Because the law isn't black and white.

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Schedules 5 and 8 to the Large & Medium-sized Companies and Groups (Accounts & Reports) Regulations 2008
Directors’ Remuneration Report
Guide

Introduction

Throughout 2010, the attention of regulators and the media has again focussed on remuneration in the banking industry. There have been sweeping new rules on remuneration (including disclosure) which will apply to a large number of firms regulated by the Financial Services Authority. We are producing a separate Guide to these new disclosure rules. If you would like a copy, please email us at Employeeincentives.newsupdates@linklaters.com.

Beyond the financial services sector, not a great deal has changed since last year.

The most significant development in corporate governance was the publication of the new UK Corporate Governance Code by the FRC in June 2010. This replaces the Combined Code for financial years beginning on or after 29 June 2010. Therefore, companies with a calendar year end are only required to apply the new Code for the year beginning 1 January 2011. However, in setting remuneration policy for 2011 and beyond, remuneration committees will need to apply the new Code. In practice, there are very few differences in relation to remuneration or disclosure.

- A new Supporting Principle has been added to emphasise the need for performance-related pay to be aligned with the long-term interests of the company and its risk policies and systems.
- The inclusion of non-financial metrics in performance measurement is recommended (in line with similar requirements for financial services firms).
- Companies are advised to consider clawing back variable remuneration in certain circumstances i.e. misstatement or misconduct. Clawback is not compulsory outside the financial services sector. Our experience is that a significant number of corporates have, or are proposing to, introduce some form of malus or clawback.
- There is clarification that all forms of performance-related remuneration are discouraged for non-executive directors, not just share options.

The new section on “comply or explain” places slightly more emphasis on ‘explain’, highlighting the importance of good disclosure:

“…the rules are not designed to be rigid and non-compliance may be justified if good governance can be achieved by other means. The reasons for non-compliance should be explained clearly to shareholders who need to support the Code’s principles-based system by being prepared to listen and enter into dialogue.”

This theme is picked up by the NAPF’s new Corporate Governance & Voting Guidelines which stress that “companies [should] tailor their policies to their own particular circumstances and … not slavishly follow established guidelines”. The NAPF makes it clearer that votes against remuneration reports will only be considered “in the absence of sufficient explanation”.

The flipside of this is greater engagement with shareholders so that the remuneration committee’s approach is well understood and shareholders’ obligations to engage are now set out in the FRC’s new Stewardship Code, published in July 2010.

This shift in emphasis in relation to ‘comply or explain’ is relevant for disclosure since greater engagement requires better disclosure. As the new NAPF guidelines point out, “effective engagement begins with good-quality reporting and a willingness to listen to shareholder concerns”. The NAPF also considers that poor disclosure is likely to lead investors to take a less sympathetic view of explanations of non-compliance.
Finally, the ABI has not issued revised Guidelines on Executive Remuneration this year. They believe that the 2009 Guidelines and the December 2009 Position Paper remain appropriate for the coming reporting season. However, in view of “recent experience”, the ABI highlight three areas of concern in relation to the remuneration committee’s consultation process:

- the process should be led by the remuneration committee chairman;
- the remuneration committee should ensure there is an adequate explanation of the link between remuneration and strategy; and
- shareholders should have enough time to consider the issues and to respond.

Keeping in touch

As usual, we will update you on developments in this area and full details will be available on ShareKnowledge, our website which gives you access to share plan information and source material. To access ShareKnowledge, please click: https://clientsites.linklaters.com/clients/shareknowledge/Pages/index.aspx.

We hope you find this Guide useful. If you have any questions or comments, or would like us to review your remuneration report please contact Gillian Chapman, Clare Peake or your usual Employment and Incentives contact at Linklaters.

Employment and Incentives team
Linklaters LLP®
December 2010
What does the Guide cover?

The Guide sets out the overlapping disclosure requirements of:

- Schedules 5 and 8 to the Large & Medium-sized Companies and Groups (Accounts & Reports) Regulations 2008;
- the Listing Rules;
- the Combined Code (June 2008) which will be replaced for years beginning on or after 29 June 2010 by the UK Corporate Governance Code;
- the Companies (Summary Financial Statement) Regulations 2008;
- International Accounting Standard 24 in relation to disclosure of compensation of “key management personnel” (relevant for companies listed on a European Union regulated market for accounting periods beginning on or after 1 January 2005);
- the NAPF 2010 Corporate Governance Policy and Voting Guidelines;
- the letter from the NAPF to chairmen of FTSE 350 companies dated 13 November 2009;
- the ABI Principles and Guidelines on Remuneration (December 2009); and
- the ABI Position Paper (December 2009).

