223 Transactions requiring members' approval: application of provisions to shadow directors

(1) For the purposes of–

(a) sections 188 and 189 (directors' service contracts),

(b) sections 190 to 196 (property transactions),

(c) sections 197 to 214 (loans etc), and

(d) sections 215 to 222 (payments for loss of office),

a shadow director is treated as a director.

(2) Any reference in those provisions to loss of office as a director does not apply in relation to loss of a person's status as a shadow director.

224 Approval by written resolution: accidental failure to send memorandum

(1) Where–

(a) approval under this Chapter is sought by written resolution, and

(b) a memorandum is required under this Chapter to be sent or submitted to every eligible member before the resolution is passed,

any accidental failure to send or submit the memorandum to one or more members shall be disregarded for the purpose of determining whether the requirement has been met.

(2) Subsection (1) has effect subject to any provision of the company's articles.

225 Cases where approval is required under more than one provision

(1) Approval may be required under more than one provision of this Chapter.

(2) If so, the requirements of each applicable provision must be met.

(3) This does not require a separate resolution for the purposes of each provision.

226 *Repealed*

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CHAPTER 4A

DIRECTORS OF QUOTED COMPANIES: SPECIAL PROVISION

Interpretation

226A Key definitions

(1) In this Chapter—

"directors' remuneration policy" means the policy of a quoted company with respect to the making of remuneration payments and payments for loss of office;

"quoted company" has the same meaning as in Part 15 of this Act;

"remuneration payment" means any form of payment or other benefit made to or otherwise conferred on a person as consideration for the person –

(a) holding, agreeing to hold or having held office as director of a company, or

(b) holding, agreeing to hold or having held, during a period when the person is or was such a director –

(i) any other office or employment in connection with the management of the affairs of the company, or

(ii) any office (as director or otherwise) or employment in connection with the management of the affairs of any subsidiary undertaking of the company,

other than a payment for loss of office;

"payment for loss of office" has the same meaning as in Chapter 4 of this Part.

(2) Subsection (3) applies where, in connection with a relevant transfer, a director of a quoted company is—

(a) to cease to hold office as director, or

(b) to cease to be the holder of—

(i) any other office or employment in connection with the management of the affairs of the company, or

(ii) any office (as director or otherwise) or employment in connection with the management of the affairs of any subsidiary undertaking of the company.

(3) If in connection with the transfer—

(a) the price to be paid to the director for any shares in the company held by the director is in excess of the price which could at the time have been obtained by other holders of like shares, or

(b) any valuable consideration is given to the director by a person other than the company,

the excess or, as the case may be, the money value of the consideration is taken for the purposes of section 226C to have been a payment for loss of office.

(4) In subsection (2), "relevant transfer" means—

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(a) a transfer of the whole or any part of the undertaking or property of the company or a subsidiary of the company;

(b) a transfer of shares in the company, or in a subsidiary of the company, resulting from a takeover bid.

(5) References in this Chapter to the making of a remuneration payment or to the making of a payment for loss of office are to be read in accordance with this section.

(6) References in this Chapter to a payment by a company include a payment by another person at the direction of, or on behalf of, the company.

(7) References in this Chapter to a payment to a person ("B") who is, has been or is to be a director of a company include—

(a) a payment to a person connected with B, or

(b) a payment to a person at the direction of, or for the benefit of, B or a person connected with B.

(8) Section 252 applies for the purposes of determining whether a person is connected with a person who has been, or is to be, a director of a company as it applies for the purposes of determining whether a person is connected with a director.

(9) References in this Chapter to a director include a shadow director but references to loss of office as a director do not include loss of a person's status as a shadow director.

Restrictions relating to remuneration or loss of office payments

226B Remuneration payments

(1) A quoted company may not make a remuneration payment to a person who is, or is to be or has been, a director of the company unless—

(a) the payment is consistent with the approved directors' remuneration policy, or

(b) the payment is approved by resolution of the members of the company.

(2) The approved directors' remuneration policy is the most recent remuneration policy to have been approved by a resolution passed by the members of the company in general meeting.

226C Loss of office payments

(1) No payment for loss of office may be made by any person to a person who is, or has been, a director of a quoted company unless—

(a) the payment is consistent with the approved directors' remuneration policy, or

(b) the payment is approved by resolution of the members of the company.

(2) The approved directors' remuneration policy is the most recent remuneration policy to have been approved by a resolution passed by the members of the company in general meeting.

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226D Sections 226B and 226C: supplementary

(1) A resolution approving a payment for the purposes of section 226B(1)(b) or 226C(1)(b) must not be passed unless a memorandum setting out particulars of the proposed payment (including its amount) is made available for inspection by the members of the company—

(a) at the company's registered office for not less than 15 days ending with the date of the meeting at which the resolution is to be considered, and

(b) at that meeting itself.

(2) The memorandum must explain the ways in which the payment is inconsistent with the approved directors' remuneration policy (within the meaning of the section in question).

(3) The company must ensure that the memorandum is made available on the company's website from the first day on which the memorandum is made available for inspection under subsection (1) until its next accounts meeting.

(4) Failure to comply with subsection (3) does not affect the validity of the meeting at which a resolution is passed approving a payment to which the memorandum relates or the validity of anything done at the meeting.

(5) Nothing in section 226B or 226C authorises the making of a remuneration payment or payment for loss of office in contravention of the articles of the company concerned.

(6) Nothing in section 226B or 226C applies in relation to a remuneration payment or (as the case may be) a payment for loss of office made to a person who is, or is to be or has been, a director of a quoted company before the earlier of —

(a) the end of the first financial year of the company to begin on or after the day on which it becomes a quoted company, and

(b) the date from which the company's first directors' remuneration policy to be approved under section 439A takes effect.

(7) In this section the "company's website" is the website on which the company makes material available under section 430.

Supplementary

226E Payments made without approval: civil consequences

(1) An obligation (however arising) to make a payment which would be in contravention of section 226B or 226C has no effect.

(2) If a payment is made in contravention of section 226B or 226C—

(a) it is held by the recipient on trust for the company or other person making the payment, and

(b) in the case of a payment by a company, any director who authorised the payment is jointly and severally liable to indemnify the company that made the payment for any loss resulting from it.

(3) If a payment for loss of office is made in contravention of section 226C to a director of a quoted company in connection with the transfer of the whole or any part of the undertaking or property of the company or a subsidiary of the company,—

(a) subsection (2) does not apply, and

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(b) the payment is held by the recipient on trust for the company whose undertaking or property is or is proposed to be transferred.

(4) If a payment for loss of office is made in contravention of section 226C to a director of a quoted company in connection with a transfer of shares in the company, or in a subsidiary of the company, resulting from a takeover bid —

(a) subsection (2) does not apply,

(b) the payment is held by the recipient on trust for persons who have sold their shares as a result of the offer made, and

(c) the expenses incurred by the recipient in distributing that sum amongst those persons shall be borne by the recipient and not retained out of that sum.

(5) If in proceedings against a director for the enforcement of a liability under subsection (2)(b) —

(a) the director shows that he or she has acted honestly and reasonably, and

(b) the court considers that, having regard to all the circumstances of the case, the director ought to be relieved of liability,

the court may relieve the director, either wholly or in part, from liability on such terms as the court thinks fit.

226F Relationship with requirements under Chapter 4

(1) This Chapter does not affect any requirement for approval by a resolution of the members of a company which applies in relation to the company under Chapter 4.

(2) Where the making of a payment to which section 226B or 226C applies requires approval by a resolution of the members of the company concerned under Chapter 4, approval obtained for the purposes of that Chapter is to be treated as satisfying the requirements of section 226B(1)(b) or (as the case may be) 226C(1)(b).

PART 15

ACCOUNTS AND REPORTS

385 Quoted and unquoted companies

(1) For the purposes of this Part a company is a quoted company in relation to a financial year if it is a quoted company immediately before the end of the accounting reference period by reference to which that financial year was determined.

(2) A "quoted company" means a company whose equity share capital–

(a) has been included in the official list in accordance with the provisions of Part 6 of the Financial Services and Markets Act 2000 (c. 8), or

(b) is officially listed in an EEA State, or

(c) is admitted to dealing on either the New York Stock Exchange or the exchange known as Nasdaq.

In paragraph (a) "the official list" has the meaning given by section 103(1) of the Financial Services and Markets Act 2000.

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(3) An “unquoted company” means a company that is not a quoted company.

(4) The Secretary of State may by regulations amend or replace the provisions of subsections (1) to (2) so as to limit or extend the application of some or all of the provisions of this Part that are expressed to apply to quoted companies.

(5) Regulations under this section extending the application of any such provision of this Part are subject to affirmative resolution procedure.

(6) Any other regulations under this section are subject to negative resolution procedure.

420 Duty to prepare directors’ remuneration report

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

(2) In the case of failure to comply with the requirement to prepare a directors’ remuneration report, 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,

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.

421 Contents of directors’ remuneration report

(1) The Secretary of State may make provision by regulations as to–

(a) the information that must be contained in a directors’ remuneration report,

(b) how information is to be set out in the report, and

(c) what is to be the auditable part of the report.

(2) Without prejudice to the generality of this power, the regulations may make any such provision as was made, immediately before the commencement of this Part, by Schedule 7A to the Companies Act 1985.

(2A) The regulations must provide that any information required to be included in the report as to the policy of the company with respect to the making of remuneration payments and payments for loss of office (within the meaning of Chapter 4A of Part 10) is to be set out in a separate part of the report.

(3) It is the duty of–

(a) any director of a company, and

(b) any person who is or has at any time in the preceding five years been a director of the company,

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to give notice to the company of such matters relating to himself as may be necessary for the purposes of regulations under this section.

(4) A person who makes default in complying with subsection (3) commits an offence and is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

422 Approval and signing of directors' remuneration report

(1) The directors' remuneration 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 directors' remuneration 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.

422A Revisions to directors' remuneration policy

(1) The directors' remuneration policy contained in a company's directors' remuneration report may be revised.

(2) Any such revision must be approved by the board of directors.

(3) The policy as so revised must be set out in a document signed on behalf of the board by a director or the secretary of the company.

(4) Regulations under section 421(1) may make provision as to—

(a) the information that must be contained in a document setting out a revised directors' remuneration policy, and

(b) how information is to be set out in the document.

(5) Sections 422(2) and (3), 454, 456 and 463 apply in relation to such a document as they apply in relation to a directors' remuneration report.

