

2019 No. 970

COMPANIES

The Companies (Directors' Remuneration Policy and Directors' Remuneration Report) Regulations 2019

Made - - - - 22nd May 2019

Coming into force - - 10th June 2019

The Secretary of State is a Minister designated(a) for the purposes of section 2(2) of the European Communities Act 1972(b) in relation to the creation, operation, regulation or dissolution of companies and other forms of business organisation.

The Secretary of State makes these Regulations in exercise of the powers conferred by section 2(2) of that Act, and sections 421(1), 468(1) and (2) and 1292(1) of the Companies Act 2006(c).

In accordance with paragraph 2 of Schedule 2 to the European Communities Act 1972 and sections 473(3) and 1290 of the Companies Act 2006, a draft of this instrument was laid before Parliament and approved by a resolution of each House of Parliament.

PART 1

Introductory

Citation and commencement

1.—(1) These Regulations may be cited as the Companies (Directors' Remuneration Policy and Directors' Remuneration Report) Regulations 2019.

(2) These Regulations come into force on 10th June 2019.

Application, transitional provisions and interpretation

2.—(1) The amendments made by—

(a) regulations 6 to 10 apply to a quoted company from the first date on or after 10th June 2019 on which a relevant directors' remuneration policy for the company approved under section 439A of the Companies Act 2006 takes effect;

(b) regulation 15 apply in relation to—

(a) S.I. 2007/193; there are no relevant amending instruments.

(b) 1972 c. 68. Section 2(2) was amended by section 27 of the Legislation and Regulatory Reform Act 2006 (c. 51) and by section 3 of, and Part 1 of the Schedule to, the European Union (Amendment) Act 2008 (c. 7).

(c) 2006 c. 46.

- (i) a directors' remuneration report or directors' remuneration policy of a quoted company first required to be made available under section 430 of the Companies Act 2006 on or after 10th June 2019;
 - (ii) annual accounts and reports of an unquoted traded company for a financial year of the company beginning on or after 10th June 2019;
 - (c) regulation 31 apply in relation to a directors' remuneration report for a financial year of a company beginning on or after 10th June 2019;
 - (d) regulation 32 apply in relation to a relevant directors' remuneration policy that was approved under section 439A of the Companies Act 2006 on or after 10th June 2019.
- (2) Where a company is an unquoted traded company immediately before the day on which these Regulations come into force and paragraph (4) does not apply—
- (a) section 226D(6) of the Companies Act 2006(a) (as amended by regulation 9) applies as if—
 - (i) in the opening words “the earlier of” were omitted; and
 - (ii) paragraph (a) was omitted;
 - (b) section 439A(1)(a) of the Companies Act 2006(b) (as amended by regulation 20) applies to the company as if for “the day on which the company becomes a quoted company or (as the case may be) an unquoted traded company” there were substituted “1st January 2020 or at an earlier general meeting”.
- (3) Paragraph (4) applies if, immediately before the day on which these Regulations come into force, an unquoted traded company has a relevant directors' remuneration policy in effect which—
- (a) was approved by a resolution passed by the members of the company at an accounts or other general meeting before 10th June 2019, and
 - (b) complied with the requirements of the Companies Act 2006 in relation to such policies.
- (4) Where this paragraph applies—
- (a) section 439A(1)(a) of the Companies Act 2006 does not apply to the company;
 - (b) the notice that was given of the intention to move a resolution to approve the policy is to be treated as having been given under section 439A(1) for the purpose of determining the period within which the next notice under that section must be given;
 - (c) regulation 2(1)(a) applies to the company as if it were a quoted company.
- (5) In this regulation—
- “directors' remuneration policy”, “quoted company” and “unquoted traded company” have the same meanings as in section 226A(1) of the Companies Act 2006(c);
- “directors' remuneration report” has the same meaning as in section 420 of the Companies Act 2006;
- “relevant directors' remuneration policy” has the same meaning as in section 439A(7) of the Companies Act 2006.

