



12 SEPTEMBER 2013

DIRECTORS' REMUNERATION REPORTING GUIDANCE

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Statement from the Secretary of State for Business, Innovation and Skills

“This October, new rules will mean companies formally set, agree and implement executive pay policy with their shareholders. These changes will make reporting more transparent, so shareholders and investors are clearer about pay.”

“We have always said this would need to include clear guidance, agreed between the business and investor communities, on the level of detail and type of information. I therefore welcome the new guidance produced by the GC100 and Investor Group. Their work will encourage more dialogue between companies and their shareholders, ensuring our reforms lead to lasting change and help build a stronger economy.”

The Rt Hon Dr Vince Cable MP, Secretary of State for Business, Innovation and Skills and President of the Board of Trade

12 September 2013

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Preface

In 2012, the UK government introduced proposals¹ that would give shareholders a binding vote on a company's remuneration policy and require companies to communicate clearly how their policies are being implemented. In doing so, the government recognised that these proposals needed to be supplemented by best practice guidance to assist companies and their investors. Representatives of the GC100² and the Corporate Governance Forum³ convened the GC100 and Investor Group (**Group**) to develop this guidance, having particular regard for the practical aspects of implementing the reporting requirements.

We are entering a new chapter in the governance of executive pay. This will present opportunities and challenges for companies and shareholders. We hope this will demonstrate the positive impact of engagement between companies and their shareholders. We encourage companies and investors to use these guidelines in a thoughtful way that enables constructive and informed engagement to take place. This will both contribute to a company's long-term success for the benefit of all concerned and provide companies with some certainty over the approval of their remuneration policies.

We should like to emphasise that remuneration policies are intended to stand the test of time. The Group strongly believes that remuneration policies should in the normal course be put to a vote on a triennial rather than an annual basis, which should facilitate each company maintaining its normal rhythm for the setting of remuneration.

We are confident that new best practice will evolve over time which will supplement that which has already developed over the past ten years. The Group intends to review and refresh the guidance from time to time to ensure it remains relevant and useful.

The guidance has been developed with the benefit of consulting a range of representative bodies and other relevant parties. The Group is grateful for their contributions and valuable insights.

Last but not least, on behalf of the Group we should like to thank Lucy Ryland, Graeme Standen and their colleagues at Practical Law for their diligent, cheerful and sustained support.



David Jackson
Company Secretary
BP plc



Guy Jubb
Head of Governance & Stewardship
Standard Life Investments Limited

12 September 2013

¹ These were enacted by the Enterprise and Regulatory Reform Act 2013 and the Large and Medium-sized Companies and Groups (Accounts and Reports) (Amendment) Regulations 2013 (SI 2013/1981).

² The GC100 is the association for the general counsel and company secretaries of companies in the FTSE 100.

³ The Corporate Governance Forum is an informal network whose members comprise leading UK institutional investors who are committed to best practice principles of governance and stewardship.

1. Introduction

1.1 Structure of this guidance

The guidance addresses the key elements of the government's directors' remuneration reporting requirements.

This guidance relates to the disclosures required by Schedule 8 to the Large and Medium-sized Companies and Groups (Accounts and Reports) Regulations 2008 (as amended) (the **Regulations**), which first apply to UK quoted companies in their financial years ending on or after 30 September 2013 and to the remuneration policy that will be required to be submitted to shareholders for approval for the first time at the AGM in the following financial year. It suggests "best practice" in the view of both investors and companies. However, the guidance is not intended to be exhaustive or definitive, nor should it be seen as precluding innovation in reporting on remuneration. On the contrary, companies should avoid boilerplate language and strive instead to provide meaningful and preferably concise disclosures relevant to the company and its particular circumstances.

Timely, open and constructive engagement between companies and investors is important, in particular, where changes are proposed to remuneration arrangements.

The Regulations deal with remuneration disclosures in a technical way, but also point to the general importance of the relationship between directors' pay and company performance. While this guidance deals specifically with the requirements of the Regulations, companies should keep in mind the broader context of narrative reporting and their overall strategy for the relevant financial years.

1.2 How to use this guidance

It is essential that this guidance is read alongside the Regulations. It is not intended to be a substitute for the Regulations, nor does it contain definitive legal advice.

The aim of this guidance is to facilitate the new regime and help companies satisfy the reporting requirements prescribed. To ensure that investors can make informed voting decisions, in some instances, the guidance recommends disclosures that go beyond the requirements in the Regulations. To be clear, the guidance uses the following phrases:

- "Must": This is a mandatory disclosure which companies must include to ensure compliance with the Regulations and the Companies Act 2006.
- "May wish to consider": Although going beyond the specific requirements of the Regulations, the Group feels that for many companies these disclosures will promote effective engagement between investors and companies.
- "Investors generally expect": Although not guidance on specific requirements of the Regulations, this provides some context for companies.

The guidance is structured as follows:

- The sections of the guidance are in the same order as the Regulations.

- The text under the heading “Requirement” is a summary of the relevant paragraph of the Regulations and not the full text. The web version of the guidance contains a link to the full paragraph of the Regulations.

The Group wants to encourage innovation in reporting and **not** boilerplate disclosures. Companies need to determine remuneration policies that fit their individual requirements.

1.3 Flexibility, discretion and judgement

Background and introduction

The company’s remuneration committee’s approach to flexibility, discretion and judgement in respect of directors’ pay is an important practical issue. Discretion is relevant to many aspects of policy and disclosure, but is not dealt with in any depth by distinct provisions in the Companies Act 2006 or the Regulations. Given their importance, the Group felt that discretion and related concepts should be addressed in this section, before setting out more specific guidance on its use under the Regulations.

Companies and shareholders want directors to be remunerated in a way that reflects their performance in their delivery of the company’s strategy. This will need to be reflected in the manner in which the policy is applied and particularly at the end of performance periods. Discretion may be in either an upwards or a downwards direction, but any upwards discretion will inevitably be the subject of considerable shareholder scrutiny and will require careful explanation. For example, the Group recognises that the simple application of arithmetic targets may lead to anomalies such as a maximum bonus being paid when the targets have been met, but for some other reason investors consider that the performance of the company has been below par. Without some discretion, such situations cannot be addressed.

Under the new regime for directors’ remuneration, a remuneration committee will prepare a remuneration policy and seek authority from the shareholders in a general meeting for its implementation.

In drafting the policy, the remuneration committee will need to give itself sufficient operational flexibility over pay, some of which may be provided by setting out discretions for the committee to use. The remuneration committee will then need to exercise discretion or judgement in various circumstances when implementing the approved policy. To this extent, the new regime has not altered the role of the committee, but it has set new requirements that must be met before any discretion can be exercised.

The Group’s view is that flexibility, discretion and judgement are crucial for the successful design and implementation of a remuneration policy. This is acknowledged by the ABI remuneration principles⁴.

Shareholders recognise that one of the tasks of the non-executive directors is the oversight of the performance of the executive directors and of the business as a whole. They, through the

⁴ The Association of British Insurers’ Principles of Remuneration, dated November 2012. This guidance is available from <http://www.ivis.co.uk/ExecutiveRemuneration.aspx>.

remuneration committee, are best placed to exercise flexibility, discretion or judgement and to ensure a fair outcome in remuneration.

Concepts of flexibility, discretion and judgement

The Group approaches the concepts of flexibility, judgement and discretion, and their relationship, in the following way:

- Flexibility needs to be provided for in drafting the remuneration policy, and this will require some discretion to be included. Flexibility is crucial in the implementation of a three-year approved policy, and its scope needs to be clearly set out within the policy. Once the framework of remuneration has been approved by the shareholders, each year the remuneration committee will need flexibility to determine pay, short-term incentives and the terms of long-term incentives (such as share plan awards).
- Discretion, in an upwards or downwards direction, may be needed to ensure that the outcome of implementation of the remuneration policy is fair to the director and fair to the investors, taking into account the overall performance and position of the company. Other kinds of discretion may also be required, such as the ability to set the level of each component of remuneration within a range from time to time over the life of the policy.
- Judgement also may be needed in respect of features such as the incentive targets used in the annual implementation of the policy. Some will be hard arithmetic targets (for example, EPS and TSR), others may require more judgement and a qualitative assessment by the remuneration committee at the end of the year (for example, the company's reputation). Judgement in this sense will often not involve any exercise of discretion (see *Discretion or judgement?* below).

Discretion or judgement?

There is an important distinction between discretion and judgement, and both have a role to play in pay decisions. In a number of areas, the remuneration committee is routinely asked to apply its judgement to what is appropriate within the bounds of the remuneration policy, or of a particular remuneration award or arrangement. This will not necessarily represent the exercise of "discretion" in the meaning of the Regulations. For example, the assessment of the satisfaction of an annual bonus objective based on progress against an aspect of strategy will be a matter for judgement rather than discretion.

Judgement of this kind, if no discretion is involved, need not be disclosed under the requirements relating to discretion. However, the remuneration committee may wish to consider disclosing the factors taken into account when they have exercised their judgement in determining the extent to which the relevant objective has been satisfied, to provide investors sufficient insight to be able to assess the link between pay and performance. The extent of the explanation that investors generally expect to see will vary depending on the complexity of the case.

Requirements (see [paragraphs 12\(3\) and 24\(4\) of the Regulations](#))

The Regulations include two express requirements about discretion, one applying to the annual remuneration report and the other to the remuneration policy, and no express references to

flexibility or judgement. The Companies Act 2006 and the Regulations also include provisions with implicit effects in respect of flexibility, judgement and discretion over pay.

Under the new regime, the approval of the remuneration policy will come from a binding vote of the shareholders. The pay of the directors must therefore fall within the terms of the approved remuneration policy. A payment outside the approved remuneration policy, including any use of discretion outside the policy, will require a separate approval by ordinary resolution of the shareholders in general meeting. Failure to do so could impose personal liability on the directors serving on the remuneration committee or on the board more generally.

Where any discretion has been exercised in respect of a short-term or long-term incentive, for example to avoid the application of performance measures or targets resulting in awards that do not fairly reflect investors' experience over the relevant period, companies must include details of how the discretion was exercised and the resulting level of award determined in the annual remuneration report (see *paragraph 12(3)(d) of the Regulations*).

Where the remuneration policy provides for the exercise of discretion over "any aspect of policy", it must also clearly disclose the extent of that discretion in respect of any "such variation, change or amendment". Companies can decide the appropriate manner in which to set out the extent of discretion, as the Regulations do not require this to be done quantitatively (or in any other specified manner). However, companies must make the extent clear in each case, and will want it to be clear so that discretion can be used with confidence (see *paragraph 24(4) of the Regulations*).

The maximum for each component, which is required to be specified in the future policy table (see *4.4: Future policy table*), will constrain the extent of any discretion applicable to that component. The way that each maximum is expressed may also suggest how to express the extent of a discretion over that component (see *paragraph 26(c) of the Regulations*). The remuneration policy must also explain how each component of remuneration "operates", and this will provide the context in which discretion must be described (see *paragraph 26(b) of the Regulations*).

Guidance

Remuneration committees may wish to consider the following two priorities:

- A policy should ensure that investors have sufficient information to be able to approve it, broadly knowing what to expect in terms of directors' remuneration whilst avoiding the risk of unexpected outcomes in future annual remuneration reports.
- The remuneration committee will also need flexibility to tailor the terms of remuneration arrangements for individual directors over the life of the policy, without the policy becoming a "shopping list" of possible components (which could be another way of providing for all reasonable eventualities with less reliance on discretion).