(6) In this section, "directors' remuneration policy" means the policy of a company with respect to the matters mentioned in section 421(2A).

430 Quoted companies: annual accounts and reports to be made available on website

(1) A quoted company must ensure that its annual accounts and reports–

(a) are made available on a website, and

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(b) remain so available until the annual accounts and reports for the company's next financial year are made available in accordance with this section.

(2) The annual accounts and reports must be made available on a website that–

(a) is maintained by or on behalf of the company, and

(b) identifies the company in question.

(2A) If the directors' remuneration policy of a quoted company is revised in accordance with section 422A, the company must ensure that the revised policy is made available on the website on which its annual accounts and reports are made available.

(2B) If a person ceases to be a director of a quoted company, the company must ensure that the following information is made available on the website on which its annual accounts and reports are made available—

(a) the name of the person concerned,

(b) particulars of any remuneration payment (within the meaning of Chapter 4A of Part 10) made or to be made to the person after ceasing to be a director, including its amount and how it was calculated, and

(b) particulars of any payment for loss of office (within the meaning of that Chapter) made or to be made to the person, including its amount and how it was calculated.

(3) Access to the material made available on the website under subsections (1) to (2B), and the ability to obtain a hard copy of such material from the website, must not be–

(a) conditional on the payment of a fee, or

(b) otherwise restricted, except so far as necessary to comply with any enactment or regulatory requirement (in the United Kingdom or elsewhere).

(4) The annual accounts and reports–

(a) must be made available as soon as reasonably practicable, and

(b) must be kept available throughout the period specified in subsection (1)(b).

(4A) Where subsection (2A) or (2B) applies, the material in question—

(a) must be made available as soon as reasonably practicable, and

(b) must be kept available until the next directors' remuneration report of the company is made available on the website.

(5) A failure to make material available on a website throughout the period mentioned in subsection (4) or (as the case may be) (4A) is disregarded if–

(a) the material is made available on the website for part of that period, and

(b) the failure is wholly attributable to circumstances that it would not be reasonable to have expected the company to prevent or avoid.

(6) In the event of default in complying with this section, an offence is committed by every officer of the company who is in default.

(7) A person guilty of an offence under subsection (6) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

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439 Quoted companies: members' approval of directors' remuneration report

(1) A quoted company must, prior to the accounts meeting, give to the members of the company entitled to be sent notice of the meeting notice of the intention to move at the meeting, as an ordinary resolution, a resolution approving the directors' remuneration report for the financial year other than the part containing the directors' remuneration policy (as to which see section 439A).

(2) The notice may be given in any manner permitted for the service on the member of notice of the meeting.

(3) The business that may be dealt with at the accounts meeting includes the resolution. This is so notwithstanding any default in complying with subsection (1) or (2).

(4) The existing directors must ensure that the resolution is put to the vote of the meeting.

(5) No entitlement of a person to remuneration is made conditional on the resolution being passed by reason only of the provision made by this section.

(6) In this section–

"the accounts meeting" means the general meeting of the company before which the company's annual accounts for the financial year are to be laid; and

"existing director" means a person who is a director of the company immediately before that meeting.

439A Quoted companies: members' approval of directors' remuneration policy

(1) A quoted company must give notice of the intention to move, as an ordinary resolution, a resolution approving the relevant directors' remuneration policy—

(a) at the accounts meeting held in the first financial year which begins on or after the day on which the company becomes a quoted company, and

(b) at an accounts or other general meeting held no later than the end of the period of three financial years beginning with the first financial year after the last accounts or other general meeting in relation to which notice is given under this subsection.

(2) A quoted company must give notice of the intention to move at an accounts meeting, as an ordinary resolution, a resolution approving the relevant directors' remuneration policy if—

(a) a resolution required to be put to the vote under section 439 was not passed at the last accounts meeting of the company, and

(b) no notice under this section was given in relation to that meeting or any other general meeting held before the next accounts meeting.

(3) Subsection (2) does not apply in relation to a quoted company before the first meeting in relation to which it gives notice under subsection (1).

(4) A notice given under subsection (2) is to be treated as given under subsection (1) for the purpose of determining the period within which the next notice under subsection (1) must be given.

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(5) Notice of the intention to move a resolution to which this section applies must be given, prior to the meeting in question, to the members of the company entitled to be sent notice of the meeting.

(6) Subsections (2) to (4) of section 439 apply for the purposes of a resolution to which this section applies as they apply for the purposes of a resolution to which section 439 applies, with the modification that, for the purposes of a resolution relating to a general meeting other than an accounts meeting, subsection (3) applies as if for “accounts meeting” there were substituted “general meeting”.

(7) For the purposes of this section, the relevant directors’ remuneration policy is—

(a) in a case where notice is given in relation to an accounts meeting, the remuneration policy contained in the directors’ remuneration report in respect of which a resolution under section 439 is required to be put to the vote at that accounts meeting;

(b) in a case where notice is given in relation to a general meeting other than an accounts meeting—

(i) the remuneration policy contained in the directors’ remuneration report in respect of which such a resolution was required to be put to the vote at the last accounts meeting to be held before that other general meeting, or

(ii) where that policy has been revised in accordance with section 422A, the policy as so revised.

(8) In this section—

(a) “accounts meeting” means a general meeting of the company before which the company’s annual accounts for a financial year are to be laid;

(b) “directors’ remuneration policy” means the policy of the company with respect to the matters mentioned in section 421(2A).

440 Quoted companies: offences in connection with procedure for approval

(1) In the event of default in complying with section 439(1) or 439A(1) or (2) (notice to be given of resolution for approval of directors’ remuneration report or policy), an offence is committed by every officer of the company who is in default.

(2) If the resolution is not put to the vote of the meeting to which it relates, an offence is committed by each existing director.

(3) It is a defence for a person charged with an offence under subsection (2) to prove that he took all reasonable steps for securing that the resolution was put to the vote of the meeting.

(4) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(5) In this section–

“existing director” means a person who is a director of the company immediately before that meeting.

Part 34 OVERSEAS COMPANIES

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Registration of particulars

1046 Duty to register particulars

(1) The Secretary of State may make provision by regulations requiring an overseas company–

(a) to deliver to the registrar for registration a return containing specified particulars, and

(b) to deliver to the registrar with the return specified documents.

(2) The regulations–

(a) must, in the case of a company other than a Gibraltar company, require the company to register particulars if the company opens a branch in the United Kingdom, and

(b) may, in the case of a Gibraltar company, require the company to register particulars if the company opens a branch in the United Kingdom, and

(c) may, in any case, require the registration of particulars in such other circumstances as may be specified.

(3) In subsection (2)–

"branch" means a branch within the meaning of the Eleventh Company Law Directive (89/666/EEC);

"Gibraltar company" means a company incorporated in Gibraltar.

(4) The regulations may provide that where a company has registered particulars under this section and any alteration is made–

(a) in the specified particulars, or

(b) in any document delivered with the return,

the company must deliver to the registrar for registration a return containing specified particulars of the alteration.

(5) The regulations may make provision–

(a) requiring the return under this section to be delivered for registration to the registrar for a specified part of the United Kingdom, and

(b) requiring it to be so delivered before the end of a specified period.

(6) The regulations may make different provision according to–

(a) the place where the company is incorporated, and

(b) the activities carried on (or proposed to be carried on) by it.

This is without prejudice to the general power to make different provision for different cases.

(7) In this section "specified" means specified in the regulations.

(8) Regulations under this section are subject to affirmative resolution procedure.

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1049 Accounts and reports: general

(1) The Secretary of State may make provision by regulations requiring an overseas company that is required to register particulars under section 1046–

(a) to prepare the like accounts and directors' report, and

(b) to cause to be prepared such an auditor's report,

as would be required if the company were formed and registered under this Act.

(2) The regulations may for this purpose apply, with or without modifications, all or any of the provisions of–

Part 15 (accounts and reports), and

Part 16 (audit).

(3) The Secretary of State may make provision by regulations requiring an overseas company to deliver to the registrar copies of–

(a) the accounts and reports prepared in accordance with the regulations, or

(b) the accounts and reports that it is required to prepare and have audited under the law of the country in which it is incorporated.

(4) Regulations under this section are subject to negative resolution procedure.

Enterprise and Regulatory Reform Act 2013

82 Payments to directors: transitional provision

(1) In relation to a company that is a quoted company immediately before the day on which section 79 of this Act comes into force, section 439A(1)(a) of the Companies Act 2006 (as inserted by section 79(4) of this Act) applies as if—

(a) the reference to the day on which the company becomes a quoted company were a reference to the day on which section 79 of this Act comes into force, and

(b) at the end of the paragraph (but before the ", and") there were inserted "or at an earlier general meeting".

(2) In relation to a company that is a quoted company immediately before the day on which section 79 of this Act comes into force, section 226D(6)(a) of the Companies Act 2006 (as inserted by section 80 of this Act) applies as if the reference to the day on which the company becomes a quoted company were a reference to the day on which section 79 of this Act comes into force.

(3) Chapter 4A of Part 10 of the Companies Act 2006 does not apply in relation to remuneration payments or payments for loss of office that are required to be made under an agreement entered into before 27 June 2012 or in consequence of any other obligation arising before that date.

(4) An agreement entered into, or any other obligation arising, before 27 June 2012 that is modified or renewed on or after that date is to be treated for the purposes of subsection (3) as having been entered into or (as the case may be) as having arisen on the date on which it was modified or renewed.

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(5) The amendment made by section 81(4) does not apply in relation to a payment for loss of office to which subsection (3) of this section applies.

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Part F – Schedule 5 to The Large and Medium-sized Companies and Groups (Accounts and Reports) Regulations 2008

INFORMATION ABOUT BENEFITS OF DIRECTORS

PART 1

PROVISIONS APPLYING TO QUOTED AND UNQUOTED COMPANIES

Total amount of directors' remuneration etc.

1 (1) There must be shown

(a) the aggregate amount of remuneration paid to or receivable by directors in respect of qualifying services;

(b) the aggregate of the amount of gains made by directors on the exercise of share options;

(c) the aggregate of the amount of money paid to or receivable by directors, and the net value of assets (other than money and share options) received or receivable by directors, under long term incentive schemes in respect of qualifying services; and

(d) the aggregate value of any company contributions

(i) paid, or treated as paid, to a pension scheme in respect of directors' qualifying services, and

(ii) by reference to which the rate or amount of any money purchase benefits that may become payable will be calculated.