PART 2

Amendments to the Companies Act 2006

3. The Companies Act 2006 is amended in accordance with regulations 4 to 27.

(a) Section 226D was inserted by section 80 of the Enterprise and Regulatory Reform Act 2013.
 (b) Section 439A was inserted by section 79 of the Enterprise and Regulatory Reform Act 2013.
 (c) The definition of “unquoted traded company” is inserted into section 226A(1) by regulation 6 of these Regulations.

CHAPTER 1

Amendments to Part 10 (a company's directors)

Amendments to section 215

4. In section 215 (payments for loss of office)(a)—
- (a) in subsection (5), after “company” insert “or unquoted traded company”;
 - (b) after subsection (5) insert—
“(6) “Unquoted traded company” means a traded company (as defined by section 360C) that is not a quoted company.”

Amendment to Chapter 4A

5. In the heading to Chapter 4A(b), after “companies” insert “and traded companies”.

Amendments to section 226A

6. In section 226A (key definitions)—
- (a) in subsection (1)—
 - (i) in the definition of “directors’ remuneration policy”, after “company” insert “, or of an unquoted traded company,”;
 - (ii) after the definition of “payment for loss of office” insert—
““unquoted traded company” means a traded company (as defined by section 360C) that is not a quoted company.”;
 - (b) in subsection (2), after “quoted company” insert “or unquoted traded company”;
 - (c) after subsection (9) insert—
“(10) References in this Chapter (other than sections 226E(2)(b) and (5)) to a director of a company include a person who is not a director of the company but who is—
 - (a) its chief executive officer (however described), or
 - (b) where such a function exists in the company, its deputy chief executive officer (however described).”

Amendments to section 226B

7. In section 226B (remuneration payments)—
- (a) in subsection (1), after “quoted company” insert “or unquoted traded company”;
 - (b) for subsection (1)(b) substitute—
“(b) an amendment to that policy authorising the company to make the payment has been approved by resolution of the members of the company.”.

Amendments to section 226C

8. In section 226C (loss of office payments)—
- (a) in subsection (1), after “quoted company” insert “or of an unquoted traded company”;
 - (b) for subsection (1)(b) substitute—
“(b) an amendment to that policy authorising the company to make the payment has been approved by resolution of the members of the company.”.

(a) Section 215(5) was inserted by section 81 of the Enterprise and Regulatory Reform Act 2013.

(b) Chapter 4A was inserted by section 80 of the Enterprise and Regulatory Reform Act 2013.

Amendments to section 226D

- 9.** In section 226D (sections 226B and 226C: supplementary)—
- (a) in subsection (1)—
 - (i) for “a payment” substitute “an amendment”;
 - (ii) after “proposed payment” insert “to which the amendment relates”;
 - (b) for subsection (2) substitute—

“(2) The memorandum must explain the ways in which the payment would be inconsistent with the approved directors’ remuneration policy (within the meaning of the section in question) but for the amendment.”;
 - (c) in subsection (4), for “a payment” substitute “the amendment”;
 - (d) in subsection (6)—
 - (i) in the opening words, after “quoted company” insert “or of an unquoted traded company”, and
 - (ii) in paragraph (a) after “quoted company” insert “or (as the case may be) an unquoted traded company”.

Amendments to section 226E

- 10.** In section 226E (payments made without approval: civil consequences)—
- (a) in subsection (3), after “quoted company” insert “or of an unquoted traded company”;
 - (b) in subsection (4), after “quoted company” insert “or of an unquoted traded company”.

CHAPTER 2

Amendments to Part 15 (accounts and reports)

Amendment to Chapter 6

11. In the heading to Chapter 6 (quoted companies: directors’ remuneration report), after “companies” insert “and traded companies”.

Amendment to section 420

12. In section 420(1) (duty to prepare directors’ remuneration report), after “quoted company” insert “, or of a traded company (as defined by section 360C) that is not a quoted company,”.