The Group does **not** recommend including in the policy only a general statement that all of the components of remuneration are subject to appropriate adjustment at the complete discretion of the remuneration committee. Investors are likely to have concerns about the way such a broad discretion might be used, and so find it hard to approve the policy. Equally, companies may find such a broad discretion difficult to exercise with confidence if (as will often be the case) there is any doubt that investors will agree. However, given that a policy, expected to last for three years, is the

authority under which the company can pay its directors, it may not be unreasonable for the policy to provide for some discretion to be used in genuinely unforeseen and exceptional circumstances.

Remuneration committees, in preparing their remuneration policies, will need to analyse each component of the remuneration package for directors, both executive and non-executive. They will need to consider the flexibility, judgement and discretion that will or may be required, including when hiring or parting company with directors. Having specified as clearly as possible the operational discretions that remuneration committees' reasonably anticipate they may need, it may be appropriate for the policy to provide for an "emergency" discretion for use only in other circumstances, which will be genuinely unforeseen and exceptional.

An example of circumstances requiring such a discretion might be an urgent need to provide a benefit of a type related to changed circumstances or strategy that has not been provided for in a recently approved policy, when it would be disproportionate to seek specific approval from a general meeting. Investors will find it easier to approve policies including such discretions if they are drafted so as to reduce the scope for misuse, for example, by including a specific higher maximum for long-term incentives to be used only in genuinely unforeseen and exceptional circumstances.

Where an exercise of discretion is disclosed in the annual remuneration report, investors expect that companies will report the circumstances leading to that exercise of discretion and why it was required; and also its consequences for the remuneration outcomes.

2. Directors' remuneration report

2.1 Introductory (Part 1 of the Regulations)

Requirement (see paragraphs 1- 2 of the Regulations)

*The directors' remuneration report (**remuneration report**) must contain an annual statement, an annual report on remuneration (**annual remuneration report**) and the directors' remuneration policy (**remuneration policy**). The remuneration policy may be omitted if the company does not intend to propose a resolution to approve the remuneration policy. Where a remuneration policy is omitted, the remuneration report must include details of when the remuneration policy was approved and where it can be found on the company's website (see paragraph 1 of the Regulations).*

The remuneration report may include more information or detail than required if the directors think fit.

Required disclosures about performance measures or targets can be withheld if commercially sensitive, in the opinion of the directors. However, the omission and the reasons for it must be declared in the remuneration report, which must also indicate if and when the information will be disclosed in future (see paragraph 2 of the Regulations).

Guidance

Content and format. As the application of the remuneration policy will be reported upon in the annual remuneration report⁵, investors would generally find it useful for companies to include the remuneration policy in the remuneration report each year, even in years when it is not put to the vote.

Although this guidance follows the order of the Regulations, when drafting the remuneration report, companies may find it more appropriate to set out the remuneration policy first, followed by the annual remuneration report.

Commercially sensitive performance measures or targets. Although investors generally expect that information on performance measures or targets will be disclosed, it is acknowledged that there may be circumstances where it is acceptable for measures or targets not to be disclosed as they are deemed to be commercially sensitive, and the Regulations permit this.

The Regulations do not provide a definition of “commercially sensitive”.

To rely on the exemption from disclosure of a commercially sensitive measure or target, the directors must consider carefully what “commercially sensitive” means and whether the exemption applies. A possible interpretation is that a measure or target will be “commercially sensitive” if its disclosure is likely to damage the company’s commercial interests. Where, in the directors’ opinion, a target or measure is considered to be “commercially sensitive”, particulars of, and the reasons for, the omission must be disclosed (see *paragraph 2(5) and (6) of the Regulations*).

Once a measure or target ceases to be commercially sensitive, investors expect it to be disclosed in the next annual remuneration report.

2.2 Annual statement (Part 2 of the Regulations)

Requirement (see paragraph 3 of the Regulations)

The remuneration report must contain a statement from the director who fulfils the role of chairman of the remuneration committee summarising, for the financial year, the major decisions on directors’ remuneration, any substantial changes made and the context in which those changes occurred.

Guidance

The remuneration committee chairman’s statement is an important opportunity to set the tone for the whole remuneration report. This annual statement may take the form of a short, succinct letter to shareholders (but this format is not obligatory). Each company will wish to focus on different aspects of their remuneration arrangements in this statement depending on their own circumstances in the reported year. Companies may wish to consider including some or all of the following disclosures (of course, others may also be relevant):

- The remuneration philosophy underpinning decisions and how company performance during the year is reflected in the remuneration outcome.

⁵ Except in the first year after approval, if the new policy incorporates and applies the old policy until the end of the year of approval.

- The key challenges and issues that the remuneration committee addressed during the year, including how the committee reached a satisfactory conclusion to these challenges, the intended remuneration arrangements for the current year and key future issues to be addressed by the remuneration committee.
- Where approval of the remuneration policy is sought, highlighting the key changes to the remuneration policy, including a summary explanation of why changes were required.
- A summary of any discretion applied by the remuneration committee during the year.
- Comment on any stakeholder engagement conducted during the year.

3. Annual remuneration report (Part 3 of the Regulations)

The annual remuneration report must set out information, other than the remuneration policy, on directors' remuneration paid in the reported year. The annual remuneration report must include a single total figure for each director's remuneration in the reported year and in the year before, and for each component of that remuneration, including pension entitlements and variable pay awarded. It must also include a statement of how the remuneration policy will be implemented in the current year, including, where applicable, details of performance targets and measures not previously disclosed and how awards will be calculated.

3.1 Single total figure of remuneration

Requirement (see paragraphs 4-12 of the Regulations)

The annual remuneration report must include a table showing the single total figure of remuneration for each director for the reported year and the financial year before that. The company may disclose the information for executive and non-executive directors in separate tables.

The table must include, for each of the two years, a total figure and show the breakdown of that figure by disclosing figures for distinct components including: base salary; taxable benefits; short-term incentives (including percentage deferred); long-term incentives vested in the year; pension related benefits; any other items in the nature of remuneration and any sum recovered or withheld during the year in respect of amounts paid in earlier years. The table may also include such other information as the directors determine.

Where any discretion has been exercised in respect of a short-term or long-term incentive that vested in the reported year, details of how the discretion was exercised and how the level of award was determined must be given.

Guidance

Separate tables for executive and non-executive directors' remuneration. Companies may set out separate tables for executive and non-executive directors with their own notes. This might be clearer for investors than combining the information into one table (see *paragraph 4(2) of the Regulations*).

Items "in the nature of remuneration". Companies need to determine if they have any unusual remuneration arrangements which do not fall within the five specified headings (salary, taxable

benefits, short-term incentives, long-term incentives and pensions) and are not payments to former directors. If there are “other items in the nature of remuneration” they must be included in additional columns. It is difficult to give examples, but such items may include:

- Promises to pay, if not caught by the specific pension disclosure requirement.
- HMRC-approved SAYE options and share incentive plan awards.
- Any incentive awards not related to performance, such as a retention bonus.
- Benefits on which no tax is payable due to an available exemption.

To ensure that companies account for all items deemed to be “in the nature of remuneration”, companies may wish to consider, as a matter of good practice, obtaining written confirmation from each director that they have not received “any other items in the nature of remuneration”, other than those already disclosed in the single total figure table. Companies may wish to consider disclosing that they have done this in the annual remuneration report (see *paragraph 6(1)(a) of the Regulations*).

Tax benefit. If a company pays the directors’ tax liability on taxable benefits, this must be disclosed, with the total of the benefit plus tax in the “taxable benefits” column. Similarly, tax met on any other component of remuneration will be a taxable benefit and must be included accordingly (see *paragraph 7(1)(b) of the Regulations*).

Short-term and long-term incentives where measures or targets are not fully completed. The primary requirement is to include an amount in the single total figure table relating to short-term and long-term incentives where performance measures have ended in the reported year. However, the Regulations also allow companies to include any short-term and long-term incentives for which the performance measures or targets are “substantially (but not fully) completed” in the reported year. In these circumstances, companies must:

- Clearly explain which short-term and long-term incentives have been included in the relevant single total figure.
- Set out the basis of the calculation.
- Report on a consistent basis in future years.

(See *paragraph 8(1) of the Regulations*.)

Treatment of share options. Share options with performance measures over more than one financial year must be reported in the single figure for long-term incentives for the year in which they vest, whether or not they are exercised in that year⁶.

As a result, the loss of a vested but unexercised share option on termination must be reported as a recovery (see the next paragraph). It is not necessary to treat shares that can be acquired under a

⁶ Subject to the proviso that they may be reported for the year before, if the performance measures are “substantially (but not fully) completed” in that earlier year.

vested but unexercised share option as “deferred”, as details of a deferral of long-term incentives need not be disclosed (although companies may choose to do so). In any case, when the shares are acquired will be largely under the director’s control, unlike a deferred short-term incentive.

However, companies must provide details of directors’ scheme interests, including vested but unexercised options and options exercised in each reported year, in the annual remuneration report, and may choose to provide that information in a more frequently updated form on their websites (see 3.6: *Statement of directors’ shareholding and share interests*). The net value of shares under option for each director at least at the end of each reported year will therefore be accessible to investors, and companies may wish to consider whether in certain circumstances it might be appropriate to add further explanation about this point (see *paragraph 7(1)(d) and 12(4) of the Regulations*).

Recovery and withholding (clawback and malus). Any recovery of sums paid in any previous financial year, or the withholding of any sum in the reported year, must be shown in a separate column as a negative value and deducted from the total. An explanation for the recovery or withholding and the basis of the calculation must be given.

Recovery and withholding are not defined in the Regulations. A “recovery” will take place when any amount is repaid, or when there is a reduction of any vested but unpaid amount (such as a formally deferred short-term or long-term incentive, or a vested but unexercised option). A “withholding” will take place when any amount that would otherwise have been paid in the year is reduced.

Withholding will often implement an adjustment needed in respect of an amount previously paid, as it can be easier (from a legal and tax perspective) to do this than require repayment of already paid sums. Similar concepts are often referred to in practice as clawback and malus. Some care may be needed with terminology in this area. Since “recovery” in the meaning of the Regulations applies to deferred amounts and vested but unexercised short-term incentives, as well as to amounts actually received, it can encompass both clawback and malus. The remuneration committee may wish to consider whether it is appropriate to confirm in the annual remuneration report that it has considered whether any recovery or withholding is appropriate, if none has been made in the reported year (see *paragraphs 8(2) of the Regulations*).

Negative value. In cases where a negative value arises, other than through recovery or withholding, this must be expressed as “0” in the table, rather than a negative value. (However, companies should note that “recovery” encompasses the forfeiture on leaving of any deferred shares and vested share options previously disclosed.) This could include circumstances such as share options that are underwater when they vest (see *Treatment of share options* above). The Regulations do not require either the disclosure of a later recovery in the share price bringing such options back into the money, or of any options falling underwater only after vesting (see *paragraph 8(3) of the Regulations*).

Estimated and actual amounts. Differences may well arise between estimated amounts included in the annual remuneration report and the actual amounts that are paid after the annual remuneration report has been finalised. Details of the calculation of the revised sum must be disclosed in the following year’s annual remuneration report. Companies may also wish to give an explanation for

the difference. Where the difference is substantial, companies may wish to consider a publication on their website to ensure timely disclosure to the market (see *paragraph 9(2) of the Regulations*).

Discretion. Where discretion has been exercised in respect of a short- or long-term incentive, companies must disclose how the discretion was exercised and how the resulting level of award was determined (see *paragraph 12(3)(d) of the Regulations*).

Deferred short-term and long-term incentives. If any element of a short-term incentive, such as annual bonus, is deferred, the company must describe the deferral as required by the Regulations, including details of any conditions attaching to the deferred amount other than performance measures (see *paragraph 12(4) of the Regulations*). However, there is no similar express requirement in respect of the deferral of any long-term incentive, although investors generally expect that any such deferral would be explained.