(2) There must be shown the number of directors (if any) to whom retirement benefits are accruing in respect of qualifying services

(a) under money purchase schemes, and

(b) under defined benefit schemes.

(3) In the case of a company which is not a quoted company and whose equity share capital is not listed on the market known as AIM

(a) sub-paragraph (1) has effect as if paragraph (b) were omitted and, in paragraph (c), "assets" did not include shares; and

(b) the number of each of the following (if any) must be shown, namely

(iii) the directors who exercised share options, and

(iv) the directors in respect of whose qualifying services shares were received or receivable under long term incentive schemes.

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Part G – Schedule 8 to The Large and Medium-sized Companies and Groups (Accounts and Reports) Regulations 2008

Click here to return to the "Where are the new rules" section.

QUOTED COMPANIES: DIRECTORS' REMUNERATION REPORT

PART 1

INTRODUCTORY

1.—(1) In the directors' remuneration report for a financial year ("the relevant financial year") there must be shown, subject to sub-paragraph (2), the information specified in Parts 2, 3, and 4.

(2) The directors' remuneration policy as specified in Part 4, may, subject to sub-paragraph (3), be omitted from the directors' remuneration report for a financial year, if the company does not intend, at the accounts meeting at which the report is to be laid, to move a resolution to approve the directors' remuneration policy in accordance with section 439A of the 2006 Act.

(3) Where the directors' remuneration policy is omitted from the report in accordance with sub-paragraph (2), there must be set out in the report the following information—

(a) the date of the last general meeting of the company at which a resolution was moved by the company in respect of that directors' remuneration policy and at which that policy was approved; and

(b) where, on the company's website or at some other place, a copy of that directors' remuneration policy may be inspected by the members of the company.

2.—(1) Information required to be shown in the report for or in respect of a particular person must be shown in the report in a manner that links the information to that person identified by name.

(2) Nothing in this Schedule prevents the directors setting out in the report any such additional information as they think fit, and any item required to be shown in the report may be shown in greater detail than required by the provisions of this Schedule.

(3) Where the requirements of this Schedule make reference to a "director" those requirements may be complied with in such manner as to distinguish between directors who perform executive functions and those who do not.

(4) Any requirement of this Schedule to provide information in respect of a director may, in respect of those directors who do not perform executive functions, be omitted or otherwise modified where that requirement is not applicable to such a director and in such a case, particulars of, and the reasons for, the omission or modification must be given in the report.

(5) Any requirement of this Schedule to provide information in respect of performance measures or targets does not require the disclosure of information which, in the opinion of the directors, is commercially sensitive in respect of the company.

(6) Where information that would otherwise be required to be in the report is not included in reliance on sub-paragraph (5), particulars of, and the reasons for, the omission must be given in the report and an indication given of when (if at all) the information is to be reported to the members of the company.

(7) Where any provision of this Schedule requires a sum or figure to be given in respect of any financial year preceding the relevant financial year, in the first directors' remuneration report prepared in accordance with this Schedule, that sum or figure may, where the sum or figure is not readily available from the reports and accounts of the company prepared for those years, be given as an estimate and a note of explanation provided in the report.

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PART 2

ANNUAL STATEMENT

3. The directors' remuneration report must contain a statement by the director who fulfils the role of chair of the remuneration committee (or, where there is no such person, by a director nominated by the directors to make the statement) summarising for the relevant financial year—

(a) the major decisions on directors' remuneration;

(b) any substantial changes relating to directors' remuneration made during the year; and

(c) the context in which those changes occurred and decisions have been taken.

PART 3

ANNUAL REPORT ON REMUNERATION

Single total figure of remuneration for each director

4.—(1) The directors' remuneration report must, for the relevant financial year, for each person who has served as a director of the company at any time during that year, set out in a table in the form set out in paragraph 5 ("the single total figure table") the information prescribed by paragraphs 6 and 7 below.

(2) The report may set out in separate tables the information to be supplied in respect of directors who perform executive functions and those who do not.

(3) Unless otherwise indicated the sums set out in the table are those in respect of the relevant financial year and relate to the director's performance of, or agreement to perform, qualifying services.

5.—(1) The form of the table required by paragraph 4 is—

Single Total Figure Table						
	a	**b**	**c**	**d**	**e**	**Total**
Director 1	xxx	xxx	xxx	xxx	xxx	xxx
Director 2	xxx	xxx	xxx	xxx	xxx	xxx

(2) The directors may choose to display the table using an alternative orientation, in which case references in this Schedule to columns are to be read as references to rows.

6.—(1) In addition to the columns described in paragraph 7, columns—

(a) must be included to set out any other items in the nature of remuneration (other than items required to be disclosed under paragraph 15) which are not set out in the columns headed "(a)" to "(e)"; and

(b) may be included if there are any sub-totals or other items which the directors consider necessary in order to assist the understanding of the table.

(2) Any additional columns must be inserted before the column marked "Total".

7.—(1) Subject to paragraph 9, in the single total figure table, the sums that are required to be set out in the columns are—

(a) in the column headed "a", the total amount of salary and fees;

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(b) in the column headed “b”, all taxable benefits;

(c) in the column headed “c”, money or other assets received or receivable for the relevant financial year as a result of the achievement of performance measures and targets relating to a period ending in that financial year other than—

(i) those which result from awards made in a previous financial year and where final vesting is determined as a result of the achievement of performance measures or targets relating to a period ending in the relevant financial year; or

(ii) those receivable subject to the achievement of performance measures or targets in a future financial year;

(d) in the column headed “d”, money or other assets received or receivable for periods of more than one financial year where final vesting—

(i) is determined as a result of the achievement of performance measures or targets relating to a period ending in the relevant financial year; and

(ii) is not subject to the achievement of performance measures or targets in a future financial year;

(e) in the column headed “e”, all pension related benefits including—

(i) payments (whether in cash or otherwise) in lieu of retirement benefits;

(ii) all benefits in year from participating in pension schemes;

(f) in the column headed “Total”, the total amount of the sums set out in the previous columns.

(2) Where it is necessary to assist the understanding of the table by the creation of sub-totals the columns headed “a” to “e” may be set out in an order other than the one set out in paragraph 5.

8.—(1) In respect of any items in paragraph 7(1)(c) or (d) where the performance measures or targets are substantially (but not fully) completed by the end of the relevant financial year—

(a) the sum given in the table may include sums which relate to the following financial year; but

(b) where such sums are included, those sums must not be included in the corresponding column of the single total figure table prepared for that following financial year; and

(c) a note to the table must explain the basis of the calculation.

(2) Where any money or other assets reported in the single total figure table in the directors’ remuneration report prepared in respect of any previous financial year are the subject of a recovery of sums paid or the withholding of any sum for any reason in the relevant financial year—

(a) the recovery or withholding so attributable must be shown in a separate column in the table as a negative value and deducted from the column headed “Total”; and

(b) an explanation for the recovery or withholding and the basis of the calculation must be given in a note to the table.

(3) Where the calculations in accordance with paragraph 10 (other than in respect of a recovery or withholding) result in a negative value, the result must be expressed as zero in the relevant column in the table.

9.—(1) Each column in the single total figure table must contain, in such manner as to permit comparison, two sums as follows—

(a) the sum set out in the corresponding column in the report prepared in respect of the financial year preceding the relevant financial year; and

(b) the sum for the relevant financial year.

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(2) When, in the single total figure table, a sum is given in the column which relates to the preceding financial year and that sum, when set out in the report for that preceding year was given as an estimated sum, then in the relevant financial year—

(a) it must be given as an actual sum;

(b) the amount representing the difference between the estimate and the actual must not be included in the column relating to the relevant financial year; and

(c) details of the calculation of the revised sum must be given in a note to the table.

10.—(1) The methods to be used to calculate the sums required to be set out in the single total figure table are—

(a) for the column headed "a", cash paid to or receivable by the person in respect of the relevant financial year;

(b) for the column headed "b", the gross value before payment of tax;

(c) for column "c", the total cash equivalent including any amount deferred, other than where the deferral is subject to the achievement of further performance measures or targets in a future financial year;

(d) for column "d"—

(i) the cash value of any monetary award;

(ii) the value of any shares or share options awarded, calculated by—

(aa) multiplying the original number of shares granted by the proportion that vest (or an estimate);

(bb) multiplying the total arrived at in (aa) by the market price of shares at the date on which the shares vest; and

(iii) the value of any additional cash or shares receivable in respect of dividends accrued (actually or notionally);

(e) for the column headed "e",—

(i) for the item in paragraph 7(1)(e)(i), the cash value;

(ii) for the item in paragraph 7(1)(e)(ii), what the aggregate pension input amount would be across all the pension schemes of the company or group in which the director accrues benefits, calculated using the method set out in section 229 of the Finance Act 2004([1]) where—

(aa) references to "pension input period" are to be read as references to the company's financial year, or where a person becomes a director during the financial year, the period starting on the date the person became a director and ending at the end of the financial year;

(bb) all pension schemes of the company or group which provide relevant benefits to the director are deemed to be registered schemes;

(cc) all pension contributions paid by the director during the pension input period are deducted from the pension input amount;

(dd) in the application of section 234 of that Act, the figure 20 is substituted for the figure 16 each time it appears;

(ee) subsections 229(3) and (4) do not apply; and

(ff) section 277 of that Act is read as follows—

[1] 2004 c.12

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“**Valuation assumptions**

277. For the purposes of this Part the valuation assumptions in relation to a person, benefits and a date are—

(a) if the person has not left the employment to which the arrangement relates on or before the date, that the person left that employment on the date with a prospective right to benefits under the arrangement,

(b) if the person has not reached such age (if any) as must have been reached to avoid any reduction in the benefits on account of age, that on the date the person is entitled to receive the benefits without any reduction on account of age, and

(c) that the person’s right to receive the benefits had not been occasioned by physical or mental impairment.”.

(2) For the item in paragraph 7(1)(e)(ii) where there has not been a company contribution to the pension scheme in respect of the director, but if such a contribution had been made it would have been measured for pension input purposes under section 233(1)(b) of the Finance Act 2004, when calculating the pension input amount for the purposes of sub-paragraph (1)(e)(ii) it should be calculated as if the cash value of any contribution notionally allocated to the scheme in respect of the person by or on behalf of the company including any adjustment made for any notional investment return achieved during the relevant financial year were a contribution paid by the employer in respect of the individual for the purposes of section 233(1)(b) of the Finance Act 2004.