Amendment to section 426A

13. In section 426A (supplementary material)(a), in subsection (2)(e), after “quoted company” insert “or of a traded company (as defined by section 360C) that is not a quoted company”.

Amendment to heading before section 430

14. In the italic heading before section 430, after “companies” insert “and traded companies”.

Amendments to section 430

15. In section 430 (quoted companies: annual accounts and reports to be made available on website)(b)—

(a) Section 426A was inserted by S.I. 2013/1970.

(b) Section 430 was amended by section 81 of the Enterprise and Regulatory Reform Act 2013.

- (a) in the heading, after “companies” insert “and traded companies”;
- (b) in subsection (1), after “quoted company” insert “or unquoted traded company”;
- (c) in subsection (1)(b), at the beginning insert “subject to subsection (4ZA),”;
- (d) in subsection (2A)—
 - (i) after “quoted company” insert “or unquoted traded company”;
 - (ii) after “section 422A,” insert “or amended as mentioned in section 226B(1)(b) or section 226C(1)(b),”;
 - (iii) after “the revised” insert “or amended”;
- (e) in subsection (2B), after “quoted company” insert “or of an unquoted traded company”;
- (f) after subsection (2B) insert—

“(2C) Where the members of a quoted company or of an unquoted traded company have passed a resolution approving the relevant directors’ remuneration policy (within the meaning of section 439A(7))—

 - (a) the company must ensure that the following information is made available on the website on which its remuneration policy is made available as soon as reasonably practicable, and kept available for as long as that information is applicable —
 - (i) the date of the resolution,
 - (ii) the number of votes validly cast,
 - (iii) the proportion of the company’s issued share capital represented by those votes,
 - (iv) the number of votes cast in favour,
 - (v) the number of votes cast against, and
 - (vi) the number of abstentions; and
 - (b) for the purposes of paragraph (a)(iii), the proportion of the issued share capital must be determined by reference to the register of members as at a time (determined by the company) that is not more than 48 hours before the time for the holding of the meeting at which the resolution was passed.”;
- (g) in subsection (3), for “(2B)” substitute “(2C)”;
- (h) in subsection (4)(b), at the beginning insert “subject to subsection (4ZA),”;
- (i) after subsection (4), insert—

“(4ZA) The directors’ remuneration report—

 - (a) must be kept available for a period of ten years beginning with the date it is first made available in accordance with this section, and
 - (b) may be kept available for a longer period if it does not contain personal data within the meaning of the Data Protection Act 2018(a) (see section 3(2) of that Act).”;
- (j) in subsection (4A)—
 - (i) omit “and” at the end of paragraph (a);
 - (ii) at the end of paragraph (b) insert “, and”;
 - (iii) after paragraph (b) insert—

“(c) in a subsection (2A) case, must be kept available for at least as long as it is applicable.”;
- (k) in subsection (5), after “(as the case may be)” insert “(4ZA) or”;
- (l) after subsection (7) insert—

“(8) In this section “unquoted traded company” means a traded company (as defined by section 360C) that is not a quoted company.”

Amendments to section 431

16. In section 431(1) (right of member or debenture holder to copies of accounts and reports: unquoted companies)(a)—

- (a) omit “and” at the end of paragraph (b);
- (b) after paragraph (b), insert—
 - “(ba) the last directors’ remuneration report (if any), and”;
- (c) in paragraph (c), after “strategic report” insert “and on the directors’ remuneration report”.

Amendment to section 433

17. In section 433 (name of signatory to be stated in published copies of accounts and reports)—

- (a) in subsection (2), after “unquoted company” insert “that is not a traded company”;
- (b) in subsection (3), in the opening words, after “company” insert “or of a traded company (as defined by section 360C) that is not a quoted company”.

Amendment to Chapter 9

18. In the heading to Chapter 9 (quoted companies: members’ approval of directors’ remuneration report), after “companies” insert “and traded companies”.