Deferral often involves additional conditions that must be met (or not breached) before the deferred amount can be received (recovery conditions). Some recovery conditions could be considered to be “performance measures” that apply only to a deferred amount after the initial vesting period. Investors expect companies to make a sensible and consistent distinction between short-term and long-term incentives. In difficult cases, companies must consider carefully whether to treat a deferred amount as a deferred short-term incentive or an unvested long-term incentive and may wish to consider explaining their approach⁷.

3.2 Total pension entitlements

Requirement (see paragraph 13 of the Regulations)

The remuneration report must contain for each director the accrued benefits under a defined benefits or cash balance benefits pension scheme (or a hybrid arrangement including either), if any, at the financial year end, assuming a normal retirement date, and the date the benefit becomes receivable, and the total value of any additional benefit in the event the director retires early. In addition, if the pension value reported in the single total figure table includes more than one type of pension benefit, the relative weighting of each type of benefit.

Guidance

The value of pensions is often substantial. Investors would find it helpful for them to be disclosed by companies in a comprehensive form and in a way that aids understanding of the figures. Companies may wish to consider explaining the key features of the directors’ pension entitlement where the single figure does not capture the full entitlement.

⁷ The required details include whether deferral “is subject to any conditions other than performance measures” (see *paragraph 12(4) of the Regulations*). It is not explained why performance measures need not be disclosed, but it may be because a further performance measure would make the amount a long-term incentive. The Regulations: treat as a short-term incentive one both awarded in, and vesting by reference to a performance period ending in, the reported year (see *paragraph 7(1)(c) of the Regulations*); and define “performance measure” as “the measure by which performance is assessed, but” not including “any condition relating to service” (see *paragraph 44(1) of the Regulations*). Recovery conditions related to performance might be considered performance measures, making the amount an unvested long-term incentive. Alternatively, if the amount is treated as a deferred short-term incentive, those conditions must be disclosed in the remuneration policy as provisions for recovery (see *paragraph 26(e) of the Regulations*).

Defined benefit scheme. For defined benefit schemes that are not final salary schemes then the nature of the benefit must be outlined, along with the accrued amount.

Change to membership status. If there have been any changes to a director's membership status of any pension arrangement during the year, then this must also be disclosed, for example, the date the director joined the scheme, and the date he left it.

Transfer value. The notes must also disclose the transfer value of any defined benefit schemes at the financial year end, assuming the director retires at the earliest opportunity. If trustee or company consent is required for such retirement it would be helpful for this to also be disclosed. Investors generally expect any elements of discretionary benefits that are not provided in line with the company's intended practice or the pension scheme's normal practice to be indicated clearly.

Multiple pensions. If the pension value reported in the single remuneration figure includes more than one type of pension benefit, the breakdown or relative weighting of each type must be provided.

3.3 Scheme interests awarded during the financial year

Requirement (see paragraph 14 of the Regulations)

The annual remuneration report must contain a table setting out details of scheme interests (as defined in paragraph 44(1) of the Regulations and meaning any long-term incentive) awarded to directors (including any person who served as a director at any time in the year) during the reported year where the value will be determined according to the achievement of performance conditions in future periods.

Guidance

The annual remuneration report must contain details of all long-term incentives awarded in the reported year to directors, and to any persons who were directors during the year. If awards were made under a number of different plans, information must be provided for each plan. Companies may wish to consider using separate tables for each type of award to make disclosure clearer.

Type of interest. For each scheme interest, a description of the type of interest awarded must be provided. Such description may, for example, specify performance shares, nil cost options, market value options or matching shares (see *paragraph 14 (1)(b)(i) of the Regulations*). The definition of "share option" in the Regulations includes any performance share award that is a right to acquire shares, even though it is not an exercisable option as usually understood (see *paragraph 44(1) of the Regulations*). As a specific disclosure is required about share options under paragraph 14 of the Regulations (see *Exercise price* below), it may make disclosure clearer if this is borne in mind when describing performance share awards that are share options under the Regulations, even though options are not mentioned in paragraph 14(1)(b)(i).

Basis on which the award is made. It must be made clear how the award is determined, for example a specified multiple of salary or a specified number of shares (see *paragraph 14 (1)(b)(ii)*).

Face value. In respect of this requirement, the Regulations do not make a distinction between nil cost, market-priced and discounted share options and any other share-settled long-term incentive that is not a contractual option. They require the face value of the maximum number of shares that

may vest to be disclosed for each award that “relates to shares or share options”. The Regulations also impose some requirements relating to the share value used to compute face value for these awards. (Face value must also be disclosed for other types of award, but that requirement is not explained further in the Regulations.)

When market-priced or discounted options are used, companies may also wish to consider disclosing a fair value for these options, as the face value may overstate the underlying value of the options. (Any fair value statement will require a clear explanation of the methodology used.) Companies must also disclose if the maximum award that can be achieved at vesting is larger than the face value of any maximum number of shares referred to in the award. This would include situations where a multiplier can be applied to the original award on vesting. Companies that pay dividends or dividend equivalent accrued on awards over the performance period may wish to consider explaining this in a note to the face value (see *paragraphs 14(1)(b)(iii) and 14 (2) and (3) of the Regulations*.)

Exercise price. If the exercise price of a share option is different from the share value used to compute the face value, this must be explained. Share options in the meaning of the Regulations will include some performance share awards (see *Type of interest* above), under which naturally no exercise price will be payable. Strictly, this must be explained, but that could be done by a note that the award is both a performance share award, for which no exercise price is expected, **and** a share option within the meaning of the Regulations (see *paragraphs 14(1)(b)(v) and 44(1) of the Regulations*).

Performance period. If an award will vest in relation to performance over multiple periods, the Regulations require disclosure of the end of the last period to end as the vesting date. Investors would find it useful for the vesting schedule of an award with multiple performance periods to be explained clearly if not covered in other sections of the remuneration report (see *paragraph 14 (1)(b)(vi) of the Regulations*).

Performance measures and targets. This is only relevant if not covered elsewhere in the remuneration report. If not covered, for each scheme interest, there must be a summary of the performance measures and targets. Companies may wish to consider including in this summary the type of measure or group of measures, the relative weightings for each measure and specific targets attached to these measures (see *paragraph 14 (1)(b)(vii) of the Regulations*).

3.4 Payments to past directors

Requirement (see paragraph 15 of the Regulations)

The annual remuneration report must contain details of any money or other assets paid during the reported year to former directors (who were not directors at the time of payment), excluding payments for loss of office, payments shown in the single figure table, payments previously disclosed, payments below a de minimis threshold set by the company and stated in the report, payments by way of regular pension benefits commenced in a previous year and payments in respect of employment or other contractual service for the company other than as a director.

Guidance

The Regulations require disclosure of payments made to past directors. Disclosure under this regulation must include payments made to former directors where the amounts were not known at the time of leaving. The nature of these payments will vary depending on circumstances. Companies may wish to consider the following issues:

De minimis threshold. Remuneration committees may wish to consider what is an appropriate *de minimis* threshold (see *paragraph 15(d) of the Regulations*). Investors do not expect immaterial amounts to be included in the annual remuneration report. If the threshold is changed from one year to the next, companies may wish to consider explaining this in the annual remuneration report.

Long-term incentives vesting to past directors. Whilst the “treatment” of outstanding incentive awards must be disclosed under paragraph 16 of the Regulations (Payments for loss of office) for the year of leaving, vesting may take place in subsequent years, typically once the performance conditions have been assessed, and this will need to be disclosed for the relevant year under paragraph 15 (Payments to past directors).

Payments previously disclosed. If payments for loss of office are phased over a number of years but full disclosure was provided in the first year under paragraph 16 of the Regulations, this information does not need to be disclosed in subsequent years. However, if the total amount was unknown at the point of leaving and only becomes known in subsequent years, then the actual amount must be disclosed in the relevant annual remuneration report as a payment to a past director.

Healthcare premiums. In most cases, healthcare premiums would not be considered to be significant and requiring disclosure, in the context of the overall director’s remuneration package. However, companies may have long-standing healthcare arrangements in place for former directors which may be of significant value, particularly for overseas former directors. In such circumstances, companies may wish to disclose that such arrangements exist in the first annual remuneration report after the director leaves but not necessarily in subsequent reports (see *paragraph 15(c) of the Regulations*).

Payments in respect of employment, consultancy or other contractual service for the company except as a director. In instances where a director steps down from the board but is still employed, or otherwise contracted, companies may wish to explain this clearly. Companies may wish to consider disclosure when a past director is appointed to a paid role at the company’s pension fund trust, charitable foundation or other connected organisation. Where a former director acts as a consultant to the company, disclosure is not required by the Regulations. However, investors generally expect companies to consider carefully the adequacy of disclosure to comply with both the Regulations and best practice (see *paragraph 15(f) of the Regulations*).

3.5 Payments for loss of office

Requirement (see paragraph 16 of the Regulations)

The annual remuneration report must show, excluding payments which are below a de minimis threshold set by the company and stated in the report:

- *The total amount of any payment made or to be made for loss of office, broken down into each component comprised in that payment and with the value of each component.*
- *An explanation of how each component was calculated.*
- *Any other payments made or to be made in connection with termination, including outstanding incentive awards vesting on or after termination.*
- *An explanation of how any discretion was exercised.*

Guidance

Discretion. Provided that the remuneration committee has remained within the approved remuneration policy, the explanation of how discretion was used should not come as a surprise to investors. In addition to explaining how discretion was exercised, remuneration committees may wish to consider explaining why any use of discretion is in the best interests of the company.

Companies may also wish to consider including:

Termination policy. A confirmation that all payments have been or will be made within the parameters of the termination policy set out in the approved remuneration policy.

Reason for leaving. To avoid concerns about rewards for failure, especially where a discretion has been exercised in favour of a director, investors would find it helpful if companies give as complete an explanation as possible of the circumstances surrounding the departure of the director.

Cash bonus. If any short-term incentive has been paid, companies may wish to give a more detailed explanation.

Long-term incentives. Companies may have some difficulty in disclosing the amounts payable under long-term incentive arrangements which may vest over a number of years and therefore not be known definitively at the time of publishing the first annual remuneration report after the date of the director leaving. It must be stated if the award is pro-rated in any way. If vesting is subject to performance conditions being met, it would be misleading to state the total value of as yet unvested shares and companies may prefer to state a range of values.

When actual amounts are determined, these must be disclosed in the annual remuneration report for the relevant year as a payment to past directors.

From 1 October 2013, section 430(2B) of the Companies Act 2006 will require companies to disclose on their website the amounts (and method of calculation) of any remuneration payments that will (or may) vest after termination and any payments for loss of office. This disclosure will take place before the annual remuneration report is compiled and so could provide a basis for preparing the disclosure in the annual remuneration report. For further guidance, see *Appendix 3: Website statement when director leaves*.

RIS announcements. When a company notifies an RIS that a director will be leaving the board (as required by the Listing Rules), it may not be practical, at that time, to release details of any termination arrangements. However, investors generally expect companies to release an RIS announcement at the point of leaving, providing investors with information on the loss of office and remuneration payments which shall be made to the departing director and an explanation of how these amounts have been calculated. A better estimate or a finalised figure may be possible for

some payments by the time the remuneration report is published. It would be helpful to explain in the annual remuneration report any difference between the disclosure in the RIS announcement at the time of termination and disclosure in the annual remuneration report for each relevant payment.