(3) For the purposes of the calculation in sub-paragraph (1)(d)(ii)—

(a) where the market price of shares at the date on which the shares vest is not ascertainable by the date on which the remuneration report is approved by the directors, an estimate of the market price of the shares shall be calculated on the basis of an average market value over the last quarter of the relevant financial year; and

(b) where the award was an award of shares or share options, the cash amount the individual was or will be required to pay to acquire the share must be deducted from the total.

Definitions applicable to the single total figure table

11.—(1) In paragraph 7(1)(b) “taxable benefits” includes—

(a) sums paid by way of expenses allowance that are—

(i) chargeable to United Kingdom income tax (or would be if the person were an individual, or would be if the person were resident in the United Kingdom for tax purposes), and

(ii) paid to or receivable by the person in respect of qualifying services; and

(b) any benefits received by the person, other than salary, (whether or not in cash) that—

(i) are emoluments of the person, and

(ii) are received by the person in respect of qualifying services.

(2) A payment or other benefit received in advance of a director commencing qualifying services, but in anticipation of performing qualifying services, is to be treated as if received on the first day of performance of the qualifying services.

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Additional requirements in respect of the single total figure table

12.—(1) In respect of the sum required to be set out by paragraph 7(1)(b), there must be set out after the table a summary identifying—

(a) the types of benefits the value of which is included in the sum set out in the column headed "b"; and

(b) the value (where significant).

(2) For every component the value of which is included in the sums required to be set out in the columns headed "c" and "d" of the table by paragraphs 7(1)(c) and (d), there must be set out after the table the relevant details.

(3) In sub-paragraph (2) "the relevant details" means—

(a) details of any performance measures and the relative weighting of each;

(b) within each performance measure, the performance targets set at the beginning of the performance period and corresponding value of the award achievable;

(c) for each performance measure, details of actual performance relative to the targets set and measured over the relevant reporting period, and the resulting level of award; and

(d) where any discretion has been exercised in respect of the award, particulars must be given of how the discretion was exercised and how the resulting level of award was determined.

(4) For each component the value of which is included in the sum set out in the column headed "c" of the table, the report must state if any amount was deferred, the percentage deferred, whether it was deferred in cash or shares, if relevant, and whether the deferral was subject to any conditions other than performance measures.

(5) Where additional columns are included in accordance with paragraph 6(1)(a), there must be set out in a note to the table the basis on which the sums in the column were calculated, and other such details as are necessary for an understanding of the sums set out in the column, including any performance measures relating to that component of remuneration or if there are none, an explanation of why not.

Total pension entitlements

13.—(1) The directors' remuneration report must, for each person who has served as a director of the company at any time during the relevant financial year, and who has a prospective entitlement to defined benefits or cash balance benefits (or to benefits under a hybrid arrangement which includes such benefits) in respect of qualifying services, contain the following information in respect of pensions—

(a) details of those rights as at the end of that year, including the person's normal retirement date;

(b) a description of any additional benefit that will become receivable by a director in the event that that director retires early; and

(c) where a person has rights under more than one type of pension benefit identified in column headed "e" of the single total figure table, separate details relating to each type of pension benefit.

(2) For the purposes of this paragraph, "defined benefits", "cash balance benefits" and "hybrid arrangement" have the same meaning as in section 152 of the Finance Act 2004.

(3) "Normal retirement date" means an age specified in the pension scheme rules (or otherwise determined) as the earliest age at which, while the individual continues to accrue benefits under the pension scheme, entitlement to a benefit arises—

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(a) without consent (whether of an employer, the trustees or managers of the scheme or otherwise), and

(b) without an actuarial reduction,

but disregarding any special provision as to early repayment on grounds of ill health, redundancy or dismissal.

Scheme interests awarded during the financial year

14.—(1) The directors' remuneration report must for each person who has served as a director of the company at any time during the relevant financial year contain a table setting out—

(a) details of the scheme interests awarded to the person during the relevant financial year; and

(b) for each scheme interest—

(i) a description of the type of interest awarded;

(ii) a description of the basis on which the award is made;

(iii) the face value of the award;

(iv) the percentage of scheme interests that would be receivable if the minimum performance was achieved;

(v) for a scheme interest that is a share option, an explanation of any difference between the exercise price per share and the price specified under paragraph 14(3);

(vi) the end of the period over which the performance measures and targets for that interest have to be achieved (or if there are different periods for different measures and targets, the end of whichever of those periods ends last); and

(vii) a summary of the performance measures and targets if not set out elsewhere in the report.

(2) In respect of a scheme interest relating to shares or share options, "face value" means the maximum number of shares that would vest if all performance measures and targets are met multiplied by either—

(a) the share price at date of grant or

(b) the average share price used to determine the number of shares awarded.

(3) Where the report sets out the face value of an award in respect of a scheme interest relating to shares or share options, the report must specify—

(a) whether the face value has been calculated using the share price at date of grant or the average share price;

(b) where the share price at date of grant is used, the amount of that share price and the date of grant;

(c) where the average share price is used, what that price was and the period used for calculating the average.

Payments to past directors

15. The directors' remuneration report must, for the relevant financial year, contain details of any payments of money or other assets to any person who was not a director of the company at the time the payment was made, but who had been a director of the company before that time, excluding—

(a) any payments falling within paragraph 16;

(b) any payments which are shown in the single total figure table;

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(c) any payments which have been disclosed in a previous directors' remuneration report of the company;

(d) any payments which are below a *de minimis* threshold set by the company and stated in the report;

(e) payments by way of regular pension benefits commenced in a previous year or dividend payments in respect of scheme interests retained after leaving office; and

(f) payments in respect of employment with or any other contractual service performed for the company other than as a director.

Payments for loss of office

16. The directors' remuneration report must for the relevant financial year set out, for each person who has served as a director of the company at any time during that year, or any previous year, excluding payments which are below a *de minimis* threshold set by the company and stated in the report—

(a) the total amount of any payment for loss of office paid to or receivable by the person in respect of that financial year, broken down into each component comprised in that payment and the value of each component;

(b) an explanation of how each component was calculated;

(c) any other payments paid to or receivable by the person in connection with the termination of qualifying services, whether by way of compensation for loss of office or otherwise, including the treatment of outstanding incentive awards that vest on or following termination; and

(d) where any discretion was exercised in respect of the payment, an explanation of how it was exercised.

Statement of directors' shareholding and share interests

17. The directors' remuneration report for the relevant financial year must contain, for each person who has served as a director of the company at any time during that year—

(a) a statement of any requirements or guidelines for the director to own shares in the company and state whether or not those requirements or guidelines have been met;

(b) in tabular form or forms—

(i) the total number of interests in shares in the company of the director including interests of connected persons (as defined for the purposes of section 96B(2) of the Financial Services and Markets Act 2000([1]));

(ii) total number of scheme interests differentiating between—

(aa) shares and share options; and

(bb) those with or without performance measures;

(iii) details of those scheme interests (which may exclude any details included elsewhere in the report); and

(iv) details of share options which are—

(aa) vested but unexercised; and

(bb) exercised in the relevant financial year.

[1] 2000 c.8. Section 96B was inserted by paragraph 6 of Schedule 1 to S.I. 2005/381. Subsection 96B(2) was substituted by regulation 2(1) of S.I. 2009/2461.

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Performance graph and table

18.—(1) The directors' remuneration report must—

(a) contain a line graph that shows for each of—

(i) a holding of shares of that class of the company's equity share capital whose listing, or admission to dealing, has resulted in the company falling within the definition of "quoted company", and

(ii) a hypothetical holding of shares made up of shares of the same kinds and number as those by reference to which a broad equity market index is calculated,

a line drawn by joining up points plotted to represent, for each of the financial years in the relevant period, the total shareholder return on that holding; and

(b) state the name of the index selected for the purposes of the graph and set out the reasons for selecting that index.

(2) The report must also set out in tabular form the following information for each of the financial years in the relevant period in respect of the director undertaking the role of chief executive officer—

(a) total remuneration as set out in the single total figure table;

(b) the sum set out in the table in column headed "c" in the single total figure table expressed as a percentage of the maximum that could have been paid in respect of that component in the financial year; and

(c) the sum set out in column headed "d" in the single total figure table restated as a percentage of the number of shares vesting against the maximum number of shares that could have been received, or, where paid in money and other assets, as a percentage of the maximum that could have been paid in respect of that component in the financial year.

(3) For the purposes of sub-paragraphs (1), (2) and (6), "relevant period" means the specified period of financial years of which the last is the relevant financial year.

(4) Where the relevant financial year—

(a) is the company's first financial year for which the performance graph is prepared in accordance with this paragraph, "specified" in sub-paragraph (3) means "five";

(b) is the company's "second", "third", "fourth", "fifth" financial year in which the report is prepared in accordance with this Schedule, "specified" in sub-paragraph (3) means "six", "seven", "eight", "nine" as the case may be; and

(c) is any financial year after the fifth financial year in which the report is prepared in accordance with this Schedule, "specified" means "ten".

(5) Sub-paragraph (2) may be complied with by use of either—

(a) a sum based on the information supplied in the directors' remuneration reports for those previous years, or,

(b) where no such report has been compiled, a suitable corresponding sum.

(6) For the purposes of sub-paragraph (1), the "total shareholder return" for a relevant period on a holding of shares must be calculated using a fair method that—

(a) takes as its starting point the percentage change over the period in the market price of the holding;

(b) involves making—

(i) the assumptions specified in sub-paragraph (7) as to reinvestment of income, and

(ii) the assumption specified in sub-paragraph (9) as to the funding of liabilities; and

(c) makes provision for any replacement of shares in the holding by shares of a different description;

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and the same method must be used for each of the holdings mentioned in sub-paragraph (1).

(7) The assumptions as to reinvestment of income are—

(a) that any benefit in the form of shares of the same kind as those in the holding is added to the holding at the time the benefit becomes receivable; and

(b) that any benefit in cash, and an amount equal to the value of any benefit not in cash and not falling within paragraph (a), is applied at the time the benefit becomes receivable in the purchase at their market price of shares of the same kind as those in the holding and that the shares purchased are added to the holding at that time.

(8) In sub-paragraph (7) "benefit" means any benefit (including, in particular, any dividend) receivable in respect of any shares in the holding by the holder from the company of whose share capital the shares form part.