The ABI Principles and Guidelines on Remuneration set out the good practice expected of companies by institutional investors. We only include in this Guide additional points not already covered by the Combined Code or Schedule 8.

The NAPF 2010 Corporate Governance Policy and Voting Guidelines comprises a statement of underlying principles and voting guidelines. It sets out “Good Practice”, the standard which NAPF members should expect from the boards and management of companies. This covers a wide range of areas and largely follows the requirements of Schedule 8 and the Combined Code on remuneration policy. In this Guide we only refer to additional points which the NAPF require to be included in remuneration reports.
What do directors need to do?

There is a duty on the directors to prepare a remuneration report complying with Schedule 8. Any failure to do this is an offence punishable by fine. Directors past and present must also provide the necessary information to the company to prepare the report.

The remuneration report should have 4 parts:

- Part 1 sets out who has considered board pay in the financial year being reported on;
- Part 2 contains details of the company’s remuneration policy for the following and subsequent financial years;
- Part 3 is the performance graph; and
- Part 4 (audited) has details of directors’ pay for the financial year.

The remuneration report must be approved by the board and signed on its behalf by a director or company secretary. This signature must appear on the copy of the report sent to the registrar. Each copy of the report which is issued or laid before the company in general meeting should then state who signed it. It is an offence to omit the signature or name of the signatory as described. This is punishable by fines on the company and its officers.

In practice, the duties in relation to preparation and approval of the report are delegated by the board to the remuneration committee.

The report has to be approved by shareholders. Here is a pro-forma shareholder resolution which can be used:

“That the Remuneration Report (as set out on pages • to • of the Annual Report and [summarised on pages • to • of the Summary Financial Statement]) for the financial year ended [31 December 2009] be approved.”

The legislation makes it clear that entitlement to remuneration is not conditional on the approving resolution being passed. However, in practice, where shareholders have either rejected or a significant minority has opposed the approving resolution, companies have indicated that they will take remedial steps.
Key to references in this Guide:

ABI Association of British Insurers Principles and Guidelines on Remuneration
ABI Position Paper Letter from the ABI to remuneration committee chairmen of FTSE 350 companies, dated 15 December 2009
Accounts Regulations The Large & Medium-sized Companies and Groups (Accounts & Reports) Regulations 2008
CA 85 Companies Act 1985
CA 06 Companies Act 2006
CC The Combined Code
CGC* The UK Corporate Governance Code (which replaces the Combined Code for years beginning on or after 29 June 2010)
IAS International Accounting Standard
JS The joint statement on executive contracts and severance by the ABI and NAPF (February 2008)
LR The Listing Rules
NAPF The National Association of Pension Funds 2010 Corporate Governance Policy & Voting Guidelines
NAPF Letter The letter from the NAPF to chairmen of FTSE 350 companies dated 13 November 2009
SFS Companies (Summary Financial Statement) Regulations 2008
Schedule 8 Schedule 8 to the Accounting Regulations

* Since the CGC only applies for years beginning on or after 29 June 2010, references to the CC have been retained for the time being. The provisions on disclosure in the CGC are not materially different from those in the CC but will be in different places.
Linklaters is a global law firm that advises the world’s leading companies, financial institutions and governments on their most challenging deals and transactions. From offices in the major business centres of Europe, Asia and the Americas, our award-winning, integrated teams of creative problem solvers deliver innovative solutions worldwide.
## Committee Details

If a board committee has considered matters relating to directors’ remuneration for the relevant financial year, the report must include:

- the name of each director who was a member of the committee at any time when it was considering any such matter;
- the name of any person who provided to the committee advice or services that materially assisted the committee in its consideration of any matter. If this person is not a director, the nature of any other services that he has provided to the company during the relevant financial year and whether he was appointed by the committee;
- the number of meetings of the remuneration committee during the financial year and individual attendance by directors; and
- where a director has been unable to attend a number of Remuneration Committee meetings, the reason for this.

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<td>Committee Details</td>
<td>Schedule 8, Para 2(1)</td>
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### Notes

1. Committee
2. Person
3. Advice or services
4. Materially assisted
5. Other services
6. CC A.1.2
7. NAPF A.1.2
Committee strictly does not include the board as a whole or two or more directors acting on behalf of the board, considering directors’ pay. However, the spirit of the legislation clearly suggests that it would be best practice to include any meetings relating to directors’ remuneration as relevant committee meetings. The remuneration committee must have at least three or, for companies below FTSE350 throughout the year before the reporting year, two members (CC B.2.1). They should be independent non-executive directors (CC B.2.1). Others can only attend by invitation (CC A.3). In practice, most chairmen are invited to, and do attend, committee meetings. Under the CC, the chairman can be a member of, but should not chair, the remuneration committee, provided he was considered independent on appointment.

