

FINANCIAL SERVICES ACT 2010

EXPLANATORY NOTES

COMMENTARY ON SECTIONS AND SCHEDULES

Remuneration of executives of authorised persons

Section 4: Executives' remuneration reports

58. This section gives the Treasury the power to make regulations requiring the preparation of a report disclosing information on the remuneration paid to officers and employees of a person who is an authorised person under FSMA and to others with a specified connection to the authorised person. Quoted companies are already required to produce and publish a directors' remuneration report detailing all monies paid to executive and non-executive directors. This section gives the Treasury power to expand the disclosure regime beyond quoted companies, and to employees who are not directors.
59. *Subsection (1)* gives the Treasury power to make regulations on executive remuneration reports.
60. *Subsection (2)* defines "executive remuneration report" for the purposes of this section.
61. *Subsection (3)* lists the type of persons who can be considered to be executives for the purposes of the executives' remuneration report. They include any individual who has a connection with the authorised person which is specified in the regulations made by the Treasury. *Subsection (4)* provides further information on who may fall into this last category and makes it clear that the Treasury is able to require the disclosure of information in relation to remuneration given to individuals providing services to an authorised person who are not employees of that person.
62. *Subsection (5)* means that the Treasury can make regulations imposing disclosure requirements on a class of authorised person defined in the regulations. "Authorised person" is a term which encompasses a wide range of financial institutions and individuals in the financial services industry. Regulations may be made in relation to one or more sections of the financial services industry.
63. *Subsection (6)* provides that regulations made under this section must be made using the affirmative resolution procedure.

Section 5: Executives' remuneration reports: supplementary

64. This section details supplementary provisions in relation to section 4.
65. *Subsection (1)* makes it clear that the Treasury can make provision regarding the information which is required to be included, the manner in which the information is presented, and what information has to be audited.
66. *Subsection (2)* provides that the Treasury may require the executive remuneration report to contain any information corresponding to information which quoted companies could be required to include in directors' remuneration reports by regulations made by the Secretary of State under section 421 of the Companies Act 2006. The requirements

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(c.28) which received Royal Assent on 8 April 2010*

for directors' remuneration reports are currently set out in Schedule 8 to the [Large and Medium-sized Companies and Groups \(Accounts and Reports\) Regulations 2008 \(S.I. 2008/410\)](#). The Treasury may also require the disclosure of comparative information, such as the ratio between the highest and lowest paid employees.

67. *Subsection (3)* provides that the Treasury can require executive remuneration reports to be filed with registrars of companies or the FSA, and provides that the FSA may publish reports filed with it.
68. *Subsection (4)* provides that regulations made by the Treasury may apply any provisions made in or under the Companies Act 2006 in respect of directors' remuneration reports to executive remuneration reports, with appropriate modifications. Under *subsection (5)* this includes provisions creating offences for failure to comply with the requirements for directors' remuneration reports. However, it also makes it clear that the Treasury may not impose stricter penalties for offences applied to executive remuneration reports than the original offence in relation to directors' remuneration reports.
69. Under *subsection (6)* the Treasury may provide that any requirements imposed on authorised persons in the regulations are to be treated as requirements imposed on that person under FSMA. The result of such a provision would be that, if the authorised person contravened a requirement under the regulations, the disciplinary powers of the FSA under FSMA would apply, and the FSA would be able to take action against the authorised person in question.
70. *Subsection (7)* defines terms in sections 4 and 5 for the purposes of these sections.

Section 6: Remuneration rules made by FSA

71. This section inserts a new section 139A into FSMA, which imposes a new duty on the FSA in relation to remuneration.

New section 139A: General rules about remuneration

72. *Subsection (1)* imposes a duty on the FSA to make rules requiring authorised persons under FSMA, or a class of authorised persons identified in FSA rules, to have and implement a remuneration policy.
73. *Subsection (2)* defines what a "remuneration policy" is for the purposes of this section. It also lists the types of person that may be included within the scope of the authorised person's remuneration policy. They include officers, employees and any other persons of a description specified in the FSA rules.
74. *Subsection (3)* obliges the FSA to ensure, through its rules, that remuneration policies required by the rules are consistent with the effective management of risks and the Financial Stability Boards' Principles for Sound Compensation Practices Implementation Standards.
75. *Subsection (4)* means that in making rules about remuneration the FSA must have regard to any other relevant international standards about remuneration which are in force.
76. *Subsection (5)* gives the Treasury power to direct the FSA to consider whether the remuneration plans of those authorised persons described or listed in the direction comply with the requirements the FSA have imposed in relation to remuneration policies. Under *subsection (6)* the FSA must be consulted before the Treasury make such a direction.
77. *Subsection (7)* provides that where the FSA considers that a remuneration policy fails to meet these requirements, the FSA must take such steps as it considers appropriate to deal with the failure. *Subsection (8)* makes clear that the steps the FSA may take include requiring the revision of the relevant remuneration policy.

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78. *Subsection (9)* provides that FSA rules may impose specific prohibitions on the way in which a person may be remunerated. They may provide that any provision of a remuneration contract which contravenes such a prohibition is void and so unenforceable, and make provision for the recovery of any payment which may have been made under such a provision.
79. *Subsection (10)* limits the FSA's power to impose such prohibitions by requiring that it may only be used to ensure consistency with the matters mentioned there.
80. *Subsection (11)* clarifies that a rule made by the FSA under *subsection (9)* which provides that a contractual provision which contravenes a prohibition on remuneration is void will not affect any provision contained in an agreement which was made before the date the rules containing the prohibition were made. Only subsequent amendments to pre-existing contracts, and contracts made after that date, will be affected.
81. *Subsection (12)* defines terms used in this section.
82. *Subsection (13)* means that the references to "the Implementation Standards" or "international standards" in this section are references to standards that are currently in force.