(9) The assumption as to the funding of liabilities is that, where the holder has a liability to the company of whose capital the shares in the holding form part, shares are sold from the holding—

(a) immediately before the time by which the liability is due to be satisfied, and

(b) in such numbers that, at the time of the sale, the market price of the shares sold equals the amount of the liability in respect of the shares in the holding that are not being sold.

(10) In sub-paragraph (9) "liability" means a liability arising in respect of any shares in the holding or from the exercise of a right attached to any of those shares.

Percentage change in remuneration of director undertaking the role of chief executive officer

19.—(1) The directors' remuneration report must set out (in a manner which permits comparison) in relation to each of the kinds of remuneration required to be set out in each of the columns headed "a", "b" and "c" of the single total figure table the following information—

(a) the percentage change from the financial year preceding the relevant financial year in respect of the director undertaking the role of the chief executive officer; and

(b) the average percentage change from the financial year preceding the relevant financial year in respect of the employees of the company taken as a whole.

(2) Where for the purposes of sub-paragraph (1)(b), a comparator group comprising the employees taken as a whole is considered by the company as an inappropriate comparator group of employees, the company may use such other comparator group of employees as the company identifies, provided the report contains a statement setting out why that group was chosen.

(3) Where the company is a parent company, the statement must relate to the group and not the company, and the director reported on is the director undertaking the role of chief executive officer of the parent company, and the employees are the employees of the group.

Relative importance of spend on pay

20.—(1) The directors' remuneration report must set out in a graphical or tabular form that shows in respect of the relevant financial year and the immediately preceding financial year the actual expenditure of the company, and the difference in spend between those years, on—

(a) remuneration paid to or receivable by all employees of the group;

(b) distributions to shareholders by way of dividend and share buyback; and

(c) any other significant distributions and payments or other uses of profit or cash-flow deemed by the directors to assist in understanding the relative importance of spend on pay.

(2) There must be set out in a note to the report an explanation in respect of sub-paragraph (1)(c) why the particular matters were chosen by the directors and how the amounts were calculated.

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(3) Where the matters chosen for the report in respect of sub-paragraph (1)(c) in the relevant financial year are not the same as the other items set out in the report for previous years, an explanation for that change must be given.

Statement of implementation of remuneration policy in the following financial year

21.—(1) The directors' remuneration report must contain a statement describing how the company intends to implement the approved directors' remuneration policy in the financial year following the relevant financial year.

(2) The statement must include, where applicable, the—

(a) performance measures and relative weightings for each; and

(b) performance targets determined for the performance measures and how awards will be calculated.

(3) Where this is not the first year of the approved remuneration policy, the statement should detail any significant changes in the way that the remuneration policy will be implemented in the next financial year compared to how it was implemented in the relevant financial year.

(4) This statement need not include information that is elsewhere in the report, including any disclosed in the directors' remuneration policy.

Consideration by the directors of matters relating to directors' remuneration

22.—(1) If a committee of the company's directors has considered matters relating to the directors' remuneration for the relevant financial year, the directors' remuneration report must—

(a) name each director who was a member of the committee at any time when the committee was considering any such matter;

(b) state whether any person provided to the committee advice, or services, that materially assisted the committee in their consideration of any such matter and name any person that has done so;

(c) in the case of any person named under paragraph (b), who is not a director of the company (other than a person who provided legal advice on compliance with any relevant legislation), state—

(i) the nature of any other services that that person has provided to the company during the relevant financial year;

(ii) by whom that person was appointed, whether or not by the committee and how they were selected;

(iii) whether and how the remuneration committee has satisfied itself that the advice received was objective and independent; and

(iv) the amount of fee or other charge paid by the company to that person for the provision of the advice or services referred to in paragraph (b) and the basis on which it was charged.

(2) In sub-paragraph (1)(b) "person" includes (in particular) any director of the company who does not fall within sub-paragraph (1)(a).

(3) Sub-paragraph (1)(c) does not apply where the person was, at the time of the provision of the advice or service, an employee of the company.

(4) This paragraph also applies to a committee which considers remuneration issues during the consideration of an individual's nomination as a director.

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Statement of voting at general meeting

23. The directors' remuneration report must contain a statement setting out in respect of the last general meeting at which a resolution of the following kind was moved by the company—

(a) in respect of a resolution to approve the directors' remuneration report, the percentage of votes cast for and against and the number of votes withheld;

(b) in respect of a resolution to approve the directors' remuneration policy, the percentage of votes cast for and against and the number of votes withheld; and,

(c) where there was a significant percentage of votes against either such resolution, a summary of the reasons for those votes, as far as known to the directors, and any actions taken by the directors in response to those concerns.

PART 4

DIRECTORS' REMUNERATION POLICY

Introductory

24.—(1) The information required to be included in the directors' remuneration report by the provisions of this Part must be set out in a separate part of the report and constitutes the directors' remuneration policy of the company.

(2) Where a company intends to move a resolution at a meeting of the company to approve a directors' remuneration policy and it is intended that some or all of the provisions of the last approved directors' remuneration policy are to continue to apply after the resolution is approved, this fact must be stated in the policy which is the subject of the resolution and it must be made clear which provisions of the last approved policy are to continue to apply and for what period of time it is intended that they shall apply.

(3) Notwithstanding the requirements of this Part, the directors' remuneration policy part of the report must set out all those matters for which the company requires approval for the purposes of Chapter 4A of Part 10 of the 2006 Act([1]).

(4) Where any provision of the directors' remuneration policy provides for the exercise by the directors of a discretion on any aspect of the policy, the policy must clearly set out the extent of that discretion in respect of any such variation, change or amendment.

(5) The directors' remuneration policy (or revised directors' remuneration policy) of a company in respect of which a company moves a resolution for approval in accordance with section 439A of the 2006 Act must, on the first occasion that such a resolution is moved after 1st October 2013 set out the date from which it is intended by the company that that policy is to take effect.

Future policy table

25.—(1) The directors' remuneration report must contain in tabular form a description of each of the components of the remuneration package for the directors of the company which are comprised in the directors' remuneration policy of the company.

(2) Where the report complies with sub-paragraph (1) by reference to provisions which apply generally to all directors, the table must also include any particular arrangements which are specific to any director individually.

[1] Chapter 4A was inserted into the Companies Act 2006 (c.46) by section 80 of the Enterprise and Regulatory Reform Act 2013 (c.24).

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(3) References in this Part to "component parts of the remuneration package" include, but are not limited to, all those items which are relevant for the purposes of the single total figure table.

26. In respect of each of the components described in the table there must be set out the following information

(a) how that component supports the short and long-term strategic objectives of the company (or, where the company is a parent company, the group);

(b) an explanation of how that component of the remuneration package operates;

(c) the maximum that may be paid in respect of that component (which may be expressed in monetary terms, or otherwise);

(d) where applicable, a description of the framework used to assess performance including—

(i) a description of any performance measures which apply and, where more than one performance measure applies, an indication of the weighting of the performance measure or group of performance measures;

(ii) details of any performance period; and

(iii) the amount (which may be expressed in monetary terms or otherwise) that may be paid in respect of —

(aa) the minimum level of performance that results in any payment under the policy, and

(bb) any further levels of performance set in accordance with the policy;

(e) an explanation as to whether there are any provisions for the recovery of sums paid or the withholding of the payment of any sum.

27. There must accompany the table notes which set out—

(a) in respect of any component falling within paragraph 26(d)(i)–(iii), an explanation of why any performance measures were chosen and how any performance targets are set;

(b) in respect of any component (other than salary, fees, benefits or pension) which is not subject to performance measures, an explanation of why there are no such measures;

(c) if any component did not form part of the remuneration package in the last approved directors' remuneration policy, why that component is now contained in the remuneration package;

(d) in respect of any component which did form a part of such a package, what changes have been made to it and why; and

(e) an explanation of the differences (if any) in the company's policy on the remuneration of directors from the policy on the remuneration of employees generally (within the company, or where the company is a parent company, the group).

28. The information required by paragraph 25 may, in respect of directors not performing an executive function, be set out in a separate table and there must be set out in that table the approach of the company to the determination of—

(a) the fee payable to such directors;

(b) any additional fees payable for any other duties to the company;

(c) such other items as are to be considered in the nature of remuneration.

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Approach to recruitment remuneration

29.—(1) The directors' remuneration policy must contain a statement of the principles which would be applied by the company when agreeing the components of a remuneration package for the appointment of directors.

(2) The statement must set out the various components which would be considered for inclusion in that package and the approach to be adopted by the company in respect of each component.

(3) The statement must, subject to sub-paragraph (4), set out the maximum level of variable remuneration which may be granted (which can be expressed in monetary terms or otherwise).

(4) Remuneration which constitutes compensation for the forfeit of any award under variable remuneration arrangements entered into with a previous employer is not included within sub-paragraph (3) of this paragraph, but is subject to the requirements of sub-paragraphs (1) and (2).

Service contracts

30. The directors' remuneration policy must contain a description of any obligation on the company which—

(a) is contained in all directors' service contracts;

(b) is contained in the service contracts of any one or more existing directors (not being covered by paragraph (a)); or

(c) it is proposed would be contained in directors' service contracts to be entered into by the company

and which could give rise to, or impact on, remuneration payments or payments for loss of office but which is not disclosed elsewhere in this report.

31. Where the directors' service contracts are not kept available for inspection at the company's registered office, the report must give details of where the contracts are kept, and if the contracts are available on a website, a link to that website.

32. The provisions of paragraphs 30 and 31 relating to directors' service contracts apply in like manner to the terms of letters of appointment of directors.

Illustrations of application of remuneration policy

33. The directors' remuneration report must, in respect of each person who is a director (other than a director who is not performing an executive function), set out in the form of a bar chart an indication of the level of remuneration that would be received by the director in accordance with the directors' remuneration policy in the first year to which the policy applies.

34.—(1) The bar chart must contain separate bars representing—

(a) minimum remuneration receivable, that is to say, including, but not limited to, salary, fees, benefits and pension;

(b) the remuneration receivable if the director was, in respect of any performance measures or targets, performing in line with the company's expectation;

(c) maximum remuneration receivable (not allowing for any share price appreciation).