Person will include external advisors (for example, lawyers and consultants) who provided advice even if this was passed through another person, e.g. the company secretary. It will also include other members of the board who have advised the committee and other officers of the company. It is expected that the CEO, CFO, HR director and company secretary would appear on the list of providers. Strictly, they should be named. It is not sufficient to identify them by position only. The remuneration committee is responsible for appointing consultants in respect of executive directors’ remuneration (SP B.2 CC). Where remuneration consultants are appointed, a statement should be made available of whether they have any other connection with the company. “Making available” means including the information on the company’s website and providing it on request (CC B.2.1). The NAPF encourages disclosure of how the new Remuneration Consultants Group’s Code of Conduct has been taken into consideration in selecting remuneration consultants and encourages companies to submit the remuneration consultant role to periodic tender and to disclose their policy on this matter, including when the role was last subject to tender.

Advice or services will include most assistance provided by external advisors except pure administration services.

Material assistance is assistance provided specifically to the remuneration committee, rather than to the company in general (including advice given initially to e.g. the HR director and then presented unchanged to the remuneration committee). Companies should consider whether the advice given changed or confirmed the actions taken. Only the remuneration committee itself can determine this. The intention is to bring more transparency to how the remuneration committee makes decisions.

Other services would include, for example, other legal services (and “other legal services” is an acceptable description). No details of costs are required. This requirement is largely to bring transparency to areas of possible conflicts. If any services are provided by remuneration consultants to the company, they should be minimised with respect to both the scope and value of services provided to the remuneration committee. The chairman of the committee should explain to shareholders why it is appropriate for the committee to appoint the same consultants as the company, despite the potential conflict of interest.

The terms of reference of the remuneration committee must also be made available. “Making available” means including the information on the company’s website and providing it on request (CC B.2.1, F.4.1 NAPF).

The NAPF says that shareholders will take low attendance at meetings into account when considering the re-election of directors. An explanation for any non-attendance is important as a trend of non-attendance, without adequate explanation over an extended period (say, a year), may be a factor when shareholders consider the re-election of directors (NAPF A.1.4).
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<td>2</td>
<td>Combined Code</td>
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<tr>
<td>2.1</td>
<td>A narrative statement of how the company has applied the Main Principles set out in the relevant provisions of the Combined Code, providing explanation enabling shareholders to evaluate how the principles have been applied.⁸</td>
<td>LR 9.8.6(5)</td>
</tr>
<tr>
<td>2.2</td>
<td>A statement as to whether or not the company has complied throughout the accounting period with section 1 of the Combined Code. A company that has not complied with all of the Code provisions, or (in the case of provisions whose requirements are of a continuing nature) complied for only part of an accounting period, must specify the Code provisions with which it has not complied, and (where relevant) for what part of the period such non-compliance continued, and give reasons for any non-compliance.⁸</td>
<td>LR 9.8.6(6)</td>
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</table>
These narrative statements are not part of the remuneration report (generally they are included in the corporate governance statement) but the requirement to include them has been set out for completeness, in view of the CC provisions on directors' remuneration. Some companies may also wish to demonstrate compliance with some or all of the CGC provisions, although there is technically no requirement to do so in respect of financial years beginning before 29 June 2010.
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<th>Number</th>
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<td>3</td>
<td>Company Policy Statement</td>
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<tr>
<td>3.1</td>
<td>A statement of the company’s policy on all (executive and non-executive) directors’ remuneration for the following and subsequent financial years.</td>
<td>Schedule 8, Para 3(1) LR 9.8.8(1)</td>
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| 3.2    | • A detailed summary of the performance conditions applying to share option and long-term incentive plan entitlements for each director;  
• An explanation of why they were chosen;  
• A summary of the methods to be used in assessing whether or not the performance conditions are met and explanation as to why those methods were chosen;  
• If any performance condition involves external comparison:  
  • a summary of the factors used in making comparisons; and  
  • if any factor relates to the performance of another company or of two or more companies or of an index, the identity of the companies or index;  
• An explanation must also be given if any director’s entitlement to share options or under long-term incentive plans is not subject to satisfaction of a performance condition; and  
• All performance measures should be fully explained. | Schedule 8 Para 3(2)(a) 3(2)(b) 3(2)(c) 3(2)(d) 3(2)(f) ABI Section III, 2.2 |
| 3.3    | • A description of maximum limits set on annual bonuses payable to directors as part of any performance-related remuneration.                                                                        | CC Schedule A Para 1          |
| 3.4    | • A description of, and explanation for, any significant amendment proposed to be made to the terms and conditions of any director’s entitlement to share options or long-term incentive plans.                                | Schedule 8, Para 3(2)(e)      |
| 3.5    | • An explanation of the relative importance of the elements of each director’s remuneration that are, and are not, performance-related.                                                                  | Schedule 8, Para 3(3)         |
| 3.6    | • A statement of how pay and employment conditions of employees of the company and of other undertakings within the same group as the company were taken into account when determining directors’ remuneration for the relevant financial year. | Schedule 8, Para 4            |
| 3.7    | • Companies should explain how profits are apportioned between retentions (which provide the capital to finance future growth), remuneration (especially bonuses) and dividends to shareholders. | NAPF Letter                   |
| 3.8    | • The remuneration report should describe how the key parameters and structure of remuneration have been applied to remuneration and incentive arrangements for the executive directors and other senior executives falling within the committee’s responsibilities.  
• The remuneration report should also describe the cost to the company and the potential end-value to each participant of the company’s remuneration schemes (assuming minimum and maximum vesting levels). | NAPF D.2.2                    |
The remuneration committee should have responsibility for setting remuneration for all executive directors and the chairman, including pension and compensation payments. It should also recommend and monitor the level and structure of remuneration for senior management (CC B.2.2).

