

Draft Regulations laid before Parliament under sections 473(3), 1290 and 1292(4) of the Companies Act 2006, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2013 No. XXXX

COMPANIES

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

Laid before Parliament

Coming into force - -

1st October 2013

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

In accordance with sections 473(3), 1290 and 1292(4) of that Act, a draft of this instrument was laid before Parliament and approved by a resolution of each House of Parliament.

PART 1

INTRODUCTION

Citation, commencement and application

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

(2) Subject to paragraph (3), these Regulations come into force on 1st October 2013.

(3) The following provisions of this instrument come into force on the making of these Regulations for the purposes only of the exercise of the powers to make regulations in the sections amended—

- (a) regulation 10;
- (b) paragraph 12(b) and (c) of the Schedule.

(4) These Regulations have effect in respect of financial years ending on or after 30th September 2013.

(a) 2006 c.46. Section 416(3) was amended by S.I. 2008/393.

PART 2

STRATEGIC REPORT

Duty to prepare strategic report

2. Part 15 (accounts and reports) of the Companies Act 2006 is amended as follows.
3. Before Chapter 5 (directors' report) insert—

“CHAPTER 4A STRATEGIC REPORT

414A Duty to prepare strategic report

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

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

(3) For a financial year in which—

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

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

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

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

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

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

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

414B Strategic report: small companies exemption

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

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

414C Contents of strategic report

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

(2) The strategic report must contain—

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

- (3) The review required is a balanced and comprehensive analysis of—
- (a) the development and performance of the company’s business during the financial year, and
 - (b) the position of the company’s business at the end of that year,
- consistent with the size and complexity of the business.

(4) The review must, to the extent necessary for an understanding of the development, performance or position of the company’s business, include—

- (a) analysis using financial key performance indicators, and
- (b) where appropriate, analysis using other key performance indicators, including information relating to environmental matters and employee matters.

(5) In subsection (4), “key performance indicators” means factors by reference to which the development, performance or position of the company’s business can be measured effectively.

(6) Where a company qualifies as medium-sized in relation to a financial year (see sections 465 to 467), the review for the year need not comply with the requirements of subsection (4) so far as they relate to non-financial information.

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

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

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

(8) In the case of a quoted company the strategic report must include—

- (a) a description of the company’s strategy,
- (b) a description of the company’s business model,
- (c) a breakdown showing at the end of the financial year—
 - (i) the number of persons of each sex who were directors of the company;
 - (ii) the number of persons of each sex who were senior managers of the company (other than persons falling within sub-paragraph (i)); and
 - (iii) the number of persons of each sex who were employees of the company.

(9) In subsection (8), “senior manager” means a person who—

- (a) has responsibility for planning, directing or controlling the activities of the company, or a strategically significant part of the company, and
- (b) is an employee of the company.

(10) In relation to a group strategic report—

- (a) the reference to the company in subsection (8)(c)(i) is to the parent company; and
- (b) the breakdown required by subsection (8)(c)(ii) must include the number of persons of each sex who were the directors of the undertakings included in the consolidation.

(11) The strategic report may also contain such of the matters otherwise required by regulations made under section 416(4) to be disclosed in the directors' report as the directors consider are of strategic importance to the company.

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

(13) Subject to paragraph (10), in relation to a group strategic report this section has effect as if the references to the company were references to the undertakings included in the consolidation.

(14) Nothing in this section requires the disclosure of information about impending developments or matters in the course of negotiation if the disclosure would, in the opinion of the directors, be seriously prejudicial to the interests of the company.

414D Approval and signing of strategic report

(1) The strategic report must be approved by the board of directors and signed on behalf of the board by a director or the secretary of the company.

(2) If a strategic report is approved that does not comply with the requirements of this Act, every director of the company who—

- (a) knew that it did not comply, or was reckless as to whether it complied, and
- (b) failed to take reasonable steps to secure compliance with those requirements or, as the case may be, to prevent the report from being approved,

commits an offence.