(2) Each bar of the chart must contain separate parts which represent—

(a) salary, fees, benefits, pension and any other item falling within sub-paragraph 34(1)(a);

(b) remuneration where performance measures or targets relate to one financial year;

(c) remuneration where performance measures or targets relate to more than one financial year.

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(3) Each bar must show—

(a) percentage of the total comprised by each of the parts; and

(b) total value of remuneration expected for each bar.

35.—(1) A narrative description of the basis of calculation and assumptions used to compile the bar chart must be set out to enable an understanding of the charts presented.

(2) In complying with sub-paragraph (1) it is not necessary for any matter to be included in the narrative description which has been set out in the future policy table required by paragraph 25.

Policy on payment for loss of office

36. The directors' remuneration policy must set out the company's policy on the setting of notice periods under directors' service contracts.

37. The directors' remuneration policy must also set out the principles on which the determination of payments for loss of office will be approached including—

(a) an indication of how each component of the payment will be calculated;

(b) whether, and if so how, the circumstances of the director's loss of office and performance during the period of qualifying service are relevant to any exercise of discretion; and

(c) any contractual provision agreed prior to 27th June 2012 that could impact on the quantum of the payment.

Statement of consideration of employment conditions elsewhere in company

38. The directors' remuneration policy must contain a statement of how pay and employment conditions of employees (other than directors) of the company and, where the company is a parent company, of the group of other undertakings within the same group as the company, were taken into account when setting the policy for directors' remuneration.

39. The statement must also set out—

(a) whether, and if so, how, the company consulted with employees when drawing up the directors' remuneration policy set out in this part of the report;

(b) whether any remuneration comparison measurements were used and if so, what they were, and how that information was taken into account.

Statement of consideration of shareholder views

40. The directors' remuneration policy must contain a statement of whether, and if so how, any views in respect of directors' remuneration expressed to the company by shareholders (whether at a general meeting or otherwise) have been taken into account in the formulation of the directors' remuneration policy.

PART 5

PROVISIONS OF THE DIRECTORS' REMUNERATION REPORT WHICH ARE SUBJECT TO AUDIT

41. The information contained in the directors' remuneration report which is subject to audit is the information required by paragraphs 4 to 17 (inclusive) of Part 3 of this Schedule.

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PART 6

REVISED DIRECTORS' REMUNERATION POLICY

42. A revised directors' remuneration policy prepared in accordance with section 422A of the 2006 Act must contain all those matters required by Part 4 of this Schedule to be in the directors' remuneration policy.

43. A revised directors' remuneration policy must be set out in the same manner as required by Part 4 of this Schedule in respect of that part of the directors' remuneration report.

PART 7

INTERPRETATION AND SUPPLEMENTARY

44.—(1) In this Schedule—

"amount", in relation to a gain made on the exercise of a share option, means the difference between—

(a) the market price of the shares on the day on which the option was exercised; and

(b) the price actually paid for the shares;

"company contributions", in relation to a pension scheme and a person, means any payments (including insurance premiums) made, or treated as made, to the scheme in respect of the person by anyone other than the person;

"emoluments" of a person—

(a) include salary, fees and bonuses, sums paid by way of expenses allowance (so far as they are chargeable to United Kingdom income tax or would be if the person were an individual or would be if the person were resident in the United Kingdom for tax purposes), but

(b) do not include any of the following, namely—

(i) the value of any share options granted to him or the amount of any gains made on the exercise of any such options;

(ii) any company contributions paid, or treated as paid, in respect of him under any pension scheme or any benefits to which he is entitled under any such scheme; or

(iii) any money or other assets paid to or received or receivable by him under any scheme;

"pension scheme" means a retirement benefits scheme within the meaning given by section 150(1) of the Finance Act 2004 which is—

(a) one in which the company participates or

(b) one to which the company paid a contribution during the financial year;

"performance measure" is the measure by which performance is to be assessed, but does not include any condition relating to service:

"performance target" is the specific level of performance to be attained in respect of that performance measure;

"qualifying services", in relation to any person, means his services as a director of the company, and his services at any time while he is a director of the company—

(a) as a director of an undertaking that is a subsidiary undertaking of the company at that time;

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(b) as a director of any other undertaking of which he is a director by virtue of the company's nomination (direct or indirect); or

(c) otherwise in connection with the management of the affairs of the company or any such subsidiary undertaking or any such other undertaking;

"remuneration committee" means a committee of directors of the company having responsibility for considering matters related to the remuneration of directors;

"retirement benefits" means relevant benefits within the meaning given by section 393B of the Income Tax (Earnings and Pensions) Act 2003 read as if subsection (2) were omitted;

"scheme" (other than a pension scheme) means any agreement or arrangement under which money or other assets may become receivable by a person and which includes one or more qualifying conditions with respect to service or performance that cannot be fulfilled within a single financial year, and for this purpose the following must be disregarded, namely—

(a) any payment the amount of which falls to be determined by reference to service or performance within a single financial year;

(b) compensation in respect of loss of office, payments for breach of contract and other termination payments; and

(c) retirement benefits;

"scheme interest" means an interest under a scheme;

"shares" means shares (whether allotted or not) in the company, or any undertaking which is a group undertaking in relation to the company, and includes a share warrant as defined by section 779(1) of the 2006 Act;

"share option" means a right to acquire shares;

"value" in relation to shares received or receivable on any day by a person who is or has been a director of a company, means the market price of the shares on that day.

(2) In this Schedule "compensation in respect of loss of office" includes compensation received or receivable by a person for—

(a) loss of office as director of the company, or

(b) loss, while director of the company or on or in connection with his ceasing to be a director of it, of—

(i) any other office in connection with the management of the company' affairs; or

(ii) any office as director or otherwise in connection with the management of the affairs of any undertaking that, immediately before the loss, is a subsidiary undertaking of the company or an undertaking of which he is a director by virtue of the company's nomination (direct or indirect);

(c) compensation in consideration for, or in connection with, a person's retirement from office; and

(d) where such a retirement is occasioned by a breach of the person's contract with the company or with an undertaking that, immediately before the breach, is a subsidiary undertaking of the company or an undertaking of which he is a director by virtue of the company's nomination (direct or indirect)—

(i) payments made by way of damages for the breach; or

(ii) payments made by way of settlement or compromise of any claim in respect of the breach.

(3) References in this Schedule to compensation include benefits otherwise than in cash; and in relation to such compensation references in this Schedule to its amounts are to the estimated money value of the benefit.

(4) References in this Schedule to a person being "connected" with a director, and to a director "controlling" a body corporate, are to be construed in accordance with sections 252 to 255 of the 2006 Act.

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45. For the purposes of this Schedule emoluments paid or receivable or share options granted in respect of a person's accepting office as a director are to be treated as emoluments paid or receivable or share options granted in respect of his services as a director.

46.—(1) The following applies with respect to the amounts to be shown under this Schedule.

(2) The amount in each case includes all relevant sums paid by or receivable from—

(a) the company; and

(b) the company's subsidiary undertakings; and

(c) any other person,

except sums to be accounted for to the company or any of its subsidiary undertakings or any other undertaking of which any person has been a director while director of the company, by virtue of section 219 of the 2006 Act (payment in connection with share transfer: requirement of members' approval), to past or present members of the company or any of its subsidiaries or any class of those members.

(3) Reference to amounts paid to or receivable by a person include amounts paid to or receivable by a person connected with the person or a body corporate controlled by the person (but not so as to require an amount to be counted twice).

47.—(1) The amounts to be shown for any financial year under Part 3 of this Schedule are the sums receivable in respect of that year (whenever paid) or, in the case of sums not receivable in respect of a period, the sums paid during that year.

(2) But where—

(a) any sums are not shown in the directors' remuneration report for the relevant financial year on the ground that the person receiving them is liable to account for them as mentioned in paragraph 46(2), but the liability is thereafter wholly or partly released or is not enforced within a period of 2 years; or

(b) any sums paid by way of expenses allowance are charged to United Kingdom income tax after the end of the relevant financial year or, in the case of any such sums paid otherwise than to an individual, it does not become clear until the end of the relevant financial year that those sums would be charged to such tax were the person an individual,

those sums must, to the extent to which the liability is released or not enforced or they are charged as mentioned above (as the case may be), be shown in the first directors' remuneration report in which it is practicable to show them and must be distinguished from the amounts to be shown apart from this provision.

48. Where it is necessary to do so for the purpose of making any distinction required by the preceding paragraphs in an amount to be shown in compliance with this Schedule, the directors may apportion any payments between the matters in respect of which these have been paid or are receivable in such manner as they think appropriate.

49. The Schedule requires information to be given only so far as it is contained in the company's books and papers, available to members of the public or the company has the right to obtain it.

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Part H – BIS's FAQs

Department
for Business
Innovation & Skills

DIRECTORS' REMUNERATION REFORMS

Frequently asked Questions

March 2013

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Introduction

The purpose of this document is to help stakeholders understand how and when they will be affected by reforms to the legal framework for directors' remuneration in quoted companies.

These reforms are being implemented through a combination of primary legislation (currently subject to Parliamentary scrutiny as part of the Enterprise and Regulatory Reform Bill) and secondary legislation (which the Department has published in draft). The legislative reforms will take effect on 1 October 2013 and affect AGMs held in reporting years commencing on or after that date.

Until both the primary and secondary legislation has been approved by Parliament, the detail of these reforms is subject to change. This document should therefore be read with that in mind. However, the Department recognises the importance of providing stakeholders with as much time as possible to understand the proposed changes to the law and hopes that this document will be helpful. If necessary, this document will be updated in future to reflect the final text of the legislation.

This document is intended as a factual explanation of the legislative reforms. It is not intended to be comprehensive and companies should not rely on it for legal guidance on how the reforms will affect them. It is not intended to substitute any good practice guidance produced by companies, investors and other stakeholders to complement the legislation.

The Department welcomes feedback on this document. Please send any comments or queries to executive.pay@bis.gsi.gov.uk

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A. Overview of reforms

From 1 October 2013, the directors' remuneration report in quoted companies will need to contain:

(i) A statement by the chair of the remuneration committee.

(ii) The company's policy on directors' remuneration (hereafter the 'remuneration policy').

(iii) Information on how the remuneration policy was implemented in the financial year being reported on (hereafter the 'implementation report').

Shareholders will have a **binding vote on a resolution to approve the directors' remuneration policy.** The remuneration policy will set out how the company proposes to pay directors, including every element of remuneration that a director will be entitled to and how it supports the company's long-term strategy and performance. The policy will also include details of the company's proposed approach to recruitment and loss of office payments.