Remuneration for non-executive directors should be determined by the board (CC B.2.3) and should reflect the commitments and responsibilities of the role. It should not include share options (CC B.1.3). If, exceptionally, options are granted, prior shareholder approval is needed and any shares so acquired must be held until at least one year after the non-executive director leaves the board (CC B.1.3). In addition, a director is not considered “independent” if he participates in a share option plan (CC A.3.1).

The policy statement must be forward looking (covering the year following the accounting period covered by the accounts, and subsequent years). As the CGC will apply in respect of financial years beginning on or after 29 June 2010, companies will need to take its provisions into account in setting remuneration policy for future years. It is sometimes difficult to define exactly what policy is, for the purposes of the remuneration report, and so particular consideration should be given as to whether or not one-off arrangements form part of policy.

Long-term incentive plans means arrangements under which a person may receive money or other assets subject to one or more conditions relating to service or performance over more than one financial year, excluding (i) a bonus where the amount is set by reference to performance over one financial year, (ii) compensation for loss of office or (iii) breach of contract or other termination payments, and retirement benefits. LTIPs include deferred bonus conversion plans which require a bonus, in the form of shares, to be held over more than one financial period (this is different to the definition of long-term incentive plans in the Listing Rules).

Summary of the methods requires summary details of the methodology and calculations used in the assessment. Risk should be taken into account as a factor in performance conditions. This is picked up in the ABI guidelines and the NAPF (D2) say that committees should acknowledge that from time to time the link may have weakened and should take steps in that event to strengthen it. The CGC also emphasises that performance measures should look to the long term interest of the company and be compatible with risk policies and systems.

Relative importance needs to be an explanatory statement (a broad statement is sufficient) showing the proportions. Some companies use a simple chart, others give an indicative statement (“more than half”) or a percentage (“at least 65%”), which is often different for different members of the board. Disclosure is required of elements of remuneration “by reference to terms and conditions”. These will often not incorporate share-based incentives. However, in practice, companies do include share-based incentives so that the disclosure more accurately reflects performance-related items. Performance-related elements of remuneration should form a significant proportion of the total remuneration percentage. Schedule A to the CC sets out principles which should be followed by the remuneration committee when designing performance-related schemes (CC B.1.1).

Pay of other employees Companies which have already chosen to comment in this area have not gone into a great deal of detail - typically saying that they have taken the pay and conditions of other employees into account but not explaining how. Certainly, the regulation gives no clues as to how to approach this and the BERR (now the Department for Business, Innovation and Skills (BIS)) guidance on the subject simply says it is up to directors.