3.6 Statement of directors' shareholding and share interests

Requirement (see paragraph 17 of the Regulations)

The annual remuneration report must contain a statement of any requirements or guidelines for a person who was a director during the reported year to own shares in the company and state whether or not those requirements or guidelines have been met. It must also set out, in tabular form:

- *The total number of interests in shares in the company of the director, including interests of connected persons.*
- *The total number, and details, of scheme interests, differentiating between shares and share options and those with or without performance measures.*
- *Details of share options which are vested but unexercised, and exercised in the relevant financial year.*

Guidance

Director shareholding requirements or guidelines. If such provisions exist, companies must disclose details of them, but the Regulations do not specify the details that must be disclosed. Companies may wish to consider disclosing:

- How much the director is required to hold (this seems likely to be a minimum requirement of the Regulations and could be expressed as a percentage of salary, especially if that is the way the provision is expressed).
- Whether the provision is a requirement or guideline and the approach that the company would take if the requirement or guideline is not met in the specified time period.
- Any time frame over which the company expects the provisions to be met.
- Details of any requirements in relation to vested awards, for example a requirement that a specified percentage of them needs to be held until the provision is met.
- Details of any requirements for directors to hold shares once they have left the company.
- Details of which shares can be included to meet the provision, for example, if it only includes shares the director holds outright, that is, those which are no longer subject to any restrictions, or whether it includes any deferred or unvested shares or shares subject to vested but unexercised options.

(See paragraph 17(a) of the Regulations.)

Deferred shares. Any shares receivable under deferred short-term incentives which have not yet vested must be captured in the table, as these are "interests in shares" (see *paragraph 17 (b)(i) of the Regulations*).

Details of scheme interests. Companies must set out the “total number of scheme interests”, which means the number of shares that may vest under long-term incentives. It seems unlikely that paragraph 17 of the Regulations also relates to other types of “scheme interest”, such as cash-settled long-term incentives (except possibly some phantom share arrangement). In setting out the details of scheme interests, companies must differentiate between “shares and share options”.

The definition of “share option” encompasses some share-settled long-term incentives that are not contractual options, and that are more naturally thought of as shares rather than options⁸, so some additional disclosure and explanation may be needed. Companies must also differentiate between scheme interests with and without performance measures and set out “details” of the scheme interests. Companies may wish to consider disclosing when the award was made, when the award will vest, the share price on grant and the exercise price, if relevant (see *paragraph 17(b)(ii)-(iii) of the Regulations*).

Hedging. Companies may wish to consider providing information on any policies in place to regulate directors’ hedging of awards and use of shares as collateral.

Website disclosure. Companies may wish to consider including a periodically updated version of the table of directors’ shareholdings and share interests on their website, to include significant changes after the remuneration report is published.

3.7 Performance graph and table

Requirement (see paragraph 18 of the Regulations)

The annual remuneration report must contain a line graph that shows the total shareholder return (TSR) over a five-year period (in the first remuneration report prepared under the revised legislation, rising in one year increments to a ten-year period over the following five years) for both:

- *A holding of the company’s listed shares.*
- *A hypothetical comparator holding of shares representing a specified broad equity market index. The annual remuneration report must also explain the reasons for selecting that index.*

The annual remuneration report must also contain a table setting out the total remuneration and the amount vesting under short-term and long-term incentives (as a percentage of the maximum that could have been achieved) in each year of the same period for the director holding the post of CEO.

Guidance

The aim of both the graph and the table is to help investors assess whether the pay policy adopted by the remuneration committee is properly relating executive pay to performance.

TSR graph. The Regulations require TSR to be calculated using a fair method (see *paragraph 18 (6) to (10) of the Regulations*). In compiling the graph companies may wish to consider:

- Explaining the key elements of the TSR methodology adopted, for example whether an averaging methodology is used, if so over what periods, whether TSR is calculated in constant or local currency and any other aspects that will assist the reader in understanding the graph.

⁸ For the definition, see *paragraph 44(1) of the Regulations*.

- An explanation for any anomalies in the data in the graph.

For years where performance measures used a comparator group that performed worse than the chosen market index, companies may wish to consider explaining that, and whether the performance measure was expressly approved by shareholders (for example, in respect of a long-term incentive plan).

Table of historic data. This requirement was developed for consideration by BIS, through the FRC's Financial Reporting Lab, see the Lab's report, "Reporting of pay and performance" dated March 2013⁹.

Example table:

Year	CEO	CEO Single figure of total remuneration (£'000)	Annual bonus payout against maximum opportunity %	Long-term incentive vesting rates against maximum opportunity %
2013	CEO 2			
2012	CEO 2			
2011*	CEO 2			
	CEO 1			
2010	CEO 1			
2009	CEO 1			

*CEO 1 retired at the AGM on 21 May 2011, and CEO 2 took over from that date, having been the COO.

Companies may find the following helpful in compiling the table:

- **CEO single total figure of remuneration.** This may need to be calculated retrospectively for a company's CEO for the previous five years, with separate numbers for each CEO in office. The retrospective figure may be based on information supplied in the remuneration report for those previous years or, where no report has been compiled, a suitable corresponding sum. It should be noted that the Financial Reporting Lab suggest that, where a new CEO has taken over, companies may wish to consider presenting the information in respect of each CEO on a separate line in the table.
- **Annual variable element award rates against maximum opportunity.** For most companies this will be annual bonus. This may also need to be calculated retrospectively for each CEO in office over the previous five years. Companies may wish to consider including the actual amount of the bonus as well as the percentage of the maximum paid.
- **Long-term incentive vesting rates against maximum opportunity.** This may also need to be calculated retrospectively for each CEO in office over the previous five years. Companies may also wish to include the value of the vested shares at the time of vesting as well as the percentage of the maximum received.

⁹ The Financial Reporting Lab's report is available from the FRC's website, www.frc.org.uk.

3.8 Percentage change in remuneration of director undertaking the role of CEO

Requirement (see paragraph 19 of the Regulations)

The annual remuneration report must set out (in a manner that permits comparison), percentage change between the reported year and the preceding year in certain aspects of the remuneration of the CEO (salary, benefits and short-term incentives) as set out in the single total figure table, and that of all employees generally (or, if that would be inappropriate, of a comparator group of employees chosen by the company, with the choice explained).

Guidance

The annual remuneration report must set out the percentage change in the remuneration awarded to the CEO between the preceding year and the reported year in relation to each of salary, benefits and bonus, as set out in the single total figure table. Companies may wish to consider including an explanation of any change in notes to the table. It should be noted that this requirement does not include long-term incentive awards and pension-related benefits from the single total figure table.

Details of the average percentage change in respect of the remuneration of employees as a whole must also be provided. The Regulations recognise that employees as a whole may not be an appropriate comparator. If this is the case, companies can set out what they believe is the appropriate comparator group. This will vary company by company and companies can use their own judgement, but companies may wish to consider using a group of employees defined by geography, business unit or level. The employee group or groups must be identified and an explanation provided as to why this group is considered to be an appropriate comparator. Companies may wish to consider using a consistent comparator group each year or explaining the reasons for any change.

In order to make the comparisons meaningful, it is suggested that the average percentage change in respect of each of salary, benefits and short-term incentives for employees as a whole (or the comparator group of employees) be a per capita figure.

3.9 Relative importance of spend on pay

Requirement (see paragraph 20 of the Regulations)

The annual remuneration report must set out in a graphical or tabular form the total amount spent, in the reported year and the financial year before that, and the difference in spend between those years, on each of:

- *Remuneration paid to or receivable by all employees of the group.*
- *Distributions to shareholders by way of dividend or share buyback.*
- *Any other significant distributions and payments or other uses of profit or cash-flow that the directors deem helpful to understanding the relative importance of spend on pay.*

Guidance

Remuneration figure. The figures used for remuneration must refer to all employees including the executive directors. Therefore, to assist with conformity and transparency, companies may wish to

take the figures directly from the notes to the accounts relating to staff and employee costs as required by the Companies Act 2006 (see *paragraph 20(1)(a) of the Regulations*).

Dividend or share buyback. Companies may wish to consider showing distributions by way of dividend and share buyback separately (see *paragraph 20(1)(b) of the Regulations*).

Other significant distributions. Investors expect any additional comparisons of other “significant distributions and, payments or other uses of profit or cash flow” to be suitable and relevant. Appropriate additional comparisons may depend on the company’s size, its industry or its stage of life cycle. The reasons for choosing any additional comparisons and their method of calculation must be explained in notes to the disclosures. Possible examples include:

- Profits retained within the business.
- Investment for future growth such as capital expenditure or research and development costs.
- Debt repayments.
- Expenditure related to wider, societal distribution such as tax payments.

When choosing additional comparison items, companies may wish to consider:

- The relevance of the chosen categories of expenditure over the longer-term.
- Maintaining consistency over time in their reporting.

(See *paragraphs 20(1)(c) and 20(2) of the Regulations*.)

Investors will find it helpful if the format of disclosure, whether in graphical or tabular form, remains consistent over time. Where comparison items are changed, an explanation must be included in the annual remuneration report (see *paragraph 20(3) of the Regulations*).

Where it is felt that a longer-term perspective may assist investors, companies may wish to consider disclosure over a longer period than the two years specified in the Regulations.

3.10 Statement of implementation of remuneration policy in the current financial year

Requirement (see [paragraph 21 of the Regulations](#))

The annual remuneration report must contain a statement describing how the company intends to implement the approved remuneration policy in the current financial year. The statement must include, where applicable, the performance measures and relative weightings for each; and performance targets determined for the performance measures and how awards will be calculated.

Where this is not the first year of the approved remuneration policy, the statement should detail any significant changes in the way that the remuneration policy will be implemented in the current year compared to how it was implemented in the reported year. This statement need not include information that is elsewhere in the remuneration report, including any disclosed in the remuneration policy.

Guidance

This requirement, and the related disclosure, is an inevitable consequence of an approved remuneration policy with an expected life of three years.

Companies must set out details of material changes to the remuneration structure (within the approved remuneration policy) and, where applicable, specific details of performance measures and targets for the current year (subject to commercial sensitivity), which may not have been determined when the remuneration policy was originally approved.

General changes in remuneration for the current year. Companies must report and explain any significant changes to the way that the approved remuneration policy will be implemented in the current year compared to the reported year. The Regulations do not define or explain what is a “significant change”. Companies may wish to consider including:

- Any change in basic salary.
- Any change in the maximum short-term and long-term incentive awards, even if the new maximum is in accordance with the award maximums set out in the future policy table.
- Any change in the target short-term and long-term incentive awards, even if the new target is in accordance with the target award levels set out in the future policy table.
- Any change to scheme interests to be awarded compared to the reported year (as set out in the statement on scheme interests awarded during the reported year, required by paragraph 14 of the Regulations).
- Any other changes in the way that the approved remuneration policy will be implemented even if it is in accordance with the approved future policy table.

If there are no changes to the implementation of the remuneration policy then the company may wish to consider stating this.

3.11 Consideration by the directors of matters relating to directors’ remuneration

Requirement (see paragraph 22 of the Regulations)

The annual remuneration report must specify the membership of any board committees that considered directors’ remuneration during the reported year (which might be both the remuneration and nomination committees) and persons providing material advice or services to the committee. If external advice or services have been received, the annual remuneration report must state how the remuneration committee satisfied itself that the advice was objective and independent, and must set out details of any other services provided to the company and of the relevant person’s appointment, selection and fees.

Guidance

Advice provided to the remuneration, nomination or other relevant committee. The annual remuneration report must name any person who provided material advice or services to a relevant

committee in the reported year, and set out additional details in respect of some of them. These persons may include the following:

- Principal internal providers of material advice and services, for example, human resources and the company secretary.
- Executive directors who may attend meetings of the remuneration committee by invitation, when their own remuneration is not being discussed.
- Remuneration consultants and advisers.
- External lawyers (as opposed to directly employed in-house lawyers) who provided any material advice or services other than legal advice on compliance with relevant legislation are subject to the additional requirements relating to objectivity, independence, appointment, selection and fees. Such advice and services may include advice on remuneration or employment practice (rather than relevant legislation) or the drafting of remuneration plans or agreements.

