

ENTERPRISE AND REGULATORY REFORM ACT 2013

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 6: Miscellaneous and General

Payments to directors of quoted companies

Summary and Background

540. Under the CA 2006, quoted companies¹ are required to produce a directors' remuneration report (section 420) as part of the annual reports and accounts, and to put this directors' remuneration report to the company's members at the annual general meeting. At the meeting, shareholders are asked to approve the report by means of an ordinary resolution (section 439). This resolution is 'advisory' in nature and the company is not required by law to take any action in response to the vote. As such, no individual directors' pay is contingent on the outcome of the vote.

Section 79: Members' approval of directors' remuneration policy

541. *Subsection (1)* inserts a new subsection (2A) into section 421 (Content of directors' remuneration report) of the CA 2006 and requires that, in making regulations on the required content of a directors' remuneration report, the Secretary of State must specify that the company's policy on remuneration of directors must be in a separate part of the report.

542. *Subsection (2)* inserts a new section 422A which makes it possible for a company to revise the directors' remuneration policy part of the directors' remuneration report. Section 422A(5) applies certain provisions in the CA 2006 to the revised report, as they apply to a directors' remuneration report.

543. *Subsection (4)* inserts a new section 439A of the CA 2006 alongside the existing requirement under section 439 (Quoted companies: members' approval of directors' remuneration report) to put the directors' remuneration report to a shareholder resolution at every accounts meeting. This new section provides for a separate shareholder resolution on the directors' remuneration policy part of the directors' remuneration report.

544. Section 439A(1) requires companies to put the directors' remuneration policy to a shareholder resolution at an accounts or other general meeting in the first financial year commencing on or after the day on which the company becomes a quoted company, and at least every three financial years thereafter.

545. Section 439A(2) has the effect of requiring companies to put the directors' remuneration policy to a shareholder resolution at the accounts meeting if, at the last accounts meeting, the shareholder resolution on the directors' remuneration report put forward

¹ Quoted company, as defined in section 385 of the Companies Act 2006.

under section 439 of the CA 2006 was not passed; and if, at that last accounts meeting or other general meeting held since, there was no shareholder resolution on the directors' remuneration policy under section 439A.

546. Section 439A(5) applies subsections (2) to (4) of existing section 439 of the CA 2006 to section 439A, therefore requiring: notice to be given in any manner permitted for the service on the member of notice of the meeting; for the business of the meeting to include the resolution; and for the existing directors to ensure the resolution is put to the vote of the meeting.

Section 80: Restrictions on payments to directors

547. **Section 80** makes provision about the effect of the shareholder resolution on the directors' remuneration policy provided for by section 79. It inserts a new Chapter 4A into the part of the CA 2006 which deals with payments to directors.
548. Section 226A defines the type of remuneration payments to people who are directors, are to be directors, or have been directors, and payments for directors' loss of office, to which the rest of the Chapter applies.
549. Sections 226B and 226C place restrictions on the remuneration payments and payments for loss of office that can be made to directors of quoted companies. All such payments to directors will need to be consistent with the directors' remuneration policy of the company of which the person is a director. Alternatively, payments will need to be approved by a separate shareholder resolution.
550. Section 226D specifies the process by which a company must approve a remuneration payment or payment for loss of office as part of a separate shareholder resolution under section 226B(1)(b) or 226C(1)(b). The details of any proposed payment, including an explanation of how it is inconsistent with the approved directors' remuneration policy, will need to be set out in a memorandum made available to shareholders. Subsection (6) of section 226D will mean that the restrictions on payments to directors contained in the new Chapter 4A will not apply to a payment made by a company until the earlier of the end of the financial year which begins on or after the day on which it becomes a quoted company or the date on which the company decides the first directors' remuneration policy approved under section 439A is to take effect for the purpose of Chapter 4A.
551. Section 226E clarifies the consequences of making payments which are not either consistent with the last directors' remuneration policy to have been approved by shareholders, or approved by a specific shareholder resolution. In doing so, it makes provision comparable to existing section 222 of the CA 2006 (Payments made without approval: civil consequences) relating to the consequences of making unapproved payments to directors.
552. Section 226E, subsection (1), will mean that any legal obligation, such as a contract with a director, which gives rise to a payment to a director which would be deemed unauthorised under section 226B or 226C, is unenforceable.
553. Section 226E, subsection (5), provides a court the discretion to decide, having regard to all the circumstances of the case, to relieve a director from liability in proceedings brought under section 226E if that director can prove that he or she acted honestly and reasonably.
554. Certain transactions such as substantial property transactions, loans and certain credit transactions require approval by a resolution of members under Chapter 4 of Part 10 of the CA 2006. Section 226F has been included because of the possibility that a transaction dealt with in Chapter 4 might also be regarded as a remuneration payment or loss of office payment for the purposes of Chapter 4A. In a case where approval under Chapter 4 and approval under section 226B(1)(b) or 226C(1)(b) would otherwise be required, section 226F(2) ensures that approval under Chapter 4 is sufficient for