PIRC’s views on this may be reflected in its evidence to the Treasury Committee enquiry into the Banking Crisis which noted that:  

“Boilerplate statements simply asserting that the committee ‘is sensitive [to the pay of other employees]’ are commonplace and insufficient. Quantitative and qualitative evidence is required to demonstrate that directors’ remuneration forms part of a coherent policy framework throughout the organisation consistent with the company’s goals and culture, so that all levels are fairly rewarded for their contribution.”
Note that there is no obligation on the remuneration committee to take into account the pay of other employees when setting the policy for directors.

14 **Balance of retention, bonus and dividends** It is not clear where this disclosure should be included. Since it deals with remuneration generally (rather than just directors) it may be appropriate to include it with the disclosure about how the pay of other employees has been taken into account (see above). However, there is no reason why it should go in the remuneration report and it may be more appropriate next to statements on dividend policy.
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<td>3.9</td>
<td>A statement on how performance evaluation of the board, committees and individual directors has been conducted during the financial year.³⁵</td>
<td>CC A.6.1</td>
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<tr>
<td>3.10</td>
<td>An analysis of the extent to which the relevant bonus targets were actually met. The maximum participation levels should be explicitly justified.</td>
<td>ABI Section II, 1.5, 1.6</td>
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<tr>
<td>3.11</td>
<td>Where performance targets for bonuses cannot be disclosed in advance because of commercial sensitivity, the main performance parameters, both corporate and personal, should be reported in the report for the year over which they were tested.</td>
<td>ABI Section II 1.4 ABI Position Paper</td>
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<td>3.12</td>
<td>A summary and explanation of the company's policies regarding the duration of notice periods and termination payments under directors' service contracts. This includes letters of appointment for non-executive directors. (See also Section 9)</td>
<td>Schedule 8, Para 3(4)</td>
</tr>
<tr>
<td>3.13</td>
<td>A statement of the company’s policy on the granting of options or awards under its employees’ share schemes and other long-term incentive schemes, explaining and justifying any departure from that policy in the period under review and any change in the policy from the preceding year.</td>
<td>LR 9.8.8(10)</td>
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<tr>
<td>3.14</td>
<td>The policy statement must include each person who is a director of the company during the period from the end of the relevant financial year to the date on which the remuneration report is put to the vote of the company’s shareholders. In practice, this may be difficult to achieve if a director is appointed shortly before the shareholder meeting.</td>
<td>Schedule 8, Para 3(5)</td>
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| 3.15   | The director’s report must include for all plans (whether or not approved by shareholders):³⁶  
  - a description of any restrictions on the transfer of shares: This will require a disclosure for bonus deferral plans which offer forfeitable shares, co-investment plans and share incentive plans.  
  - a description of change of control provisions in any ‘significant plan’³⁷.  
  - a description of voting rights that are not directly held by employees: We think this applies to employee trusts but only to the extent that the trustee can vote and the beneficiaries cannot instruct the trustee on how to vote. | Part 6 of Schedule 7 of the Accounts Regulations ³⁸ |
| 3.16   | Disclosure is required of prudent and appropriate arrangements governing the acquisition of shares, and its financing, to meet obligations under share-based incentive schemes. This could include plans to satisfy awards or options using shares purchased by an employee trust. Where companies have not decided whether to use existing or newly issued shares, their current intention should be disclosed. | ABI Section III, 5.3 |
| 3.17   | Companies should explain “the steps they are taking to introduce diversity, particularly gender diversity, to the boardroom.” If disclosure is poor, shareholders may wish to consider abstaining or voting against the re-election of the chairman of the nominations committee. If there is no statement on diversity policy, shareholders may choose to vote against the election of a director. This is probably more appropriate for the Corporate Governance Statement than the remuneration report. | NAPF B2 |
This statement would normally be in the corporate governance statement. The non-executive directors, led by the senior independent director, are responsible for the performance evaluation of the chairman, taking into account the views of executive directors (CC A.6.1). There should also be performance evaluation of the board committees. Guidance notes attached to (but not forming part of) the CC set out a checklist which may be used when carrying out performance evaluation.

The format of the disclosures is not prescribed in the legislation but "detailed information" is required. Once you have made a disclosure for the first year, it should only be necessary to change it for future years if you adopt or amend a plan.

It is not clear what ‘significant’ means but, in our view, it is likely to be relevant for any arrangement where significant numbers of shares are under award (e.g. a large sharesave or executive plan) or plans in which directors participate (even if, as a percentage of share capital, the awards are not significant).

