

# Disclosure of director's pensions: new reporting obligations for quoted companies

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Pension briefing

## HIGHLIGHTS

From 1 October 2013, there are revised and more onerous requirements to disclose details of directors' remuneration, including pension arrangements, from quoted companies. The policy objectives of the revision are:

- giving shareholders more power through binding votes, so they can hold companies to account
- boosting transparency so that what directors are paid is clear and easily understood.

Remuneration reports have to be in a new format with expanded content and a standard method of disclosure and presentation. They now have three distinct parts – an annual statement; an annual remuneration report; and a new directors' remuneration policy. The new forward-looking policy part creates a binding set of commitments by the company on the future remuneration of directors. Pension benefits have to be disclosed in both the annual remuneration report and the policy.



## WHAT ARE THE KEY REQUIREMENTS UNDER THE NEW REGIME?

The Companies Act 2006 previously required directors of quoted companies to produce a directors' remuneration report at the end of each financial year. The Enterprise and Regulatory Reform Act 2013 amends the Act and establishes a new voting and disclosure regime for directors' remuneration. The *Large and Medium-sized Companies and Groups (Accounts and Reports) (Amendment) Regulations 2013* introduce new requirements on the form and contents of the directors' remuneration report which must now contain:

- an annual statement summarising directors' remuneration
- an annual report on remuneration (**Annual Report**)
- a separate directors' remuneration policy (**Policy**).

The new regulations do not replace the Financial Conduct Authority's existing Listing Rules which require disclosures for directors of quoted companies. But changes are being made to the Listing Rules to avoid duplication.

The GC100 and Investor Group, representing the Association of General Counsel and Company Secretaries of companies in the FTSE 100 and leading institutional investors, published best practice Guidance in September 2013 on the new regulations.

## HOW DO SHAREHOLDER VOTES FIT IN?

In conjunction with these new reporting rules, there are changes to shareholder votes on directors' pay. There will be an annual binding vote on the Policy unless it is left unchanged, in which case there will be a vote every three years. There will also be an annual advisory vote on the Annual Report (as was previously the case) but if this vote is lost, this will trigger a binding vote on the Policy the next year. All remuneration and loss of office payments must be consistent with an approved Policy.

## WHO DO THE NEW RULES APPLY TO?

The new rules apply to executive and non-executive directors of quoted companies (see box below).

### Quoted companies

A quoted company is one which is listed on one of:

- The Official List (the Financial Conduct Authority's list of securities issued for trading on UK regulated markets)
- The official list of an EEA state
- The New York Stock Exchange
- NASDAQ.

Companies listed on AIM (formerly called the Alternative Investment Market) are not covered.

Remuneration payments to directors of all other types of UK companies will continue to be subject to the regime under the Companies Act 2006 (see Directors of unquoted companies: pension disclosures, below).

## DIRECTORS' REMUNERATION REPORT – POLICY

The new Policy must include:

- a table setting out each component of the company's director remuneration package, including all the individual items for the single total figure in the Annual Report (see below) plus information for each about: how the element supports short and long term objectives; how the component operates; the maximum that can be paid; how performance is assessed and whether any clawback is applied (for example, for poor performance)
- a statement of the approach to recruitment packages
- policy and provisions of service contracts on compensation and loss of office payments

- bar charts showing minimum, target and maximum remuneration
- the extent to which pay and conditions of other staff is taken into account
- how shareholder views have been taken into account.

### Policy: pensions

There are no specific requirements in the regulations on pensions disclosure but the GC100 Guidance says that companies must give a clear explanation of pension benefits, including the approach taken to making payments in lieu of retirement benefits, or defined benefit (DB) arrangements. It comments that companies may wish to disclose anticipated changes to DB arrangements where there is likely to be a material change to the arrangements disclosed in the Annual Report, such as:

- discretionary augmentation of benefits over and above the normal entitlement and whether this requires trustee consent
- changes in DB contribution rates
- the closure, or proposed closure, of a DB scheme to future accrual.