(See paragraph 22(1)(b)-(c), (2) and (3) of the Regulations.)

Objective and independent advice: Companies may wish to consider disclosing the factors which the remuneration committee took into account in determining that the advice received was appropriate, objective and independent.

3.12 Statement of voting at general meeting

Requirement (see paragraph 23 of the Regulations)

The annual remuneration report must set out the following in respect of the last general meeting at which a relevant resolution was put by the company:

- *In respect of the resolution to approve the remuneration report and the resolution to approve the remuneration policy, the percentages of votes cast for and against and the number of votes withheld.*
- *Where there was a significant percentage of votes against either resolution, where known to the directors, the reasons for those votes and any actions taken by the directors in response to investors' concerns.*

Guidance

Investors would find it helpful for companies to adopt a common approach to the reporting of the vote outcomes for the resolutions regarding remuneration at the previous general meeting. This includes resolutions to approve or amend share schemes and other long-term incentive plans or to approve payments outside the remuneration policy, which are not required or regulated by the Regulations, but by other provisions.

The Regulations only require the percentage of votes cast for and against to be disclosed, along with the number of withheld votes. However, to ensure the data is comparable, investors would find it helpful if the number of votes cast for and against the resolutions were also disclosed.

Example following approval at an annual general meeting

At the Annual General Meeting held on [DATE], votes cast by proxy and at the meeting in respect of the directors' remuneration were as follows:

Resolution Text	Votes For	% For	Votes Against	% Against	Total votes cast	Votes withheld (abstentions)
Approval of remuneration report	XXX	XX%	XXX	XX%	XXX	XXX
Approval of the remuneration policy						
To adopt the long-term incentive scheme (where applicable)						

Where there is a significant percentage of votes against either of the remuneration resolutions (at the last general meeting of the reported year, if more than one), the company must disclose the reasons for this (if known) in the annual remuneration report presented in the current year and describe any actions taken to address investor concerns. Companies may wish to consider making a similar report about voting at an earlier general meeting, if a significant percentage voted against a relevant resolution at that meeting, but not against a similar resolution at a later meeting. Otherwise, no report will be provided disclosing this information, even though the circumstances would strongly suggest that investors' concerns had been identified and addressed by the directors. This situation may arise, for example, if a new remuneration policy is proposed, rejected, amended and then approved within a financial year.

Companies will need to use their judgment, regarding the level of votes against, that they consider to be "significant". Although each resolution will be passed if votes in favour exceed 50% of those cast, a significant number of votes against indicates investor dissatisfaction. It is in the company's interest to explain and address a low level of support, so as to avoid lower votes in favour in future years. As a guideline, companies may wish to consider votes against in excess of 20% as being significant, although there may be reasons why, for some companies, a higher or lower level might be more appropriate.

Although "votes withheld" (abstentions) are not votes in law, many investors withhold their vote to indicate their lack of support for management. Companies may therefore wish to consider viewing votes withheld (or in combination with votes against) exceeding 20% as also indicating a low level of support from investors that they would wish to address, although this again will depend on the company concerned.

Companies may wish to consider disclosing in the annual remuneration report the level of votes against that they deem to be "significant".

Where the board considered the outcome to be a "significant" vote against, or otherwise showing a significant lack of support for the resolution that they plan to address, the company may also wish to

consider including a statement to that effect in the RIS announcement relating to the results of the AGM.

4. Directors' remuneration policy (Part 4 of the Regulations)

4.1 New statutory regime

4.1.1 Restrictions on remuneration and loss of office payments

Requirement (see section 226A – D of the Companies Act 2006 and section 82 of the Enterprise and Regulatory Reform Act 2013)

Under the new regime, a company may only make a remuneration payment or payment for loss of office to directors which is either:

- Consistent with the most recently approved remuneration policy (*sections 226B(1)(a), 226C(1)(a), Companies Act 2006*).
- Inconsistent with the remuneration policy, but approved by a shareholders' ordinary resolution, with a memorandum setting out particulars of the proposed payment (including the amount and the ways in which it is inconsistent with policy) made available for inspection for at least 15 days before and at the meeting (*sections 226B(1)(b), 226C(1)(b) and 226D, Companies Act 2006*).

These restrictions do not apply to a remuneration payment or payment for loss of office which is required to be made pursuant to an agreement entered into before 27 June 2012, unless it was modified or renewed on or after that date or as a consequence of any other obligation arising before that date (*section 82(3) – (4), Enterprise and Regulatory Reform Act 2013*).

These restrictions apply from the earlier of the end of the first financial year of the company to begin on or after 1 October 2013 and the date from which the company's first remuneration policy takes effect (*section 226D(6), Companies Act 2006 and section 82(2), Enterprise and Regulatory Reform Act 2013*).

Guidance

Although the government specifically grandfathered payments to be made pursuant to an agreement entered into before 27 June 2012, companies will also want to ensure that the following promises can be honoured.

Commitments made prior to new policy coming into effect. Companies may need to be in a position to make firm commitments to executives which cannot be defeated by later changes in remuneration policy. Accordingly, companies may wish to make clear in a new policy that any commitments made which were consistent with the approved remuneration policy in force at the time can be honoured, even if they would not otherwise be consistent with the policy prevailing when the commitment is fulfilled.

Commitments made before the restrictions were applicable. The same as above applies to commitments made before the current legislation on remuneration policies came into force and commitments made before an individual became a director or before the company became a quoted

company. Investors are likely to find this acceptable in straightforward cases, especially regarding promises that were consistent with the approved policy when made. In less straightforward cases, companies may wish to consider providing additional information when presenting a policy with provisions of this kind, and perhaps consulting investors about it before presentation, particularly if any relevant commitments are for payments which investors find, or may find, unacceptable.

4.1.2 Structure and significance of the remuneration policy

The Regulations require the remuneration report to include a remuneration policy containing details of the components of the remuneration packages of the company's directors. The remuneration policy is forward-looking and must be approved by investors by an ordinary resolution at least every three years, or sooner in the event of revisions to the remuneration policy (or a shareholder vote against approval of the annual remuneration report in certain years), see *Appendix 1: Approval of remuneration policy* and *Appendix 2: Timing of accounts or general meetings to approve remuneration policy*. It is important to note that the policy sets legally binding boundaries on what may legitimately be paid to directors.

The remuneration policy must set out the policy of the company with respect to the making of remuneration payments and payments for loss of office (*section 422A, Companies Act 2006*). "Remuneration payments" is defined as any form of payment or other benefit made to or otherwise conferred on a person as consideration for that person holding, agreeing to hold or having held office as a director (*section 226A, Companies Act 2006*).

The remuneration policy must include a table dealing with specified aspects of the company's future policy. Other details of remuneration policy must also be included in the remuneration policy although not in the future policy table. The Regulations do not specify a particular format for these additional disclosures.

When preparing the remuneration policy, companies may wish to consider:

- Embracing the overriding principle of transparency.
- Drafting a remuneration policy which is broad and flexible enough to allow companies to respond to changed circumstances without needing to amend the policy (see *1.3: Flexibility, discretion and judgement*).
- Providing sufficient detail (succinctly if possible) to enable investors to understand what will be paid in different circumstances and for what levels of performance and thereby enabling them to evaluate the remuneration policy and to assess whether actual payments are within the remuneration policy.

4.2 Introductory

Requirement (see paragraph 24 of the Regulations)

The information required by Part 4 of the Regulations must be set out in a separate part of the remuneration report and constitutes the remuneration policy of the company. Where some or all of the provisions of the last approved remuneration policy are to continue to apply, this fact must be stated in the remuneration policy together with details of the period it is intended they shall apply.

Where any provision of the remuneration policy provides for the exercise by the directors of discretion, the policy must set out the extent of that discretion.

A company's first remuneration policy presented for approval after 1 October 2013 must set out the date it is intended by the company to take effect.

Guidance

Timing. There is some flexibility as to when companies may choose that the first remuneration policy takes effect under the Companies Act 2006 and the Regulations.

First year. The remuneration policy may specify that it takes effect from:

Date	Example: company with a 31 December year-end
The general meeting (usually the AGM) or any specified later date within the current year	[x] April 2014
The start of the following financial year	1 January 2015

Investors are generally in favour of the remuneration policy starting immediately following approval at the general meeting (which will usually be the AGM). This will provide certainty for directors and will enable meaningful engagement between companies and their investors.

In deciding the date from which the first remuneration policy will take effect, the remuneration committee may wish to consider taking into account the following:

- The statutory restrictions on making a remuneration payment or payment for loss of office (see 4.1.1: *Restrictions on remuneration and loss of office payments*) will apply from the end of the first year or the date the approved remuneration policy "takes effect" if earlier, meaning the date when the company states (within the remuneration policy) that it shall take effect. However, a remuneration policy cannot take effect earlier than the date of approval. It must not be specified to take effect later than the end of the company's first financial year to begin on or after 1 October 2013.
- That performance periods for short-term and long-term incentive performance measures and targets do not have to align with the date the policy takes effect. Usually these periods will relate to whole financial years (although there is some diversity between companies), but the awards will vest or be paid only after the effective date of an approved remuneration policy with which they comply.

Subsequent years. The remuneration policy will commence from the date it is approved unless it is stated that all provisions of the last remuneration policy will apply until a specified time:

Date	Example: company with a 31 December year-end
The general meeting (usually the AGM)	[x] April 2017
The start of the following financial year (specify in the new policy that the last approved remuneration policy will apply until this date)	1 January 2018

It is generally expected that companies will put forward their remuneration policy for approval every three years, unless the company needs to change the policy, or fails to obtain approval of the annual remuneration report, and therefore puts forward an amended policy for approval before the end of the three-year period. Investors would generally not find it helpful if companies put forward their policy for approval annually as a matter of standard practice.

In deciding the date from which future remuneration policies will take effect, the remuneration committee may wish to take into account the following considerations:

- As stated above, investors are generally in favour of the remuneration policy starting immediately following approval at the general meeting.
- Any actual payments made must be consistent with the approved remuneration policy at the time they are made. (However, it is open to companies to provide in their policies that payments under arrangements consistent with an earlier policy when made will be deemed consistent with a later, altered policy. For more on this possibility, see *4.1.1: Restrictions on remuneration and loss of office payments*.)
- If the new remuneration policy does not take effect immediately after the general meeting at which it is approved, the new remuneration policy must specify that the last approved remuneration policy will continue to apply and the period of time it is intended it will apply for. In effect, this makes the old remuneration policy temporarily part of the new approved remuneration policy for the purposes of restrictions on payments.

4.3 Future policy table

Requirement (see paragraphs 25 and 26 of the Regulations)

The remuneration policy must contain in tabular form a description of each of the components of the remuneration package for the directors of the company. Where the provisions apply generally to all directors, the table must also include any particular arrangements which are specific to any individual director.

In respect of each of the components described in the table, there must be set out:

- *How that component supports the short and long-term strategic objectives of the company.*
- *An explanation of how that component of the remuneration package operates.*
- *The maximum that may be paid in respect of that component.*
- *A description of the framework used to assess performance (where applicable) including:*
 - *a description of the performance measures used and the weighting of them where several apply;*
 - *details of any performance period; and*
 - *amounts that may be paid in respect of the minimum level of performance and in respect of any further specified levels of performance.*
- *An explanation as to whether there are any provisions for the recovery of sums paid or the withholding of any payment.*

Guidance

The Regulations do not set out a prescribed format for the table, other than expecting it to include

at least the components required to be included in the single total figure table in the annual remuneration report. While paragraphs 25 and 26 of the Regulations are drafted simply in terms of directors, paragraph 28 of the Regulations allows separate versions of the future policy table for executive and non-executive directors (see 4.5: *Non-executive directors*).