These disclosures do not need to be included in the remuneration report but do need to be included in the directors’ report.
### 4 Performance Graph

The remuneration report must include a line graph that shows the "total shareholder return" for the preceding **five financial years** (of which the last is the relevant financial year) for:

- a holding of shares of the class of the company's equity share capital whose listing, or admission to dealing, has resulted in the company falling within the definition of "quoted company"; and

- a **hypothetical holding of shares** made up of shares of the same kinds and number as those by reference to which a broad equity market index is calculated. The name of the index and the reasons for its selection must be given.

"Total shareholder return" should be calculated using a "**fair method**" that takes as its starting point the percentage change over the measurement period in the market price of the relevant shareholding. It must be calculated on the assumptions that:

- all cash or cash equivalent of a benefit on the relevant shares is reinvested in the shares when the benefit is receivable;

- that any benefit in shares is added to the holding; and

- that all liabilities arising on the relevant shares are funded by the sale (immediately before the liability is due to be satisfied) of such part of the shareholding as has a market price equal to the amount of the liability in respect of the part of the shareholding that is not being sold.

Provision must be made for the replacement of shares in the holding.

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<td>4</td>
<td><strong>Performance Graph</strong></td>
<td>Schedule 8, Paras 5, 5(1)(a), 5(1)(b), 5(4), 5(5)</td>
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<td></td>
<td>The remuneration report must include a line graph that shows the &quot;total shareholder return&quot; for the preceding <strong>five financial years</strong> (of which the last is the relevant financial year) for:</td>
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<td>- a holding of shares of the class of the company's equity share capital whose listing, or admission to dealing, has resulted in the company falling within the definition of &quot;quoted company&quot;; and</td>
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<td>- a <strong>hypothetical holding of shares</strong> made up of shares of the same kinds and number as those by reference to which a broad equity market index is calculated. The name of the index and the reasons for its selection must be given.</td>
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<td>&quot;Total shareholder return&quot; should be calculated using a &quot;<strong>fair method</strong>&quot; that takes as its starting point the percentage change over the measurement period in the market price of the relevant shareholding. It must be calculated on the assumptions that:</td>
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<td>- all cash or cash equivalent of a benefit on the relevant shares is reinvested in the shares when the benefit is receivable;</td>
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<td>- that any benefit in shares is added to the holding; and</td>
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<td>- that all liabilities arising on the relevant shares are funded by the sale (immediately before the liability is due to be satisfied) of such part of the shareholding as has a market price equal to the amount of the liability in respect of the part of the shareholding that is not being sold.</td>
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<td>Provision must be made for the replacement of shares in the holding.</td>
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</table>
19 **Line graph** – this must be a line graph joining up points plotted representing total shareholder return. The vast majority of companies have produced a 5 point straight line graph with points plotted for each financial year. The aim of the regulations is to provide clarity in the comparison, rather than track price movements of the company. Companies may wish to include other information, for example performance against a non-market-recognised index, for example the LTIP comparator group of companies. If so, this should be set out in separate graphs.

20 **Five financial years** - in relation to “new entities”, our interpretation of the regulations is as follows:

- for a newly incorporated company, only the periods since incorporation;
- for a newly listed company, only periods since listing;
- for “merged” companies, the previous five financial years for the company that remains quoted. Results affected by the merger can be explained in the notes.

If a new holding company has been created, only periods since the incorporation of that holding company are required to be included. However, companies should consider including extra information in relation to prior periods or, for example, the company that has been taken over, to give a full picture to shareholders. AIM listed companies which transfer to the main exchange are effectively a newly listed companies for this purpose. However, the AIM-listed periods are sometimes included in the graph, depending on the circumstances.

21 **Hypothetical holding of shares by reference to which a broad equity market index is calculated.**

The broad equity market index should be a market-recognised index, rather than companies simply selected by the company. An index of less than 10 companies is unlikely to be considered ‘broad’. The majority of companies have used the FTSE 100. Others have used sector indices. Any weighting applied to the index also needs to be applied to the hypothetical holding.