both purposes. The company will not be required to seek approval through two separate resolutions.

Section 81: Payments to directors: minor and consequential amendments

555. *Subsection (3)* amends section 190 of the CA 2006 to preserve the existing position that transactions relating to payments for loss of office to directors of quoted companies are not subject to the requirements of Chapter 4 of the CA 2006 relating to substantial property transactions.
556. *Subsection (4)* disapplies existing provisions on payments for loss of office in sections 216 to 222 (inclusive) of the CA 2006 for those companies (i.e. quoted companies falling within section 385) that will in future be required to comply with the new sections on the directors' remuneration policy and payments to directors, from the point at which Chapter 4A applies to those companies. Sections 216 to 222 (inclusive) of the CA 2006 will continue to apply to all other types of companies.
557. *Subsection (6)* inserts two new subsections into the existing section 430 of the CA 2006 (Quoted companies: annual accounts and reports to be made available on website). *Subsection (2A)* requires that any revised directors' remuneration policy (as revised under new section 422A) is to be made available on the company's website in the same manner as other reports and accounts. *Subsection (2B)* requires that companies publish, in a similar manner, details of payments for loss of office and remuneration payments made or to be made to a departing director as soon as reasonably practicable after a person ceases to be a director. *Subsections (7) to (9)* make further minor amendments to section 430 to clarify the process by which information under sections 430(2A) and 430(2B) must be made available.
558. *Subsection (10)* amends existing section 440 of the CA 2006 (Quoted companies: offences in connection with procedure for approval) so as to preserve the criminal offences that are committed where there is a failure to comply with the requirements about giving notices, and putting resolutions to the vote, in relation to directors' remuneration reports (including the part of the report containing the directors' remuneration policy).

Section 82: Payments to directors: transitional provision

559. *Subsection (1)* specifies that companies that are quoted companies on the day immediately before section 79 comes into force will be required to give notice of the intention to move, as an ordinary resolution, a resolution approving the relevant directors' remuneration policy at the accounts meeting in the first financial year which begins on or after the day section 79 comes into force, or at an earlier general meeting.
560. *Subsection (2)* specifies that where a company is a quoted company on the day immediately before section 79 comes into force, a remuneration or loss of office payment made to a director in the first financial year to begin on or after the day section 79 comes into force will not be subject to the restrictions set out in section 226B or 226C (unless the company has decided that the first directors' remuneration policy approved under section 439A should take effect on a date before the end of that year).
561. *Subsection (3)* excludes from Chapter 4A payments required to be made to directors under agreements entered into, or under other obligations arising, before 27 June 2012.
562. *Subsection (4)* has the effect of treating agreements entered into, or other obligations arising, before 27 June 2012 but which are modified or renewed on or after that date, as having been made on the date of the modification or renewal. The effect of this is that, if an agreement is changed or renewed after that date, a requirement to make payment under that agreement will be subject to the restrictions in Chapter 4A.

*These notes refer to the Enterprise and Regulatory Reform Act
2013 (c.24) which received Royal Assent on 25 April 2013*

563. *Subsection (5)* will mean that sections 216 to 222 of the CA 2006 will continue to apply to payments for loss of office which are, for the reasons set out in subsection (3), not covered by the proposed new Chapter 4A.