Companies must put the remuneration policy to a shareholder resolution at least every three years. If a company wishes to make any changes to the remuneration policy it will have to put the new policy to shareholders for approval at a general meeting.

Once a remuneration policy has been approved, a company will only be able to make remuneration and loss of office payments which are permitted within the limits of the policy, unless the payment has been approved by a separate shareholder resolution.

Companies will also have to produce an annual implementation report on how the approved pay policy has been implemented, including a single figure for the total pay directors received that year. This will allow shareholders to make comparisons year-on- year and between companies.

Shareholders will also have an **annual advisory vote on a resolution to approve the implementation report.** If a company fails to pass this resolution in a year in which the remuneration policy was not put to a shareholder resolution, this will trigger the need for the company to put the remuneration policy to shareholders the following year.

To further improve transparency around loss of office payments, from 1 October 2013, whenever a director leaves office, companies will need to publish a statement setting out what payments the director has received or may receive in future. This statement must be published as soon as reasonably practicable.

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B. Scope

1 Which companies does this apply to?

Quoted companies, as defined by the Companies Act 2006. This means companies registered in the UK and with equity listed on the main market in the UK, in another state in the European Economic Area or on the New York Stock Exchange or NASDAQ. There are around 900 such companies.

2 Does this apply to AIM listed companies?

No.

3 What about companies that are foreign registered and UK listed?

The reforms apply to UK registered companies only and so do not capture foreign registered companies listed in the UK.

All companies listed in the UK have to comply with the remuneration elements of the Corporate Governance Code or explain reasons for non-compliance. UK companies with a premium listing must also comply with the Listing Rules requirements relating to remuneration.

The UK Listing Authority will consider how the Listing Rules need to be updated in light of the reforms being made to company law.

4 Do UK registered companies listed overseas have to comply with this legislation even if the country they are listed in does not require it?

Yes, all UK registered companies with equity listed on the main market in the UK, in a state in the European Economic Area or on the New York Stock Exchange or NASDAQ, have to comply with the legislation.

5 Do the rules apply equally across the UK?

Yes.

6 Do the new restrictions on remuneration and loss of office payments apply to non-executive directors who are not employees?

Yes. The legislation applies to all those who hold the office of director, regardless of whether or not they are an employee of the company.

C. Timing

7 When will companies have to start complying with the new regime?

The new regime will come into force on 1 October 2013.

For the AGM held in the first financial year to begin on or after 1 October 2013 companies will need to produce a directors' remuneration report in the new format prescribed by regulations - with a separate policy part and implementation part. For the majority of

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companies this will mean AGMs held in the Spring/Summer of 2014. The first companies to comply with the new regime will be those with a financial year beginning on 1 October

At this AGM, both the remuneration policy and the implementation report must be put to shareholders for approval.

All companies must have successfully sought approval for a remuneration policy by no later than the start of the second financial year to begin after the reforms come into force. So for a typical December year-end company that means by the 1 January 2015.

After this date, the restrictions in new Chapter 4A of the Companies Act 2006 will take effect and all remuneration and loss of office payments to directors will need to be in line with the company's approved remuneration policy, or else separately approved by a shareholder resolution.

In the first year of the new regime, companies may choose to apply the restrictions in Chapter 4A from an earlier date if they wish (i.e. any date after a remuneration policy has been approved).

The Chapter 4A restrictions will not apply to any remuneration or loss of office payment required to be made as part of an agreement entered into, or other obligation arising, before 27 June 2012 and which has not been renewed or amended since.

Table 1: Date that restrictions on remuneration and loss of office payments will come into force

Year-end	First AGM at which company must report in the new format and put the remuneration policy to a binding shareholder resolution	Date from which all remuneration and loss of office payments must be consistent with the approved policy or approved by a separate shareholder resolution
30 September	Early 2014	1 October 2014
31 September	Spring 2014	1 January 2015
31 March	Summer 2014	1 April 2015
30 June	Autumn 2014	1 July 2015

8 Does this mean that until the start of the second financial year (or whenever the company chooses to have the restrictions in Chapter 4A take effect) companies can pay whatever they want?

The Chapter 4A restrictions on remuneration and loss of office payments will not take effect until the start of the second financial year to begin after the reforms come into force, or at an earlier date of the company's choosing (any date after a remuneration policy has been approved).

Before this date, remuneration and loss of office payments made which are not consistent with the approved remuneration policy will not be unlawful. Until the Chapter 4A restrictions come into effect the existing Companies Act 2006 provisions on payments for loss of office will continue to apply.

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9 When will the regulations prescribing the new format of the directors' remuneration report be finalised?

The Government hopes to present these to Parliament in Spring 2013.

D. Voting procedure

(i) Shareholder resolution on the implementation report

10 How often must companies put the implementation report to a shareholder resolution?

At every AGM.

11 What are the consequences if a company fails the shareholder resolution on the implementation report?

No individual director's remuneration is dependent on the resolution on the implementation report being passed as it is an 'advisory' resolution.

However, if a company fails the annual advisory resolution in a year in which the remuneration policy was not also put to a shareholder resolution, this will trigger the need for the company to put its remuneration policy to a shareholder resolution the following year.

12 What happens if a company fails the resolution on the implementation report but a resolution on the remuneration policy is approved at the same AGM?

As the shareholders have had the opportunity to vote on the remuneration policy and approved it, the company will not be required to put it back to shareholders at the next AGM.

(ii) Shareholder resolution on the remuneration policy

13 How often must companies put the remuneration policy to a shareholder resolution?

All companies must put the remuneration policy to a shareholder resolution at the AGM held in the first financial year to commence on or after 1 October 2013.

After that, whenever companies want to introduce a new remuneration policy or make changes to an existing policy they will need to put the remuneration policy to shareholders for approval.

All companies will have to put their remuneration policy to shareholders for approval at least every three years.

14 How are the three years measured?

From the beginning of the first financial year to commence after the last AGM or other general meeting at which the remuneration policy was put to a shareholder resolution. The

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company must put the remuneration policy back to shareholders by the end of the third full financial year.

Table 2: Requirement to put the remuneration policy to a resolution every three years

Date of last AGM or other general meeting at which the remuneration policy was put to a !shareholder resolution	Date of first financial year to commence after this AGM	Date by which the company must put the remuneration policy back to shareholders
Early 2014	1 October 2014	30 September 2017
Spring 2014	1 January 2015	31 December 2017
Summer 2014	1 April 2015	31 March 2018
Autumn 2014	1 July 2015	30 June 2018

15 From what date does a remuneration policy apply?

In the first year of the new regime the restrictions in Chapter 4A of the Companies Act 2006 will not take effect until the start of the following financial year (unless the company chooses for them to apply sooner). The company may adopt the policy immediately but the restrictions on payments will not apply until the end of that year.

Thereafter, the remuneration policy will take effect for the purposes of the restrictions in Chapter 4A from the date it is approved at the AGM or other general meeting.

If, as part of the proposed remuneration policy, a company wants to continue to operate according to the previously approved remuneration policy for a certain period of time (for example, up to the end of the financial year), the company must clearly indicate this intention within the remuneration policy being put to shareholders for approval.

16 Can companies make minor changes to their remuneration policy without putting it back to shareholders for approval?

No. Companies can only make remuneration or loss of office payments which are consistent with the last remuneration policy report to have been approved by shareholders, or which have been approved by a separate shareholder resolution. As such, any changes made to the policy need to be approved by shareholders.

17 Will companies be able to put a revised remuneration policy to shareholders for approval in between AGMs?

Yes. New section 422A of the Companies Act 2006 makes this possible by allowing companies to put a revised remuneration policy to a shareholder resolution at a general meeting which is not the accounts meeting.

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18 Why would a company want to revise its remuneration policy in between AGMs?

A company may want to revise its remuneration policy if it finds the current policy is no longer workable or is deficient in some way or if the company wishes to do something not previously contemplated (e.g. a particular loss of office payment). Following a merger or acquisition a company may want to change its policy without having to wait for the next AGM.

19 Can companies put a remuneration policy to a shareholder resolution earlier than the legislation requires?

Yes. Companies have the option of calling a general meeting to ask shareholders to approve a revised remuneration policy before the AGM held in the first financial year to commence on or after 1 October 2013.

This will need to be a remuneration policy revised in accordance with section 422A. The new directors' remuneration reporting regulations will determine the content of a revised remuneration policy and will effectively require exactly the same content as any other remuneration policy to be prepared under the new regulations.

No remuneration policy approved prior to 1 October 2013 will be recognised as an approved remuneration policy for the purposes of the new legislation.

20 What are the consequences if a company fails the shareholder resolution on the remuneration policy?

If the shareholder resolution on the remuneration policy is not passed, a company will have three options:

(i) Continue to operate according to the last remuneration policy to have been approved by a shareholder resolution.

(ii) Continue to operate according to the last remuneration policy to have been approved by a shareholder resolution and seek separate shareholder approval (via a resolution at a meeting) for any specific remuneration or loss of office payments which are not consistent with the policy.

(iii) Call a general meeting and put a remuneration policy to shareholders for approval.

This could, but need not be, an amended version of the policy last put to shareholders for approval.

21 What are the consequences if a company fails the shareholder resolution on the remuneration policy report in the first year?

In the first financial year after the reforms come into force a company which fails the resolution on the remuneration policy will not be able to rely on options (i) or (ii) as there is no previously approved policy to fall back on. The company would have to call a general meeting.

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22 How does the new resolution on the pay policy fit with the existing resolution on long-term incentive plans (LTIPs) and employees' share schemes through the Listing Rules?

The Listing Rules will continue to require shareholder approval for certain types of incentive schemes which involve the awarding of shares to directors and other employees.

In the remuneration policy companies will have to provide additional details of how any share awards made under such incentive schemes will work for the directors specifically. e.g. The maximum payout level and the performance conditions that will be applied. This may cross-refer to more detailed information in the rules of approved schemes.

23 If a company fails the resolution on the remuneration policy does that mean it can't pay out on its LTIPs?

Not necessarily. Once the new regime is in steady state companies who fail the resolution on the remuneration policy will always have the option of falling back on the last policy to have been approved. If the last policy to have been approved makes provision for payments to directors under existing LTIP schemes then the company will be able to continue to make payments under them, subject to any conditions in the last approved policy.