22 **Fair method** means a fair methodology based on market practice. We understand that averaging is permitted provided it gives a fair representation. The disclosure is likely to be that the method chosen is an industry standard.
<table>
<thead>
<tr>
<th>Number</th>
<th>Disclosure</th>
<th>Regulatory Reference</th>
</tr>
</thead>
<tbody>
<tr>
<td>5.1</td>
<td>The remuneration report must include for each person who has served as a director during the relevant financial year:</td>
<td>LR 9.8.8(2) and Schedule 8, Para 7</td>
</tr>
<tr>
<td></td>
<td>• total amount of salary and fees paid or receivable;</td>
<td>7(1)(a)</td>
</tr>
<tr>
<td></td>
<td>• total amount of bonuses paid or receivable;</td>
<td>7(1)(a)</td>
</tr>
<tr>
<td></td>
<td>• total amount of expenses allowance paid or receivable and chargeable to UK income tax (or would be if the person were an individual);</td>
<td>7(1)(c)</td>
</tr>
<tr>
<td></td>
<td>• total amount of compensation for loss of office paid or receivable and other payments paid or receivable in connection with termination of qualifying services;</td>
<td>7(1)(d)</td>
</tr>
<tr>
<td></td>
<td>• total estimated value of any non-cash benefits received not covered above; and</td>
<td>7(1)(e)</td>
</tr>
<tr>
<td></td>
<td>• total of the sums referred to above, and the total for the previous financial year.</td>
<td>7(1)(f), 7(2)</td>
</tr>
<tr>
<td></td>
<td>Any awards made to a former director during the relevant financial year including amounts for loss of office, breach of contract or other termination payments and pensions.</td>
<td>15, 7(1)(d)</td>
</tr>
<tr>
<td></td>
<td>The information should appear in tabular form and explanatory notes should be included as necessary.</td>
<td>Para 7(4)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>LR 9.8.8(2)</td>
</tr>
<tr>
<td>5.2</td>
<td>Explanation and justification of any element of remuneration (including annual bonuses and benefits in kind), other than basic salary, which is pensionable.</td>
<td>LR 9.8.8(7)</td>
</tr>
<tr>
<td>5.3</td>
<td>Where a TSR or other relative performance measure is unpinned by another measure, any determination of vesting should be justified in relation to the overall underlying financial performance of the company and not solely by performance relative to peer companies and this determination should be disclosed in the remuneration report.</td>
<td>ABI Position Paper</td>
</tr>
<tr>
<td>5.4</td>
<td>In respect of each person who has been a director during the year, sums (including the estimated money value of non-cash benefits) paid to a third party in respect of that director's services (as a director of the company, a subsidiary or in connection with related management duties).</td>
<td>Schedule 8, Para 16</td>
</tr>
<tr>
<td>5.5</td>
<td>The aggregate amount of emoluments paid to or receivable by directors.</td>
<td>Schedule 5 the Accounts Regulations, Para 1(1)(a)</td>
</tr>
<tr>
<td>5.6</td>
<td>Where an executive director serves as a non-executive director elsewhere, a statement as to whether or not the director will retain the non-executive director's fees and, if so, the total amount of these fees.</td>
<td>CC B.1.4</td>
</tr>
</tbody>
</table>
This section of the report must be audited.

This would include bonuses earned in the reported year but not calculated until after the year end. Where there is a bonus deferral plan, normal practice would be to disclose the amount of cash paid with a footnote showing the amount to be deferred (and/or, if the deferral awards have already been granted, the number of shares). The actual grant will be shown under Long Term Incentive Plans table in the following year.

Expense allowance – we understand this would also cover reimbursement of expenses which are taxable.

The NAPF guidelines specify that it is normally not appropriate for non-contractual and other ex-gratia payments to be made either during employment or at the end of employment. The NAPF, jointly with the ABI, has published guidance on termination payments which is designed to eliminate ‘payments for failure’.

The value of all non-cash elements should be included in the total but in practice companies do not always itemise elements which are not material in the footnotes. The ABI require that payments in lieu of pension scheme participation should be clearly disclosed and treated as a separate non-salary benefit (and not as part of bonus entitlements or share scheme grants). Generally, non-cash items necessary to carry out the office of director (such as travel to board meetings) are not disclosable except where the provision goes beyond that which is strictly necessary. This is a complex area and specific advice should be sought.

‘Awards’ includes both contractual and discretionary payments. Schedule 8 refers to “significant awards” but this should be interpreted widely.

This amount is required to appear in the notes to the accounts. However, some companies are including it as part of the remuneration table. Note that this may include amounts paid to ‘connected persons’ so the position should be carefully examined to ensure correct disclosure. ‘Connected persons’ here has a wider meaning than that used for the disclosure of interests in shares (5.7).
| 5.7 | The annual report should include details of interests in shares by directors and their ‘connected persons’ as at the end of the period under review, together with any changes in those interests occurring between the end of the reported year and a date not more than a month before the date of the notice of annual general meeting. If there is no change, that should be disclosed.\(^{30}\) | LR 9.8.6(1) |
| 5.8 | Compensation paid to “key management personnel”\(^{31}\) must be disclosed in total and for each of the following categories:  
  - short-term employee benefits;  
  - post-employment benefits;  
  - other long-term benefits;  
  - termination benefits; and  
  - share-based payment. | IAS 24 |
30 The ‘interests’ are those reportable as transactions in shares under the Disclosure & Transparency Rules.