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

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

4. In section 415A(2)(a) (provisions to which small companies exemption for directors' report is relevant)—

- (a) after “dividend),” insert “and”, and
- (b) omit “section 417 (contents of report: business review), and”.

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

PART 3

DIRECTORS' REPORT

Amendment to section 416 of Companies Act 2006

6.—(1) Section 416 (content of directors' report: general) is amended as follows.

- (2) In subsection (1) omit paragraph (b) and the “and” immediately preceding that paragraph.
- (3) Omit subsection (2).

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

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

- (2) For regulation 10(2) (directors' report: structure of Schedule 7) substitute—

(a) Section 415A was inserted by regulation 6(2) of S.I. 2008/393.

(b) S.I. 2008/410.

“(2) In Schedule 7—

Part 1 relates to matters of a general nature including political donations and expenditure,

Part 2 relates to the acquisition by a company of its own shares or a charge on them,

Part 3 relates to the employment, training and advancement of disabled persons,

Part 4 relates to the involvement of employees in the affairs, policy and performance of the company,

Part 6 relates to certain disclosures required by publicly traded companies, and

Part 7 relates to disclosures in relation to greenhouse gas emissions.”.

(3) In Schedule 7 (matters to be dealt with in directors’ report)—

(a) after paragraph 1 insert—

“**1A.** Where a company has chosen in accordance with section 414C(11) to set out in the company’s strategic report information required by this Schedule to be contained in the directors’ report it shall state in the directors’ report that it has done so and in respect of which information it has done so.”;

(b) omit paragraphs 2 (asset values) and 5 (charitable donations);

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

(d) omit paragraph 12 (policy and practice on payment of creditors); and

(e) after paragraph 14 insert—

“PART 7

DISCLOSURES CONCERNING GREENHOUSE GAS EMISSIONS

15.—(1) This Part of this Schedule applies to the directors’ report for a financial year if the company is a quoted company.

(2) The report must state the annual quantity of emissions in tonnes of carbon dioxide equivalent from activities for which that company is responsible including—

(a) the combustion of fuel; and

(b) the operation of any facility.

(3) The report must state the annual quantity of emissions in tonnes of carbon dioxide equivalent resulting from the purchase of electricity, heat, steam or cooling by the company for its own use.

(4) Sub-paragraphs (2) and (3) apply only to the extent that it is practical for the company to obtain the information in question; but where it is not practical for the company to obtain some or all of that information, the report must state what information is not included and why.

16. The directors’ report must state the methodologies used to calculate the information disclosed under paragraph 15(2) and (3).

17. The directors’ report must state at least one ratio which expresses the quoted company’s annual emissions in relation to a quantifiable factor associated with the company’s activities.

18. With the exception of the first year for which the directors’ report contains the information required by paragraphs 15(2) and (3) and 17, the report must state not only the information required by paragraphs 15(2) and (3) and 17, but also that information as disclosed in the report for the preceding financial year.

19. The directors' report must state if the period for which it is reporting the information required by paragraph 15(2) and (3) is different to the period in respect of which the directors' report is prepared.

20. The following definitions apply for the purposes of this Part of this Schedule—

“emissions” means emissions into the atmosphere of a greenhouse gas as defined in section 92 of the Climate Change Act 2008(a) which are attributable to human activity;

“tonne of carbon dioxide equivalent” has the meaning given in section 93(2) of the Climate Change Act 2008.”.

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

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

(2) Omit paragraph 4 (charitable donations).

(3) Omit paragraph 6 (company acquiring own shares).

PART 4

OPTION TO PROVIDE STRATEGIC REPORT

Option to provide strategic report with supplementary material

9. Part 15 (accounts and reports) of the Companies Act 2006 is amended as follows.

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

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

(3) In subsection (1) for “summary financial statement” substitute “copy of the strategic report together with the supplementary material described in section 426A”.

(4) Omit subsection (4).

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

12.—(1) After section 426 (option to provide summary financial statement) insert—

“426A Supplementary material

(1) The supplementary material referred to in section 426 must be prepared in accordance with this section.