The resolution on the remuneration policy will have no impact on how LTIP schemes can operate for staff who are not directors.

(iii) Voting threshold

24 What proportion of shareholders must support the resolution on the implementation report or the remuneration policy?

A simple majority, like all ordinary resolutions.

25 Do abstentions/votes withheld count?

Consistent with all ordinary resolutions abstentions/votes withheld will not count.

26 How does this fit with the proposed changes to the UK Corporate Governance Code, requiring companies to respond when a substantial minority of shareholders vote against a resolution on remuneration?

Some stakeholders have suggested that when a substantial minority of shareholders oppose a resolution on directors' remuneration, companies should have to respond and say what they will do to address shareholder concerns.

The Financial Reporting Counsel (FRC) will consider this and consult on potential changes to the UK Corporate Governance Code once legislative reforms are finalised. At this stage, the FRC does not envisage making further changes to the UK Corporate Governance Code during 2013.

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E. Remuneration reports

27 Can companies start reporting in the new format early?

Companies can start to adopt the new reporting requirements before they come into force on 1 October 2013, provided that they continue to fulfil the legal requirements in the existing regulations.

28 Can companies go further than the requirements in the regulations and include extra information in their directors' remuneration reports?

Yes. The new directors' remuneration reporting regulations will provide a reporting framework with minimum standards to ensure a consistent level of reporting, but they do not preclude companies from including additional information which they think is relevant and helpful for shareholders.

29 Do companies have to treat executive and non-executives directors in the same way when reporting on pay?

The Act does not make a distinction between executive and non-executive directors and information about both must be included in the directors' remuneration report.

However, the Government recognises that remuneration of executive directors is more complicated than that of non-executive directors and is of most interest to shareholders. It is anticipated that the final directors' remuneration reporting regulations will take this into consideration and enable companies to provide less comprehensive disclosures on non-executive directors' remuneration.

F. Restrictions on remuneration payments

30 When do the restrictions on remuneration payments come into force?

The restrictions in new Chapter 4A of the Companies Act 2006 will apply from the start of the second financial year to begin on or after 1 October 2013 (i.e. 1 January 2015 for a December year-end company), or at an earlier date of the company's choosing (any date after a remuneration policy has been approved by shareholders).

Before this date, remuneration payments made which are not consistent with the approved remuneration policy will not be unlawful.

Any remuneration payments made to directors after the restrictions come into force will need to be consistent with the approved remuneration policy or separately approved by a shareholder resolution. That is, unless the payments are required to be made as part of a legal obligation entered into before 27 June 2012 and not amended or renewed since.

31 What does it mean for a payment to be 'consistent with the remuneration policy'?

The approved remuneration policy must have made provision for the payment and the payment must be consistent with that provision.

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32 The restrictions on remuneration and loss of office payments apply to people who are, are to be, or were directors – how does this impact on:

(i) **Buying out existing remuneration arrangements of new recruits and other recruitment awards**

The restrictions on remuneration payments will capture payments made to individuals who are going to become directors of the company. This includes payments a company may make to buy-out an individual's remuneration arrangements at another company which they would otherwise lose as a result of leaving. The recruiting company will need to ensure any such payments are consistent with the approved directors' remuneration policy and if not, have been separately approved by shareholders.

(ii) **How much companies can pay new recruits**

Any remuneration payments to directors, including individuals who become directors part way through the financial year, will need to be consistent with the approved directors' remuneration policy. This means that the policy will need to make reference to the company's approach to remuneration of new recruits.

(iii) **Remuneration payments made to directors after they have left**

Any remuneration payments made to former directors will need to be consistent with the approved directors' remuneration policy. As such, the company's remuneration policy will need to make reference to their approach to making such payments to individuals after they have left office.

33 Some remuneration schemes may be created under one policy and pay out under another- how does that work?

All remuneration payments will need to be consistent with the approved remuneration policy at the point they are made.

Companies may want to consider including in their remuneration policy a brief reference to their intention to make payments under remuneration schemes created under a previous policy, including schemes created before the new legislation came into force.

Any payments which are required to be made as part of an agreement entered into or other obligations arising before 27 June 2012 and not renewed or amended since will not be subject to these restrictions and can be paid regardless of the remuneration policy.

34 If a company includes information about how it pays people below board level in the remuneration policy will it be bound by this in the same way it is for directors?

No. The Companies Act 2006 places no restrictions on the payments companies can make to individuals who are not directors.

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G. Restrictions on Loss of Office Payments

35 When do restrictions on loss of office payments come into force?

The restrictions in new Chapter 4A of the Companies Act 2006 will apply from the start of the second financial year to begin on or after 1 October 2013 (i.e. 1 January 2015 for a December year-end company), or at an earlier date of the company's choosing (any date after a remuneration policy has been approved by shareholders).

Before this date loss of office payments made which are not consistent with the approved remuneration policy will not be unlawful. Until the Chapter 4A restrictions come into effect the existing Companies Act 2006 provisions on payments for loss of office will continue to apply.

Any loss of office payments made to directors after the Chapter 4A restrictions come into force will need to be consistent with the approved remuneration policy or separately approved by a shareholder resolution. That is, unless the payments are required to be made as part of a legal obligation entered into before 27 June 2012 and not amended or renewed since.

36 How does the legislation affect the ability of companies to settle statutory or contractual claims arising in connection with loss of office?

The Companies Act 2006 definition of payments for loss of office includes settlement of claims associated with the loss of office. This means that companies will need to ensure their remuneration policy makes it clear how they will approach settling any such claims.

37 How does the legislation affect the ability of companies to make payments ordered by a court, e.g. as a result of a discrimination claim?

Where a court has ordered a payment – which could be construed as a loss of office payment - to be made, the legislation will not prevent the company from paying it.

38 How does the legislation affect the ability of companies to make statutory payments (e.g. for redundancy) or payments required to be made by Jaw in another jurisdiction?

Where another Act of Parliament requires a payment – which could be construed as a loss of office payment- to be made, the legislation will not prevent the company from paying it.

39 What must be included in the statement that companies publish online when a director leaves?

Particulars of loss of office payments and remuneration payments which have been made or may be made in future, and how they were calculated. It will be up to investors and companies to work out what best practice looks like when it comes to this disclosure.

40 Does the company need to publish a statement every time it makes a remuneration payment to a former director?

No. The statement is only required at the point the director leaves office (or as soon as reasonably practicable afterwards).

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H. Contracts and other legal agreements

41 Impact on existing contracts and other legal agreements, not renewed or amended since 27 June 2012

Payments required to be made under existing contracts and legal agreements entered into, and obligations arising, before the legislation introducing these reforms was published on June 2012 and which have not been amended or renewed since, will not be subject to the restrictions in new Chapter 4A of the Companies Act 2006.

42 Impact on agreements entered into, and existing contracts and agreements amended or renewed on or after 27 June 2012

All payments made under agreements entered into, amended or renewed on or after 27 June 2012 will be caught by the new rules.

This means that any payments made under these agreements must be consistent with the approved remuneration policy.

However, the restrictions in Chapter 4A will not come into force until the second financial year to begin on or after 1 October 2013 or an earlier date of the company's choosing, giving companies plenty of time to prepare.

43 You say companies can't pay outside of the remuneration policy but what if they have a legal agreement with a director?

Obligations to make a payment which would be inconsistent with the approved remuneration policy and have not been separately approved by shareholders will have no effect.

I. Unauthorised payments

44 What happens if a company makes a payment which is inconsistent with the approved remuneration policy and has not been separately approved by shareholders?

The unauthorised payment is to be held on trust by the individual recipient and an action can be brought to recover the payment.

45 Who can bring an action to recover an unauthorised payment?

This action could be brought by the directors, on behalf of the company.

If the directors choose not to bring an action then the shareholders, acting on behalf of the company, may seek to do so, using their rights to shareholder derivative actions under section 260 of the Companies Act 2006. The shareholders would need to apply to a court to seek permission to pursue the action.

46 What happens if the company, or the shareholders acting on behalf of the company, cannot recover the payment?

The directors who authorised the payment can be held liable for any losses incurred as a result.

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47 What happens if the directors who authorised the payment made an honest mistake?

If a director who authorised an unapproved payment can prove that he or she acted honestly and reasonably then the court- taking into account all of the circumstances of the case - may relieve the director either wholly or in part on such terms as the court sees fit.

48 Can the company or shareholders bring an action to recover a payment under section without also bringing an action to recover losses from the responsible directors or are the two processes always joined together?

The action to recover a payment can be seen separately and so a company or its shareholders may take action to recover a payment without also seeking to recover any resulting losses from the directors who authorised the payment.

49 Do the directors who authorised the payment have to pay for losses if the payment is fully recovered from the individual who received it?

Where the payment has been fully recovered it is possible there may have been no losses and so no grounds for an action against the directors.

J. Miscellaneous

50 When do newly quoted companies have to start complying with the rules?

Newly quoted companies will need to put a remuneration policy to a shareholder resolution at the AGM in the first financial year to begin on or after the day which the company becomes a quoted company. The restrictions on remuneration and loss of office payments in Chapter 4A of the Companies Act 2006 will apply to newly quoted companies from the start of their second financial year as a quoted company.

51 How will this affect remuneration payments in a takeover situation?

Any remuneration payment made will need to be consistent with approved remuneration policy of whichever company is making the payment (if that company is a quoted company).

Where a company has taken over another company, the new parent company's remuneration policy becomes the relevant policy. Where a new quoted company is formed, that company would need to put a remuneration policy to a shareholder resolution at the AGM in the first financial year to begin on or after the day on which the company becomes a quoted company.

52 How will this affect loss of office payments in a takeover situation?

Any loss of office payment made will need to be consistent with the approved remuneration policy of whichever quoted company the director is departing from, regardless of who actually makes the payment. If, at the point the director departs, the company is no longer a quoted company then these restrictions do not apply.

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53 What is the Financial Reporting Council consulting on?

The FRC will consider any changes that should be made to the UK Corporate Governance Code in light of legislative reforms. This includes:

- How companies should formally respond when a significant minority of shareholders oppose a resolution on the directors' remuneration report.
- Requiring all companies to adopt clawback mechanisms.
- The extent to which executives should serve on remuneration committees in other companies.

The FRC will consult on potential changes to the UK Corporate Governance Code once legislative reforms are finalised. At this stage, the FRC does not envisage making further changes to the UK Corporate Governance Code during 2013.

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