

*Draft Regulations laid before Parliament under paragraph 2 of Schedule 2 to the European Communities Act 1972 and sections 473(3) and 1290 of the Companies Act 2006, for approval by resolution of each House of Parliament.*

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## DRAFT STATUTORY INSTRUMENTS

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**2019 No.**

## **COMPANIES**

### **The Companies (Directors' Remuneration Policy and Directors' Remuneration Report) Regulations 2019**

*Made* - - - - **\*\*\***  
*Coming into force* - - *10th June 2019*

The Secretary of State is a Minister designated<sup>(1)</sup> for the purposes of section 2(2) of the European Communities Act 1972<sup>(2)</sup> in relation to the creation, operation, regulation or dissolution of companies and other forms of business organisation.

The Secretary of State makes these Regulations in exercise of the powers conferred by section 2(2) of that Act, and sections 421(1), 468(1) and (2) and 1292(1) of the Companies Act 2006<sup>(3)</sup>.

In accordance with paragraph 2 of Schedule 2 to the European Communities Act 1972 and sections 473(3) and 1290 of the Companies Act 2006, a draft of this instrument was laid before Parliament and approved by a resolution of each House of Parliament.

## **PART 1**

### **Introductory**

#### **Citation and commencement**

**1.—**(1) These Regulations may be cited as the Companies (Directors' Remuneration Policy and Directors' Remuneration Report) Regulations 2019.

(2) These Regulations come into force on 10th June 2019.

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(1) [S.I. 2007/193](#); there are no relevant amending instruments.  
(2) [1972 c. 68](#). Section 2(2) was amended by section 27 of the Legislation and Regulatory Reform Act 2006 ([c. 51](#)) and by section 3 of, and Part 1 of the Schedule to, the European Union (Amendment) Act 2008 ([c. 7](#)).  
(3) [2006 c. 46](#).

## Application, transitional provisions and interpretation

### 2.—(1) The amendments made by—

- (a) regulations 6 to 10 apply to a quoted company from the first date on or after 10th June 2019 on which a relevant directors' remuneration policy for the company approved under section 439A of the Companies Act 2006 takes effect;
- (b) regulation 15 apply in relation to—
  - (i) a directors' remuneration report or directors' remuneration policy of a quoted company first required to be made available under section 430 of the Companies Act 2006 on or after 10th June 2019;
  - (ii) annual accounts and reports of an unquoted traded company for a financial year of the company beginning on or after 10th June 2019;
- (c) regulation 31 apply in relation to a directors' remuneration report for a financial year of a company beginning on or after 10th June 2019;
- (d) regulation 32 apply in relation to a relevant directors' remuneration policy that was approved under section 439A of the Companies Act 2006 on or after 10th June 2019.

### (2) Where a company is an unquoted traded company immediately before the day on which these Regulations come into force and paragraph (4) does not apply—

- (a) section 226D(6) of the Companies Act 2006(4) (as amended by regulation 9) applies as if—
  - (i) in the opening words “the earlier of” were omitted; and
  - (ii) paragraph (a) was omitted;
- (b) section 439A(1)(a) of the Companies Act 2006(5) (as amended by regulation 20) applies to the company as if for “the day on which the company becomes a quoted company or (as the case may be) an unquoted traded company” there were substituted “1st January 2020 or at an earlier general meeting”.

### (3) Paragraph (4) applies if, immediately before the day on which these Regulations come into force, an unquoted traded company has a relevant directors' remuneration policy in effect which—

- (a) was approved by a resolution passed by the members of the company at an accounts or other general meeting before 10th June 2019, and
- (b) complied with the requirements of the Companies Act 2006 in relation to such policies.

### (4) Where this paragraph applies—

- (a) section 439A(1)(a) of the Companies Act 2006 does not apply to the company;
- (b) the notice that was given of the intention to move a resolution to approve the policy is to be treated as having been given under section 439A(1) for the purpose of determining the period within which the next notice under that section must be given;
- (c) regulation 2(1)(a) applies to the company as if it were a quoted company.

### (5) In this regulation—

“directors' remuneration policy”, “quoted company” and “unquoted traded company” have the same meanings as in section 226A(1) of the Companies Act 2006(6);

“directors' remuneration report” has the same meaning as in section 420 of the Companies Act 2006;

“relevant directors' remuneration policy” has the same meaning as in section 439A(7) of the Companies Act 2006.

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(4) Section 226D was inserted by section 80 of the Enterprise and Regulatory Reform Act 2013.

(5) Section 439A was inserted by section 79 of the Enterprise and Regulatory Reform Act 2013.

(6) The definition of “unquoted traded company” is inserted into section 226A(1) by regulation 6 of these Regulations.

## PART 2

### Amendments to the Companies Act 2006

3. The Companies Act 2006 is amended in accordance with regulations 4 to 27.

#### CHAPTER 1

##### Amendments to Part 10 (a company's directors)

##### **Amendments to section 215**

4. In section 215 (payments for loss of office)(7)—
- (a) in subsection (5), after “company” insert “or unquoted traded company”;
  - (b) after subsection (5) insert—

“(6) “Unquoted traded company” means a traded company (as defined by section 360C) that is not a quoted company.”