Amendments to section 439

19. In section 439 (quoted companies: members’ approval of directors’ remuneration report)(b)—

- (a) in the heading, after “companies” insert “and traded companies”;
- (b) in subsection (1), for “quoted company” substitute “company to which this section applies”;
- (c) after subsection (1) insert—
 - “(1A) This section applies to—
 - (a) a quoted company, and
 - (b) a traded company (as defined by section 360C) that is not a quoted company.”

Amendments to section 439A

20. In section 439A (quoted companies: members’ approval of directors’ remuneration policy)(c)—

- (a) in the heading, after “companies” insert “and traded companies”;
- (b) in subsection (1)—
 - (i) in the opening words, after “company” insert “or unquoted traded company”, and
 - (ii) in paragraph (a), after “quoted company” insert “or (as the case may be) an unquoted traded company”;
- (c) in subsections (2) and (3), after “quoted company” insert “or unquoted traded company”;

(a) Section 431(1) was amended by S.I. 2013/1970.

(b) Section 439 was amended by section 79 of the Enterprise and Regulatory Reform Act 2013.

(c) Section 439A was inserted by section 79 of the Enterprise and Regulatory Reform Act 2013.

- (d) after subsection (2), insert—
- “(2A) A quoted company or unquoted traded company must give notice of the intention to move at an accounts or other general 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 subsection (1) or (2) or this subsection was not passed at the last accounts or other general meeting of the company, and
 - (b) no notice under this section was given in relation to any other general meeting held before the next accounts meeting.”;
- (e) in subsection (4), after “subsection (2)” insert “or (2A)”;
- (f) in subsection (8), after paragraph (b) insert—
- “(c) “unquoted traded company” means a traded company (as defined by section 360C) that is not a quoted company.”.

Amendments to section 440

21. In section 440(1) (quoted companies: offences in connection with procedure for approval)(a)—

- (a) in the heading, after “companies” insert “and traded companies”;
- (b) in subsection (1), for “or (2)” substitute “, (2) or (2A)”.

Amendments to section 446

22. In section 446 (filing obligations of unquoted companies)(b)—

- (a) in subsection (1)—
 - (i) omit “and” at the end of paragraph (b);
 - (ii) after paragraph (b), insert—
 - “(ba) any directors’ remuneration report, and”;
- (b) in subsection (2), after “directors’ report” insert “, any directors’ remuneration report”;
- (c) in subsection (3), after “directors’ report” insert “, any directors’ remuneration report”.

Amendment to section 471

23. In section 471(2) (meaning of “annual accounts” and related expressions)(c), after paragraph (aa) insert—

- “(ab) the directors’ remuneration report (if any),”.

Amendment to section 474

24. In section 474(1) (minor definitions)(d), in the definition of “traded company”, after “traded company” insert “, unless the context otherwise requires,”.

(a) Section 440 was amended by section 81 of the Enterprise and Regulatory Reform Act 2013.
(b) Subsections (1) and (2) of section 446 were amended by S.I. 2009/1581 and 2013/1970; subsection (3) was amended by S.I. 2013/1970.
(c) Section 471(2) was amended by S.I. 2013/1970.
(d) “traded company” was inserted in section 474(1) by S.I. 2015/980.

CHAPTER 3

Amendments to Part 16 (audit)

Amendment to section 497

- 25.** In section 497 (auditor's report on auditable part of directors' remuneration report)—
- (a) in subsection (1), after "quoted company" insert "or unquoted traded company";
 - (b) after subsection (2) insert—
“(3) In this section “unquoted traded company” means a traded company (as defined by section 360C) that is not a quoted company.”.

Amendments to section 498

- 26.** In section 498 (duties of auditor)—
- (a) in subsections (1)(c) and (2)(c), after "quoted company" insert "or unquoted traded company";
 - (b) after subsection (6) insert—
“(7) In this section “unquoted traded company” means a traded company (as defined by section 360C) that is not a quoted company.”.