For most companies the typical components of pay for executive directors will be: salary, benefits, pension, short-term and long-term incentive awards. Each must be separately set out in the table. These main components of pay will usually be the same for all executive directors. Companies with differing levels of benefits or short-term or long-term incentives for different executive directors will need, however, to ensure that the variations are properly described.

This table will form part of the remuneration policy. Companies may therefore wish to consider any exceptional items that they do not currently pay or provide but anticipate they might need to provide during the life of the remuneration policy.

The table must also specify the “maximum” that may be paid in respect of each component, which may be expressed in monetary terms or otherwise. It is accepted that it may be difficult for companies to set a maximum for the remuneration policy period. Companies will need to clearly explain the “expected” maximum (normal course) but may also wish to consider building in sufficient flexibility/headroom and also disclosing an “exceptional” maximum. Investors accept that companies may need this flexibility to cover the expected three year life of a policy and to take account of changes in the company’s strategy or a director’s role and responsibility.

Companies may wish to consider the following points in respect of each component:

4.3.1 Salary

- Companies must describe the factors that the remuneration committee will consider when determining the level of salary to be paid on an annual basis, explaining how the basis on which pay is determined supports the company’s strategic objectives.
- There is a requirement to disclose the maximum amount that might be paid. As well as disclosing the current level of salary paid, companies may wish to describe the considerations the remuneration committee will take into account for increasing salaries during the remuneration policy period. The maximum must be explained in monetary terms or any other way appropriate to the company (for example, a percentage of salary).
- Companies with overseas directors may pay salaries in different currencies, which will need clear explanation. Whilst it might be considered helpful to convert to a common currency, companies and investors need to be aware that currency fluctuations may result in anomalies, which companies may wish to explain clearly. If different currencies are used, it may also be important to set out maxima in all relevant currencies and not only one currency.

4.3.2 Benefits

- Companies must give a broad description of the type of benefits that will be provided to directors and how these benefits support the company’s strategy. This description needs to

be broad enough to encompass all benefits that might be offered to directors during the course of the remuneration policy period and this may well include benefits not currently being paid.

- Precise benefits will vary from company to company and even for directors in the same company depending on various factors such as their country of residence, local practices and length of service with the company.
- In determining the maximum amount of benefits, companies may wish to consider factors which may cause these amounts to fluctuate considerably such as:
 - The cost of certain benefits such as healthcare cover can vary dramatically from country to country and year to year due to a change in family status of the director, his or her age, medical inflation or a change in the service provider used by the employing company. Companies would be prudent to consider this when setting the maximum for healthcare costs, particularly if directors move between countries where different or more expensive healthcare benefits are the usual local practice for employees.
 - Relocation and expatriate or international assignment costs can be very high and may encompass a number of elements including: removal costs, tax equalisation arrangements, house purchase or rental, children's education and relocation of family. At the beginning of a remuneration policy period, companies may not necessarily know their plans regarding director relocation for the next three years, as that will depend on emerging business requirements.
- Companies may wish to separate benefits payable to a director on an ongoing basis and benefits that might become payable as a result of new business requirements such as relocation.

4.3.3 Pension

- Companies must give a clear explanation of pension-related benefits, including the approach taken to making payments in lieu of retirement benefits or defined benefit arrangements.
- Companies may wish to disclose anticipated changes to defined benefit pension arrangements where there is likely to be material difference in the arrangements disclosed in the annual remuneration report. These might include, but are not limited to:
 - The discretionary augmentation of benefits over and above the normal entitlement, indicating whether or not such augmentation requires the consent of the scheme's trustees.
 - Changes in contribution rates in respect of a defined benefit arrangement beyond those set out in the periodic schedule of contributions certified by the scheme actuary.
 - The closure, or proposed closure, of a defined benefit arrangement to future accrual.

4.3.4 Short-term and long-term incentives

The Regulations do not make a distinction between short-term and long-term incentive arrangements in the provisions relating to policy (except to the extent that these require the same components to be addressed as in the single figure table, as the provisions relating to annual remuneration report do treat short- and long-term incentives separately). The split between short-term and long-term incentives (discussed further below) is a common approach adopted by companies but some companies may have different components in their remuneration packages that do not necessarily fall into these categories. For a discussion of a similar issue arising for the annual remuneration report, see 3.1: *Deferred short-term and long-term incentives*.

The Regulations make it clear that information in respect of performance measures or targets that, in the opinion of the directors, is commercially sensitive in respect of the company does not need to be disclosed. See 2.1: *Commercially sensitive performance measures or targets*.

Short-term incentives

- Companies must describe how the short-term incentive supports the objectives of the company and explain how the plan operates.
- The maximum amount of the short-term incentive that might be earned must be disclosed as well as the amounts that could be paid for reaching certain thresholds or targets. The Regulations have been drafted to enable companies to use their own terminology for the minimum and maximum levels of performance. These amounts may be expressed as salary multiples or fixed monetary amounts or any other way that might be appropriate for the company.
- An explanation must also be given of any performance measures which will apply. In the case of annual plans, the performance measures may change over the remuneration policy period to align with the annual strategy of the company. Therefore, companies may choose to describe performance measures in broad terms, for example, grouping performance measures into financial and business measures and personal goals or objectives, where appropriate.
- Investors will wish to understand the performance measures used and will expect them to align with the overall corporate strategy. Where performance measures are disclosed in broad terms in the future policy table, full details for the current year must be given in the annual remuneration report (see 3.10: *Statement of implementation of remuneration policy in the current financial year*).
- There is no requirement to disclose performance targets in the future policy table. However, details must be disclosed in the annual remuneration report (see 3.10: *Statement of implementation of remuneration policy in the current financial year*).
- The performance period for the short-term incentive will generally be one year. Companies must, however, describe any arrangements for the deferral of all or part of the short-term incentive, as this is a feature of the operation of a remuneration component. The period of deferral, together with any further conditions, must be explained, as well as whether the

deferred element is payable in cash or in shares and if any matching award may be made when deferral ends.

- An explanation must also be given as to any provisions for recovery of sums paid, or withholding of any current year payment, in the short-term incentive plan including how and when they will be applied.

Long-term incentives

- Companies must describe how any long-term incentive plan for directors supports the objectives of the company and explain how the plan operates. If the company operates more than one plan for directors, companies must separate out the different plans.
- Even though almost all new long-term incentive plans in which directors can participate, and any substantial amendment to an existing plan, must currently be separately approved by shareholders under the Listing Rules, that approval will not amend the remuneration policy. It is anticipated that a new remuneration policy will be proposed when a company proposes a new plan or amends an existing plan, if the new plan or amendment conflicts with the current approved policy. Companies must also check when they change the remuneration policy that any long-term incentive plan awards made under a previous remuneration policy, and under which payments are still intended to be made, can be paid out under the new remuneration policy.
- The maximum amount of long-term awards that might be earned for stretch performance must be disclosed as well as the amounts that could be paid for threshold or target performance. The Regulations have been drafted widely to enable companies to use their own terminology for the minimum and maximum levels of performance and these amounts may be expressed as salary multiples or fixed monetary amounts, fixed number of shares or in any other way that might be appropriate for the company.
- Most long-term awards will be in the form of shares, rights to shares or options and the nature of the award must be made clear. Where phantom shares or long-term cash plans exist these must also be included in the long-term incentive awards section of the table.
- An explanation must also be given of the performance measures and groups of performance measures that will apply. More detail on the performance measures which will apply to awards made during the life of the remuneration policy must be provided. If a company wishes to significantly change these performance measures, it will need to seek approval of a revised remuneration policy. If a company has reserved discretion to make non-significant changes, it will be able to do so, but may wish to consider consulting with investors.
- There is no requirement to disclose performance targets in the future policy table but if they are not, full details for the current year must be disclosed in the annual remuneration report (see 3.10: *Statement of implementation of remuneration policy in the current financial year*).
- Companies must also disclose the performance period and, where appropriate, any additional holding period after vesting.

- An explanation must also be given as to any provisions for the recovery of sums paid, or the withholding of any current year payment, in the long-term incentive plan, including how and when they will be applied.

4.4 Notes to the future policy table

Requirement (see [paragraph 27 of the Regulations](#))

The future policy table must be accompanied by notes which set out in respect of each component:

- *An explanation of why any performance measures were chosen and how performance targets are set.*
- *An explanation of why there are no performance measures relating to any component other than fixed elements.*
- *An explanation of the reasons for any new component or any changes to existing components relative to the previous policy.*
- *An explanation of the differences between the remuneration policy for directors and for employees generally.*

Guidance

The Regulations recognise that it is not possible to include every detail in a table and therefore the following additional information must be provided in the explanatory notes to the table.

Performance targets. The notes must explain how performance targets are set. Companies should note that they are not required to disclose specific performance targets in the future policy table, but just explain how they would be determined. If not in the policy, the performance targets for the current year must be disclosed in the annual remuneration report, unless non-disclosure is justified on the basis that the targets are commercially sensitive (see 3.10: *Statement of implementation of remuneration policy in the current financial year*).

Changes. Companies also must explain any changes from the previously approved remuneration policy, particularly any new elements, for example, a new share plan or any changes to a remuneration component (for example, a change to the performance measures applying to a particular plan). Companies may also wish to consider referring to the overall changes in the committee chairman's introductory statement, see 2.2: *Annual statement*.

4.5 Non-executive directors

Requirement (see [paragraph 28 of the Regulations](#))

Information in respect of directors not performing an executive function may be set out in a separate table explaining the approach of the company to the determination of fees payable to such directors, any additional fees paid for other duties to the company and such other items as are to be considered in the nature of remuneration.

Guidance

Companies may wish to disclose non-executive directors' remuneration in a separate table as typically they will receive fees for their services and will not participate in the incentive arrangements applying to executive directors.

Companies with executive chairmen will need to include details of the executive chairman's remuneration in the table for executive directors.

This table will form part of the remuneration policy and therefore no other remuneration may be provided to non-executive directors which is not included in the future policy table.

The Regulations require companies to disclose "the approach of the company" towards the determination of the non-executive directors' fees. This may include fees as a non-executive director, additional fees for acting as senior independent director, chairman of a committee, member of a committee, travel and attendance fees and, where relevant, consultancy fees. Legitimate business expenses are not remuneration and therefore are not required to be disclosed.

Companies may wish to consider disclosing if part of the fees is paid in shares instead of cash, and if there is any requirement to retain the shares.

4.6 Approach to recruitment remuneration

Requirement (see paragraph 29 of the Regulations)

The remuneration policy must contain a statement of the principles which the company would apply to agreeing a remuneration package for a new director. The statement must set out the various components which would be considered by the company for inclusion in that package and the approach of the company to each element and the maximum level of variable remuneration (excluding compensation for variable remuneration lost on leaving a former employer) which may be awarded, expressed in monetary terms or otherwise.

Guidance

These requirements apply to all board members, not just executive directors. They also apply to internal appointments to director, not just external hires.

Statement of principles. The Regulations refer to a statement of principles. Companies must set out the principles and the parameters which the remuneration committee will apply but be mindful that too much detail could raise expectations of potential directors and so weaken the company's ability to negotiate appropriate terms. Companies may wish to cross-refer to the future policy table, which describes each component of remuneration for the directors of the company and which will be applicable to new directors recruited within the life of the approved remuneration policy.