(2) The supplementary material must—

(a) contain a statement that the strategic report is only part of the company's annual accounts and reports;

(b) state how a person entitled to them can obtain a full copy of the company's annual accounts and reports;

(c) state whether the auditor's report on the annual accounts was unqualified or qualified and, if it was qualified, set out the report in full together with any further material needed to understand the qualification;

(a) 2008 c. 27.

(b) S.I. 2008/409 to which there are amendments not relevant to these Regulations.

- (d) state whether, in that report, the auditor’s statement under section 496 (whether strategic report and directors’ report consistent with the accounts) was unqualified or qualified and, if it was qualified, set out the qualified statement in full together with any further material needed to understand the qualification;
- (e) in the case of a quoted company, contain a copy of that part of the directors’ remuneration report which sets out the single total figure table in respect of the company’s directors’ remuneration in accordance with the requirements of Schedule 8 to the Large and Medium-sized Companies (Accounts and Reports) Regulations 2008 (S.I. 2008/410).”

13. Omit section 429 (summary financial statements: offences).

PART 5

Consequential amendments

14. The Schedule (consequential amendments) has effect.

Name
Parliamentary Under Secretary of State for Employment Relations and Consumer Affairs

Date Department for Business, Innovation and Skills

SCHEDULE

Regulation 14

Consequential amendments

Companies Act 2006

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

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

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

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

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

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

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

(a) Section 446 was amended by S.I. 2009/1581.

(b) Section 447 was amended by S.I. 2009/1581.

16. In section 459 (power of authorised person to require documents, information and explanations), in subsection (1) for “or directors’ report comply” substitute “, strategic report or directors’ report complies”.

17. In section 463 (liability for false or misleading statements in reports), in subsection (1)—

(a) before paragraph (a) insert—

“(za) the strategic report,”;

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

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

(a) in subsection (2)—

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

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

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

(b) in subsection (3)—

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

“(ba) the strategic report (if any),” ; and

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

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

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

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

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

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

22. In section 498 (duties of auditor) in subsection (5)(b) after “small companies exemption” insert “from the requirement to prepare a strategic report or”.

23. In section 837(1) (justification of distribution by reference to accounts: requirements where last annual accounts used), omit paragraph (b) and the “or” immediately preceding that paragraph.

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

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

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

Postal Services Act 2000

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

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

(a) 2000 c. 26.

Dartford-Thurrock Crossing Act 1988

28. In section 33 of the Dartford-Thurrock Crossing Act 1988(a) in subsection (2) after “relevant” insert “strategic report and”.

(a) 1988 c. 20. Subsection (2) was amended by paragraph 39 of Schedule 10 to the Companies Act 1989 and by paragraph 152 of Schedule 1 to S.I. 2008/948.

EXPLANATORY NOTE

(This note is not part of the Regulations)

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

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

Regulation 4 amends section 415A as a consequence of new section 414B.

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

Regulation 6 amends section 416 (content of directors’ report) of the Act to omit the need for a statement by the company of its principal activities in the course of the year.

Regulations 7 and 8 amend the Large and Medium-sized Companies and Groups (Accounts and Reports) Regulations 2008 (S.I. 2008/410) and the Small Companies and Groups (Accounts and Directors’ Report) Regulations 2008 (S.I. 2008/409) regulations which prescribe the contents of the directors’ report to remove certain items of information from the report, and limit the need to provide information on a company’s purchase of its own shares to public companies. S.I. 2008/410 is amended to require quoted companies to make certain disclosures regarding greenhouse gas emissions.

Regulations 9 to 12 amend section 426 of the Act to substitute for a summary financial statement a copy of the strategic report and supplementary material.

A full regulatory impact assessment of the effect that these Regulations will have on the costs to business is available from Business Environment Directorate of the Department for Business, Innovation and Skills, 1 Victoria Street, London SW1H 0ET or at www.gov.uk/bis and is published with the Explanatory Memorandum alongside the instrument on www.legislation.gov.uk.

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