CHAPTER 4

Amendment to Schedule 8 (index of defined expressions)

Amendment to Schedule 8

- 27.** In Schedule 8 (index of defined expressions), at the appropriate place insert—
- “unquoted traded company (in Chapter 4A of section 226A(1) Part 10)

PART 3

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

- 28.** The Large and Medium-sized Companies and Groups (Accounts and Reports) Regulations 2008(a) are amended in accordance with regulations 29 to 33.

Amendments to regulation 11

- 29.** In regulation 11 (directors' remuneration report (quoted companies))(b)—
- (a) in the heading, after "companies" insert "and traded companies";
 - (b) in paragraph (1), after "quoted company" insert "or unquoted traded company".

(a) S.I. 2008/410.

(b) There are amendments to regulation 11 but none is relevant.

Amendments to Schedule 8

30. Schedule 8 (quoted companies: directors' remuneration report)(a) is amended in accordance with regulations 31 to 33.

31.—(1) In the heading of Schedule 8, after “companies” insert “and traded companies”.

(2) After paragraph 2(2), insert—

“(2A) The directors' remuneration report must not include personal data of a director that falls within a special category of data listed in Article 9(1) of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data(b), or personal data which refers to the family situation of individual directors.”.

(3) After paragraph 2(7), insert—

“(8) A person is to be treated as a director of a company for the purposes of this Schedule (other than in the references to directors in paragraphs 2(2), 2(5), 3, 5(2), 6(1)(b), 10(3), 22(1), 23(c), 24(4), and 48) if the person—

(a) is the company's chief executive officer (however described) or, where such a function exists in the company, the company's deputy chief executive officer (however described), but

(b) is not a director of the company.”.

(4) For the table in paragraph 5(1) substitute—

“Single Total Figure Table								
	a	b	c	d	e	Total	Total Fixed Remuneration	Total Variable Remuneration
Director 1	xxx	xxx	xxx	xxx	xxx	xxx	xxx	xxx
Director 2	xxx	xxx	xxx	xxx	xxx	xxx	xxx	xxx”

(5) After paragraph 7(1)(f), insert—

“(g) in the column headed “Total Fixed Remuneration”, the total amount of the sums set out in columns headed “a”, “b” and “e” and any additional columns relevant to this calculation;

(h) in the column headed “Total Variable Remuneration”, the total amount of the sums set out in columns headed “c” and “d” and any additional columns relevant to this calculation.”.

(6) In paragraph 14(1)(b)(v), at the end insert “and any change in the exercise price or date;”.

(7) In paragraph 18(1)(a)(i), after ““quoted company”” insert “or “unquoted traded company””.

(8) In paragraph 19—

(a) for the heading substitute—

“Annual percentage change in remuneration of directors and employees”;

(b) for sub-paragraphs (1)(a) and (1)(b) substitute—

“(a) the annual percentage change over the five financial years preceding the relevant financial year in respect of each director; and

(a) Parts 1 to 7 of Schedule 8 were substituted for Parts 1 to 4 as originally enacted by S.I. 2013/1981. Parts 2 to 4 were amended by S.I. 2018/860.

(b) OJ No. L 119, 4.5.2016, p. 1.