- Companies are required to disclose the maximum level of variable pay that may be granted to a newly-appointed director. This may be expressed in monetary terms or otherwise, for example a multiple of salary. Companies may wish to consider a statement that new directors will participate in short-term and long-term incentive plans on the same basis as existing directors, which should suffice in most cases. Companies which operate different plans or multiples for different directors will need to take care that they explain this clearly in the remuneration policy.
- Companies may wish to consider committing in the remuneration policy to timely disclosure on the remuneration structure of any new executive director or chairman. It is recommended that such disclosure be included in the relevant RIS notification.

- If relevant, companies must disclose the principles around relocation policies and any other benefits.

Sign-on payments. If companies wish to have the ability to make sign-on payments, they must ensure the remuneration policy covers such payments. If the remuneration policy is silent on sign-on payments, companies will not be able to make a sign-on payment to a future executive director without having first obtained shareholder approval. In practical terms, it will be difficult to convene a general meeting to approve such a payment while still in negotiations with a potential executive director regarding their remuneration.

When describing their sign-on policies, companies must disclose the type of awards (for example, cash or shares) that could be made, the potential use of performance criteria and holding periods, and any application of recovery or withholding policies. They may wish to consider disclosing:

- Whether their policy is to compensate an executive director for amounts lost at a previous employer or to pay a so-called “golden hello”.
- A commitment to provide a full explanation at the time of recruitment of why a sign-on payment was required and a breakdown of that payment and an explanation of the approach taken to determine a fair level of compensation.

Compensation for the amounts forfeited for variable remuneration arrangements by an incoming executive. These amounts are not subject to the maximum set by the recruitment policy and will vary depending on the plans and arrangements in place at the previous employer. Investors generally expect the policy to make clear whether and how the maxima set out in the future policy table apply to such payments (see 4.3: *Future policy table*).

Internal promotion. If a company is considering the promotion of senior management to the board, it may wish to make clear in its policy that any commitments made before promotion can continue to be honoured under the policy even if they would not otherwise be consistent with the policy prevailing when the commitment is fulfilled (see also 4.1.1: *Restrictions on remuneration and loss of office payments*). If not, it will be necessary for the new director to give up, or amend, the inconsistent element of their remuneration before being promoted.

4.7 Service contracts

Requirement (see paragraphs 30-32 of the Regulations)

The remuneration policy must contain a description of any obligation on the company that is, or is proposed to be, contained in all (or one or more) directors’ service contracts, and that could give rise to remuneration or loss of office payments not disclosed elsewhere in the remuneration policy. This requirement applies equally to letters of appointment.

Guidance

Companies must disclose any obligation on the company which could give rise to a remuneration or loss of office payment, which is not disclosed in the remuneration policy. Although the Regulations refer to such obligations being contained in service contracts and letters of appointment, this should be interpreted widely as referring to the whole contract between the director and the company as it stands at the time, and not just the provisions of a single, original document. For example, the

“contract” or “letter” includes any obligations set out in side letters, and any changes made by later notices, agreements or letters (whether in writing or orally).

For many companies, this requirement will be satisfied by disclosures made elsewhere in the remuneration policy. In such circumstances, companies may wish to consider confirming that there are no further obligations which could give rise to a remuneration or loss of office payment in the service contracts and/or letters of appointment.

4.8 Illustrations of the application of the remuneration policy

Requirement (see paragraphs 33-35 of the Regulations)

The remuneration policy must set out in the form of a bar chart and in respect of each director (other than non-executive directors) an indication of what could be received under the policy. The bar chart should include three bars showing the following:

- *the minimum remuneration receivable (paragraph 34(1)(a) of the Regulations);*
- *the remuneration receivable if the director performs in line with the company’s expectation (paragraph 34(1)(b) of the Regulations); and*
- *the maximum remuneration receivable (paragraph 34(1)(c) of the Regulations).*

Guidance

The Regulations do not mandate the measurement basis for the components of the bar chart, however the Financial Reporting Lab did extensive work on the preferred approach of investors and companies and this is reflected in the guidance below. See the Financial Reporting Lab’s report, “Reporting of pay and performance” dated March 2013¹⁰.

Each bar of the chart must contain separate parts which represent the following (to the extent that they are applicable in the scenario under consideration):

- Salary, fees, benefits, pension and any other ‘fixed’ remuneration.
- Remuneration where performance measures or targets relate to one financial year (for example annual bonus).
- Remuneration where performance measures or targets relate to more than one financial year (for example long-term incentives).

Salary. This should be the last confirmed salary. This may be the same figure as the salary in the single total figure table, but if there has been a confirmed change to the salary the most current figure should be used.

Benefits. This should be the last known figure as set out in the single total figure table excluding any non-recurring items.

Pension. The preferred approach depends on the type of pension entitlement:

- **Defined benefit.** The amount as set out in the single total figure table.

¹⁰ The Lab’s report is available from the FRC’s website, www.frc.org.uk.

- **Other** (for example defined contribution or cash in lieu). It would be consistent for the amount to be based on the policy set out in the future policy table and the last confirmed salary. This may be different to the pension amount in the single total figure table, for example where there has recently been a salary increase or a change to the defined contribution percentage.

Short-term incentives. The amount should be based on the policy set out in the future policy table and the last confirmed salary. For example, if the future policy table refers to a target opportunity of 50% of salary and a maximum opportunity of 100% of salary, with half delivered in cash and half delivered in deferred shares, and the last confirmed salary is £500,000, the amounts to include in respect of this element in each bar would be:

- Bar showing minimum receivable (*paragraph 34(1)(a)*): Nil.
- Bar showing remuneration receivable for performing in line with the company's expectation (*paragraph 34(1)(b)*): £250,000.
- Bar showing maximum remuneration receivable (*paragraph 34(1)(c)*): £500,000.

In substance the deferred share component is valued at face value but there is no need to value the shares because the calculation is based on a percentage of salary.

The bars showing remuneration for in line performance and maximum remuneration receivable must take account of all relevant plan features. For example, if the bonus plan provides for the award of additional "matching shares" if an executive voluntarily invests a portion of their cash bonus in deferred shares, the additional matching shares must be included in those two bars. In other words, those two bars should show what would be receivable assuming the executive makes all elections that can increase the size of the award¹¹.

Long-term incentives. The preferred approach depends on how the company makes long-term incentive awards:

- **Awards based on a percentage or multiple of salary.** It would be consistent for the amount included in the bar charts to be based on the policy set out in the future policy table and the last confirmed salary. For example, if the future policy table refers to an award of performance shares worth 100% of salary (face value), and the last confirmed salary is £500,000, the amounts to include in respect of this element in each bar would be:
 - Bar showing minimum receivable (*paragraph 34(1)(a)*): Nil
 - Bar showing remuneration receivable for performing in line with the company's expectation (*paragraph 34(1)(b)*): The value based on what the company judges to be the percentage level of vesting that correlates to "performing in line with the company's expectation". This may, for example, align with the level of vesting at threshold performance.

¹¹ If the matching shares are subject to performance measures they may need to be shown in the long-term incentive part of each bar, rather than the annual bonus part. See discussion in 3.1: *Single total figure of remuneration*.

- Bar showing maximum remuneration receivable (*paragraph 34(1)(c)*): £500,000.

In substance the share award is valued at face value, but there is no need to value the shares because the calculation is based on a percentage of salary.

If the company's practice is to specify award sizes as a percentage of salary using "expected value" or "fair value", it will be necessary to translate the award size into an equivalent face value. For example, if the company's policy is to make an award worth 100% of salary on an expected value basis, and the expected value of a performance share is 33% of face value, the bar showing maximum remuneration receivable would include a value of 300% of salary for the long-term incentive part of the bar.

The bar showing maximum remuneration receivable must take account of all relevant plan features. For example, if the plan provides for a "target award" worth 100% of salary and a "maximum vesting" of 200% of salary, the bar showing maximum remuneration receivable would include a value of 200% of salary for the long-term incentive part of the bar.

In some cases, a plan sets a maximum award size that is larger than the awards customarily made. For example, where the theoretical maximum under the plan rules is 300% of salary but actual awards for the past four years have been 200% of salary and the "statement of implementation of remuneration policy in the current financial year" stipulates that the award in the first year of the policy will be 200% of salary. In this situation, given that paragraph 33 of the Regulations requires the bar chart to show remuneration receivable in accordance with the policy "in the first year to which the policy applies", the bar showing maximum remuneration receivable must be based on 200% of salary. Companies may wish to consider including a narrative description which refers to the plan maximum where that is higher than the award size factored into the bar charts.

- **Awards based on a fixed number of shares.** The amount to include in the bar charts must be based on the face value of the shares, with no allowance for potential share price appreciation over the course of the vesting period.

The "maximum" bar must include the full face value, and the "in line" bar must include the value based on what the company judges to be the percentage level of vesting that correlates to "performing in line with the company's expectation". As indicated above, this may align with the level of vesting at threshold performance.

The share price to factor into the valuation could be either a spot price from a date close to the date for finalising the remuneration report, or an average share price. If an average share price is used an explanation should be given of the period over which the average was taken and why that approach has been adopted. (The Regulations do not state this expressly, but do require a "description of the basis of calculation and assumptions used ... to enable an understanding of the charts".)

- **Options (market exercise price options as opposed to nil-price options).** The preferred approach depends on how the company makes option awards:

- If options are awarded based on a percentage or multiple of salary, it would be consistent for the amount included in the bar charts to be based on the policy set out in the future policy table and the last confirmed salary, as detailed above. In other words, if the company's policy is "A long term incentive award will be granted in market priced options with a value equal to 200% of salary" then the company would simply use 200% of salary in the long-term incentive part of the "maximum" bar, and (200% of salary) x (appropriate percentage based on company's view of what "performing in line with the company's expectation" correlates to) in the "in line" bar.
- If awards are made as a fixed number of options, the amount to include in the bar charts must be based on (a) the number of options; and (b) an appropriate valuation method, with an explanation of the valuation method. The valuation method must **not** take account of performance hurdles, if any exist, as these will be reflected in the minimum, in line and maximum bars. For example, if the company awards 200,000 options, the spot share price on a date shortly before the date for finalising the remuneration report is £1.00, and the option valuation method shows the value of an option as 30% of the share price, the amount to include in the "maximum" bar would be £60,000. As regards an appropriate valuation method, the Financial Reporting Lab recommended use of a rule of thumb established by common practice, with "one third of the market value of the shares under option" being the Lab's "initial suggestion". See the Financial Reporting Lab's report, "Reporting of pay and performance" dated March 2013¹².

Any dividend accrual, "dividend shares", dividend equivalent payments or similar provided for in the long-term incentive plan or the short-term incentive plan, or both, should be disregarded for the purposes of the bar charts, for clarity. But their existence and exclusion must then be explained in the description of the calculation and assumptions used.

4.9 Policy on payment for loss of office

Requirement (see paragraphs 36-37 of the Regulations)

The remuneration policy must summarise and explain the company's policy on:

- *The setting of notice periods under directors' contracts.*
- *Termination payments for directors.*

The remuneration policy must set out the principles on which a termination payment will be determined including:

- *How each element of any termination payment will be calculated.*
- *Any contractual provisions agreed before 27 June 2012 that could impact on a termination payment (payments under agreements made before that date, and not subsequently amended, are not subject to the requirement to be consistent with approved remuneration policy).*
- *Whether and how the circumstances under which a director leaves and the director's performance will be taken into account in determining any payment.*

¹² The Lab's report is available from the FRC's website, www.frc.org.uk.

Guidance

Companies need to take care when drafting disclosure on future potential exit payments that they retain sufficient flexibility to cover all types of leaver situation as they will be unable to make any termination payment outside the approved remuneration policy.

Investors expect companies to provide sufficient information for investors to understand how the various elements of the remuneration package would be treated in different termination situations and the parameters that the remuneration committee will consider. Companies may wish to consider carefully whether the remuneration committee has the power to exercise discretion in this area and, if so, how they will describe this. The remuneration committee can only exercise discretion if it is permitted to do so in the remuneration policy.