##### **Amendment to Chapter 4A**

5. In the heading to Chapter 4A(8), after “companies” insert “and traded companies”.

##### **Amendments to section 226A**

6. In section 226A (key definitions)—
- (a) in subsection (1)—
    - (i) in the definition of “directors’ remuneration policy”, after “company” insert “, or of an unquoted traded company,”;
    - (ii) after the definition of “payment for loss of office” insert—

““unquoted traded company” means a traded company (as defined by section 360C) that is not a quoted company.”;
  - (b) in subsection (2), after “quoted company” insert “or unquoted traded company”;
  - (c) after subsection (9) insert—

“(10) References in this Chapter (other than sections 226E(2)(b) and (5)) to a director of a company include a person who is not a director of the company but who is—

    - (a) its chief executive officer (however described), or
    - (b) where such a function exists in the company, its deputy chief executive officer (however described).”

##### **Amendments to section 226B**

7. In section 226B (remuneration payments)—
- (a) in subsection (1), after “quoted company” insert “or unquoted traded company”;
  - (b) for subsection (1)(b) substitute—

“(b) an amendment to that policy authorising the company to make the payment has been approved by resolution of the members of the company.”.

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(7) Section 215(5) was inserted by section 81 of the Enterprise and Regulatory Reform Act 2013.

(8) Chapter 4A was inserted by section 80 of the Enterprise and Regulatory Reform Act 2013.

### **Amendments to section 226C**

8. In section 226C (loss of office payments)—
- (a) in subsection (1), after “quoted company” insert “or of an unquoted traded company”;
  - (b) for subsection (1)(b) substitute—
    - “(b) an amendment to that policy authorising the company to make the payment has been approved by resolution of the members of the company.”.

### **Amendments to section 226D**

9. In section 226D (sections 226B and 226C: supplementary)—
- (a) in subsection (1)—
    - (i) for “a payment” substitute “an amendment”;
    - (ii) after “proposed payment” insert “to which the amendment relates”;
  - (b) for subsection (2) substitute—
    - “(2) The memorandum must explain the ways in which the payment would be inconsistent with the approved directors’ remuneration policy (within the meaning of the section in question) but for the amendment.”;
  - (c) in subsection (4), for “a payment” substitute “the amendment”;
  - (d) in subsection (6)—
    - (i) in the opening words, after “quoted company” insert “or of an unquoted traded company”, and
    - (ii) in paragraph (a) after “quoted company” insert “or (as the case may be) an unquoted traded company”.

### **Amendments to section 226E**

10. In section 226E (payments made without approval: civil consequences)—
- (a) in subsection (3), after “quoted company” insert “or of an unquoted traded company”;
  - (b) in subsection (4), after “quoted company” insert “or of an unquoted traded company”.

## **CHAPTER 2**

### **Amendments to Part 15 (accounts and reports)**

#### **Amendment to Chapter 6**

11. In the heading to Chapter 6 (quoted companies: directors’ remuneration report), after “companies” insert “and traded companies”.

#### **Amendment to section 420**

12. In section 420(1) (duty to prepare directors’ remuneration report), after “quoted company” insert “, or of a traded company (as defined by section 360C) that is not a quoted company,”.

### **Amendment to section 426A**

**13.** In section 426A (supplementary material)(9), in subsection (2)(e), after “quoted company” insert “or of a traded company (as defined by section 360C) that is not a quoted company”.

### **Amendment to heading before section 430**

**14.** In the italic heading before section 430, after “companies” insert “and traded companies”.

### **Amendments to section 430**

**15.** In section 430 (quoted companies: annual accounts and reports to be made available on website)(10)—

- (a) in the heading, after “companies” insert “and traded companies”;
- (b) in subsection (1), after “quoted company” insert “or unquoted traded company”;
- (c) in subsection (1)(b), at the beginning insert “subject to subsection (4ZA),”;
- (d) in subsection (2A)—
  - (i) after “quoted company” insert “or unquoted traded company”;
  - (ii) after “section 422A,” insert “or amended as mentioned in section 226B(1)(b) or section 226C(1)(b),”;
  - (iii) after “the revised” insert “or amended”;
- (e) in subsection (2B), after “quoted company” insert “or of an unquoted traded company”;
- (f) after subsection (2B) insert—

“(2C) Where the members of a quoted company or of an unquoted traded company have passed a resolution approving the relevant directors’ remuneration policy (within the meaning of section 439A(7))—

  - (a) the company must ensure that the following information is made available on the website on which its remuneration policy is made available as soon as reasonably practicable, and kept available for as long as that information is applicable —
    - (i) the date of the resolution,
    - (ii) the number of votes validly cast,
    - (iii) the proportion of the company’s issued share capital represented by those votes,
    - (iv) the number of votes cast in favour,
    - (v) the number of votes cast against, and
    - (vi) the number of abstentions; and
  - (b) for the purposes of paragraph (a)(iii), the proportion of the issued share capital must be determined by reference to the register of members as at a time (determined by the company) that is not more than 48 hours before the time for the holding of the meeting at which the resolution was passed.”;
- (g) in subsection (3), for “(2B)” substitute “(2C)”;
- (h) in subsection (4)(b), at the beginning insert “subject to subsection (4ZA),”;
- (i) after subsection (4), insert—

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(9) Section 426A was inserted by [S.I. 2013/1970](#).

(10) Section 430 was amended by section 81 of the Enterprise and Regulatory Reform Act 2013.