### DIRECTORS' REMUNERATION REPORT – ANNUAL REPORT

The Annual Report must include a table showing how the Policy has been implemented in the past year, with a single total pay figure for each director who has served in the year. This single figure is shown as the total of five set elements of pay including "pension related benefits", defined as including payments in lieu of retirement benefits and all benefits in the year from participating in pension schemes. The table must show comparative figures for the previous financial year.

#### Annual Report: pensions

Under the new rules, the pension element incorporated into the single figure for each director is the "pension input amount" (used for testing benefits against the annual allowance – the maximum tax free pension saving allowed in a year). This means:

- for DC, contributions paid or notionally allocated
- for DB, pension accrued in the year, calculated in a similar way as for the annual allowance.

There are some important modifications to the calculation of the pension input amount for the purposes of the disclosure rules, including:

- contributions made by the director are deducted
- the financial year, rather than the pension input period, is used
- to value DB pensions, a factor of 20 is applied to the increase in accrued pension, rather than 16
- benefits in unregistered pension schemes, such as employer financed retirement benefit schemes (EFRBS) are included

- DB benefits are calculated assuming the director retires at the earliest opportunity and at an age which does not result in a reduction of benefit for early payment
- pension input in a year of ill-health retirement or death is included.

As well as the pension value reported in the single total figure table, the Annual Report must show, for directors with DB, cash balance or hybrid benefits:

- details of the rights at the end of the year, assuming (and stating) normal retirement date
- the value of any additional benefits on early retirement
- if the single figure includes more than one type of pension benefit, the relative weighting of each type.

#### Annual Report: optional pension information

Although much of the content of the Annual Report is prescribed, there is no restriction on the inclusion of additional information and companies may want to consider whether to include extra explanatory details on pensions. The GC100 Guidance suggests that where the single figure does not capture a director's full entitlement, companies should disclose additional information. Examples include:

- for DB schemes that are not final salary schemes, the nature of the benefit
- any changes to a director's membership status during the year, such as the date of joining or leaving the scheme
- if trustee or company consent is required to early retirement
- any elements of discretionary benefits that are not provided in line with the company's intended practice or the scheme's normal practice.

#### WHEN DO THE NEW RULES START?

The new rules came into force on 1 October 2013 but timing depends on companies' financial year end dates. For a company with a financial year starting on or after that date, the requirement is to publish a new style Annual Report at the first AGM and obtain approval for the Policy at the first AGM.

#### WHAT ARE THE SANCTIONS FOR NON-COMPLIANCE?

From the start of the second financial year after 1 October 2013, a company may not make a remuneration or loss of office payment to a director unless:

- the payment is consistent with the approved Policy; or
- the payment has been separately approved by a members' resolution.

Once a company has received approval for its Policy, any obligation to make a payment that would contravene the Policy will have no effect and any payment already made would be held on trust for the company. Any director who has authorised such a payment is jointly and severally liable to indemnify the company against any loss arising from it. (There is a defence, at the court's discretion, for directors who can show that they have acted honestly and reasonably.)

The enforcement provisions do not apply where a payment is made under an agreement made before 27 June 2012 (when the Government announced the changes), provided it has not been amended or renewed since then.

#### Directors of unquoted companies: pension disclosures

For directors of unquoted companies, the *Large and Medium-sized Companies and Groups (Accounts and Reports) Regulations 2008* apply unamended by the 2013 regulations. In summary, they require unquoted companies that do not qualify as small companies to disclose:

- for DC schemes, the contributions paid by the company and the number of directors accruing benefits
- for DB schemes, the accrued pension and lump sum

payable at normal pension age (valued as if the director had left service at the end of the year) of the highest paid director and the number of directors accruing benefits

- for all schemes, the aggregate amount by which pensions payment have increased since the date they became payable (unless they are fully funded and paid to all pensioners on the same basis).

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