- (b) the average percentage change, from financial year to subsequent financial year, over the five financial years preceding the relevant financial year in respect of the employees of the company on a full time equivalent basis.”;
- (c) omit sub-paragraphs (2) and (3);
- (d) at the end insert—
 - “(4) For the purposes of sub-paragraphs (1)(a) and (1)(b) the “five financial years” referred to must include financial years beginning on or after 10th June 2019 and where five financial years have not passed since that date the annual percentage change must be calculated for all financial years since that date preceding the relevant financial year.
 - (5) “Employee” for purposes of this paragraph means any employee other than a director.”.
- (9) In paragraph 21(3), at the end insert “and any deviations from the procedure for the implementation of the remuneration policy set out in the policy”.
- 32.**—(1) In paragraph 24, after sub-paragraph (1), insert—
 - “(1A) The directors’ remuneration policy must explain the decision-making process followed for its determination, review and implementation, including measures to avoid or manage conflicts of interest and, where applicable, the role of the remuneration committee or other committees concerned except that this explanation need not include information that is elsewhere in the directors’ remuneration report.”.
- (2) In paragraph 26—
 - (a) in sub-paragraph (b), after “operates” insert “and information on any deferral periods”;
 - (b) after sub-paragraph (b), insert—
 - “(ba) where the company awards share-based remuneration, information on any vesting periods and any holding periods;”.
- (3) After paragraph 30 insert—
 - “**30A.** The directors’ remuneration policy must contain an indication of the duration of directors’ service contracts or arrangements with the directors.”.
- (4) In paragraph 42, at the end insert “, and a description and explanation of all significant revisions”.
- 33.** In paragraph 44(1), after the definition for “UK employee” insert—
 - ““unquoted traded company” means a traded company (as defined in section 360C of the Companies Act 2006) that is not a quoted company (as defined in section 385 of the Companies Act 2006);”.

Kelly Tolhurst
Minister for Small Business, Consumers and Corporate Responsibility
Department for Business, Energy and Industrial Strategy

22nd May 2019

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations implement in part Directive (EU) 2017/828 of the European Parliament and of the Council of 17 May 2017 amending Directive 2007/36/EC as regards the encouragement of long-term shareholder engagement (OJ L 132, 20.5.2017, p. 1) (“the Directive”). The Directive amends Directive 2007/36/EC of the European Parliament and of the Council of 11 July 2007 on the exercise of certain rights of shareholders in listed companies (OJ L 184, 14.7.2007, p. 17) (“the

Original Directive”). These Regulations contain the implementation of article 9a (right to vote on a company’s remuneration policy) and article 9b (information to be provided in and right to vote on the remuneration report), which are inserted into the Original Directive. The Original Directive applies to a company whose shares carry voting rights and are admitted to trading on a regulated market within the EEA. In the UK, the definition of “traded company” in section 360C of the Companies Act 2006 (c. 46) (“the Act”) covers this type of company.

The Act and the Large and Medium-sized Companies and Groups (Accounts and Reports) Regulations 2008 (S.I. 2008/410) (“the 2008 Regulations”) already provide a legal framework in the UK for approval of and voting on directors’ remuneration, and this legislation currently applies to quoted companies (as defined in section 385 of the Act) which includes traded companies unless they are unquoted companies (also defined in section 385). This framework is amended by these Regulations to implement the Directive, including bringing unquoted traded companies within scope of the existing legal framework.

These Regulations amend:

Chapters 4 and 4A of Part 10 (relating to members’ approval and remuneration of directors), Chapters 6 (directors’ remuneration report), 7 (publication of accounts and reports), 9 (members’ approval of directors’ remuneration report), 10 (filing of accounts and reports) and 12 (supplementary provisions) of Part 15 (accounts and reports), and Chapter 3 (functions of the auditor) of Part 16 (audit) of the Act; and

Regulation 11 of, and Schedule 8 to the 2008 Regulations.

These Regulations implement a requirement of the Directive that the remuneration of the Chief Executive Officer and any Deputy Chief Executive Officer must be reported even if they are not a director on the board of the company. Previously under UK law, only the remuneration of the directors on the board were required to be reported.

A full impact assessment has not been published for this instrument as it has no significant impact on the costs of business, the voluntary sector and the public sector.

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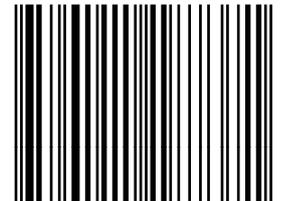
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