Companies must disclose their policies on setting notice periods and their approaches to determining loss of office payments. Companies may wish to consider disclosing:

- That the contractual entitlements of terminated directors will be honoured.
- The length of service contract and notice periods applicable from the company and the director.
- Details of any limitations, parameters, or guarantees applied to severance payments (for example, contractual).
- How the remuneration committee classifies leavers. It would be advisable to make clear that the good and bad leaver scenarios are examples and not a definitive list of scenarios. This will mean that the remuneration policy has the flexibility to cover future termination situations which are similar to, but not exactly the same as, one of the scenarios.
- How the remuneration committee assesses salary, short-term incentives, long-term incentives, pension and other benefits for each category of leaver and any reductions that may apply to these remuneration components in “normal” circumstances.
- Policies applied in “exceptional” circumstances including change of control.
- Whether there is a policy of requiring mitigation, and a summary of how that policy would work in practice.

4.10 Statement of consideration of employment conditions elsewhere in the company

Requirement (see [paragraphs 38-39 of the Regulations](#))

The remuneration policy must include a statement of how pay and employment conditions of employees generally were taken into account when setting the remuneration policy. It must also set out whether and, if so, how the company has consulted with employees when drawing up the remuneration policy. The statement must also offset out whether any comparison metrics were taken into account and, if so, what they were and how they were taken into account.

Guidance

Employee consultation. If the company has consulted with its employees, it must disclose what steps have been taken to seek employee views. If it has not, this must be stated. The Regulations suggest that a specific statement is required, rather than general statements about employee views being taken into account.

Pay and employment conditions of employees. Companies should state how wider employee pay and conditions were taken into account, including whether or not any remuneration comparison measurements were used. The metrics will differ across companies and the disclosure must set out what metrics were taken into account and how they were used in determining the quantum and structure of the directors' remuneration.

4.11 Statement of consideration of shareholder views

Requirement (see [paragraph 40 of the Regulations](#))

The company must state whether and, if so, how any views expressed by investors in respect of remuneration either at a general meeting or otherwise have been taken into account in the formulation of the remuneration policy.

Guidance

The level of disclosure in this area will vary from company to company and will depend on the extent of engagement that has taken place. Companies may wish to consider including a summary of:

- The actions taken by the company and investors to engage with each other.
- The broad topics discussed in the engagement process and an indication of investors' reactions.
- Any changes to the remuneration policy, or its implementation, made as a result of the engagement.

Appendix

1. Approval of remuneration policy

Companies must propose an ordinary resolution to approve the remuneration policy:

- At the accounts meeting held in the first financial year which begins on or after 1 October 2013 (*section 439A(1)(a), Companies Act 2006 and section 82(1) Enterprise and Regulatory Reform Act 2013*).
- At an accounts or general meeting held no later than the end of the third financial year after the meeting at which a resolution was proposed to approve the remuneration policy (*section 439A(1)(b), Companies Act 2006*).
- At an accounts meeting if, at the last accounts meeting, the resolution to approve the annual remuneration report was not approved (*section 439A(2), Companies Act 2006*).

Companies may propose an ordinary resolution to approve the remuneration policy at any accounts or general meeting if they wish to change or revise the remuneration policy.

2. Timing of accounts or general meetings to approve remuneration policy

The table below illustrates when companies must obtain approval of their remuneration policy.

Year-end	Approximate date of first AGM to propose resolution to approve remuneration policy ¹³	Long-stop date for first remuneration policy to be approved, i.e. the date that restrictions on remuneration and loss of office payments commence ¹⁴	Approximate date of second AGM or meeting to propose resolution to approve remuneration policy ¹⁵
30 September 2013	January 2014	1 October 2014	AGM: Jan 2017; or GM: held by 30 September 2017
31 December 2013	April 2014	1 January 2015	AGM: April 2017; or GM: held by 31 December 2017
31 March 2014	June 2014	1 April 2015	AGM: June 2017; or GM: held by 31 March 2018
30 June 2014	September 2014	1 July 2015	AGM: September 2017; or GM: held by 30 June 2018

¹³ Assumes approval sought at AGM.

¹⁴ Assumes company has not chosen for the restrictions to apply earlier.

¹⁵ Assumes annual remuneration report has been approved at previous AGM and no changes have been made to the remuneration policy since approved in 2014.

3. Website statement when director leaves

Requirement (section 430(2B) of the Companies Act 2006)

Companies are required to publish a statement on its website, as soon as reasonably practicable, when a director leaves giving particulars of:

- *Loss of office payments and remuneration payments which have been, or will be, made to the departing director.*
- *Explanation of how these payments were calculated.*

Guidance

The Companies Act 2006 does not distinguish between executive and non-executive directors and companies therefore need to make a similar statement regarding departing non-executive directors, even though the payment of the final monthly fee may be all that needs to be disclosed.

Companies must make the statement available “as soon as reasonably practicable”, so when, or very soon after, the arrangements have been confirmed. It is anticipated that in many cases this will be on the date the departure is announced to the market. Where companies need further time to prepare and agree the exact wording between announcement and departure from the board, companies may wish to consider giving a commitment to announce any payments as soon as the arrangements become known. An announcement will also be required where a director steps down from the board, but continues to be employed by the company.

If no payments are made, or to be made, companies may wish to make a disclosure to this effect rather than fielding questions about why such a disclosure has not been made.

As from 1 October 2013, in addition to making an RIS announcement regarding a director’s departure from the board (as required by the Listing Rules), investors generally expect companies to make an RIS announcement, at the point of leaving, setting out the information required to be published on their website under the Companies Act 2006.

For further guidance on the information to be included in the statement, see 3.4 and 3.5: *Payments to past directors* and *Payments for loss of office*.

4. Glossary

annual remuneration report	The annual report on remuneration, as required by section 420 of the Companies Act 2006 and Part 3 of the Regulations, which must contain the information prescribed by Part 3 of the Regulations.
current year	The company's financial year during which a remuneration report is published.
EPS	Earnings per share.
future policy table	A table describing each of the components of the remuneration package for the directors, which must be included in the remuneration policy under paragraphs 25 and 26 of the Regulations.
long-term incentive	Any amount (to be provided in cash, shares or other assets) received or receivable as a result of an award made before the reported year and the achievement of performance measures or targets over a period that ends within that year. This phrase is not used in the Regulations, which refer to these by various references to the requirement to disclose their value in the single figure table, which is set out in paragraph 7(1)(d) of the Regulations. Common types of long-term incentive include long-term incentive share awards and share options. Long-term incentive awards are also referred to in the Regulations as scheme interests.
recovery	Recovery of amounts previously vested or paid (which some might refer to as clawback or malus) (see 3.1: <i>Recovery and withholding (clawback and malus)</i>).
Regulations	Schedule 8 to the Large and Medium-sized Companies and Groups (Accounts and Reports) Regulations 2008 (SI 2008/373), as amended by the Large and Medium-sized Companies and Groups (Accounts and Reports) Amendment Regulations 2013 (SI 2013/1981).
remuneration policy	The directors' remuneration policy as required by section 421 and section 439A of the Companies Act 2006. The remuneration policy must contain the information prescribed by Part 4 of the Regulations.
remuneration report	The directors' remuneration report, as required by section 421 and section 439 of the Companies Act 2006, which must

	contain an annual statement, an annual remuneration report and, if being voted on, the remuneration policy (which the company may still choose to include if there is expected to be no vote on policy in the current year).
reported year	The company's financial year for which details of remuneration are set out in an annual remuneration report, that is the year before the current year. This is referred to in the Regulations as the "relevant financial year".
RIS	Regulatory information service
single total figure table	A table showing the single total figure of remuneration for each director to be included in the annual remuneration report as required by paragraphs 4 to 12 of the Regulations.
short-term incentive	Any amount (to be provided in cash, shares or other assets) received or receivable as a result of an award made in the reported year and the achievement of performance measures or targets within that year. This phrase is not used in the Regulations, which refer to these by various references to the requirement to disclose their value in the single figure table, which is set out in paragraph 7(1)(c) of the Regulations. The most common type of short-term incentive is the annual bonus.
TSR	Total shareholder return.
withholding	Withholding of amounts that would otherwise have been paid (see 3.1: <i>Recovery and withholding (clawback and malus)</i>).

5. GC100 and Investor Group

Corporate Governance Forum

Member	Company
Guy Jubb (Co-chair)	Standard Life Investments Limited (Head of Governance & Stewardship)
Jeannette Andrews	USS Investment Management Ltd (Analyst, Responsible Investment)
Ian Burger	Newton Investment Management Limited (Corporate Governance Officer)
Frank Curtiss	RPMI RAILPEN Investments (Head of Corporate Governance)
Rebecca Vine	Fidelity Worldwide Investment (Senior Manager, Corporate Governance)
Jennifer Walmsley	Hermes Equity Ownership Services (Director)
Freddie Woolfe	Hermes Equity Ownership Services (Manager)
Andrew Ninian	Association of British Insurers (Head of Corporate Governance) (Participating observer)

GC100

Member	Company
David Jackson (Co-chair)	BP (Company Secretary)
Grant Dawson	Centrica (General Counsel and Company Secretary)
Lawrence Dickinson	Barclays (Company Secretary)
Ben Mathews	HSBC (Company Secretary)
Susan Swabey	Smith & Nephew (Company Secretary)
Geof Stapledon	BHP Billiton (Vice President Governance)
Victoria Whyte	GlaxoSmithKline (Company Secretary)

Secretariat and legal support to the GC100 and Investor Group

Lucy Ryland (Secretary to Group)	Practical Law (Non-practising solicitor, Corporate Editor and support to GC100)
Graeme Standen	Practical Law (Non-practising solicitor, Share Schemes and Incentives Editor)

6. Respondents to consultation on draft guidance

The guidance has been developed with the benefit of consulting with a number of representative bodies and other relevant parties. The GC100 and Investor Group is grateful for the responses it received from:

- Association of British Insurers (ABI)
- City of London Law Society Company Law Committee
- Corporate Governance Forum
- Deloitte LLP
- Department for Business Innovation & Skills (BIS)
- Equiniti David Venus Limited
- Financial Reporting Council
- GC100
- Glass Lewis
- Institute of Chartered Accountants in England and Wales (ICAEW)
- Institute of Chartered Secretaries and Administrators (ICSA)
- Institutional Shareholders Service Inc. (ISS)
- Kepler Associates
- Manifest
- The National Association of Pension Funds (NAPF)
- PricewaterhouseCoopers LLP
- Quoted Companies Alliance (QCA)
- Remuneration Consultants Group

Disclaimer

This Remuneration Reporting Guidance, which does not necessarily reflect the views of all individual members of the GC100, the Corporate Governance Forum or their employing companies, has been produced for guidance only.

It is the responsibility of individual companies to ensure that they understand, and have compliance procedures in place that meet the requirements of, the Companies Act 2006 and the Large and Medium-sized Companies and Groups (Accounts and Reports) Regulations 2008 (as amended) and to take specific external advice (legal or otherwise) if they deem necessary.

The guidance is limited to the directors' remuneration reporting requirements as specified in the Companies Act 2006 and the Large and Medium-sized Companies and Groups (Accounts and Reports) Regulations 2008 (as amended). Detailed guidance on the structure and form of directors' remuneration is outside the scope of this guidance.

Nothing in this guidance represents advice by the GC100, the Corporate Governance Forum or any of their members, Practical Law, or any of the participants in the GC100 and Investor Group to any person and none of the GC100, the Corporate Governance Forum, Practical Law and the participants in the GC100 and Investor Group accepts any liability to any person for or in respect of the guidance.