31 “Key management personnel” are those having authority and responsibility for planning, directing and controlling the activities of the company directly or indirectly, including all executive and non-executive directors. Some companies interpret this to cover the same group as persons or directors with managerial responsibility (under the Disclosure & Transparency Rules, i.e. PDMRs).
6 Share Options

6.1 Details of:

- the number of shares in respect of which each director holds options at the beginning of the relevant financial year (or, if later, on appointment) and at the end of the relevant financial year (or, if earlier, on cessation), in each case differentiating between options exercisable at different prices and/or on different dates;
- options awarded, exercised, expired unexercised or varied, during the relevant financial year;
- the following details for each option which is unexpired at any time during the financial year:
  - exercise price (and price paid on grant, if any);
  - exercise period;
  - expiry date;
  - summary of performance criteria (including a description of any variation made during the year);
- highest and lowest share prices during the year;
- share price at year end; and
- for each option exercised during the year, share price at the time of exercise.

All such information (except details of variations) must be presented in tabular form together with explanatory notes as necessary.

6.2 The aggregate of the amount of gains made by directors on the exercise of share options.

<table>
<thead>
<tr>
<th>Number</th>
<th>Disclosure</th>
</tr>
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<tbody>
<tr>
<td>6</td>
<td>Share Options</td>
</tr>
<tr>
<td>6.1</td>
<td>Details of:</td>
</tr>
<tr>
<td></td>
<td>• the number of shares in respect of which each director holds options at the beginning of the relevant financial year (or, if later, on appointment) and at the end of the relevant financial year (or, if earlier, on cessation), in each case differentiating between options exercisable at different prices and/or on different dates;</td>
</tr>
<tr>
<td></td>
<td>• options awarded, exercised, expired unexercised or varied, during the relevant financial year;</td>
</tr>
<tr>
<td></td>
<td>• the following details for each option which is unexpired at any time during the financial year:</td>
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<tr>
<td></td>
<td>• exercise price (and price paid on grant, if any);</td>
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<td></td>
<td>• exercise period;</td>
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<td></td>
<td>• expiry date;</td>
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<tr>
<td></td>
<td>• summary of performance criteria (including a description of any variation made during the year);</td>
</tr>
<tr>
<td></td>
<td>• highest and lowest share prices during the year;</td>
</tr>
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<td></td>
<td>• share price at year end; and</td>
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<td></td>
<td>• for each option exercised during the year, share price at the time of exercise.</td>
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</table>

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<tr>
<th>Number</th>
<th>Disclosure</th>
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</thead>
<tbody>
<tr>
<td>6.2</td>
<td>The aggregate of the amount of gains made by directors on the exercise of share options.</td>
</tr>
</tbody>
</table>
This section of the report must be audited.

To avoid excessive length, the information need not differentiate between options with different terms and conditions. Unusually large individual items may need to be noted to prevent misleading conclusions being drawn from an average.

Companies deal with this in various ways. It is our view that, where a director exercises options after his appointment ends but before the end of the financial year, the number held on cessation should be shown in the table together with exercises post cessation. Where a director is appointed during a financial year, the number of options held on appointment should be shown and all option exercises for the year. It is not clear whether this should include exercises before appointment. Market practice seems to be that option exercises before appointment (but within the financial year under review) are not disclosed, but those after cessation (but within the financial year under review) are disclosed. Where a director leaves after the end of the financial year but before publication, it would be appropriate to disclose the number of options held on cessation, if timing allows. Some companies will also disclose exercises after the end of the financial year but before publication of the report, often by way of footnote.

Full disclosure must be made for options granted, exercised or varied during the relevant financial year.

To avoid excessive length these prices can be aggregated and weighted averages can be used, but out of the money options cannot be aggregated with in the money options.

To avoid excessive length these disclosures may be aggregated and a range of dates disclosed, but out of the money options cannot be aggregated with in the money options.

Performance criteria should be summarised in a note to the table. Sufficient information should be included if this is a different performance criteria from that described in the policy statement.

Some companies also disclose exercises after the end of the financial year.

See note 29, the aggregate may appear in the share options table.
<table>
<thead>
<tr>
<th>Number</th>
<th>Disclosure</th>
<th>Regulatory Reference</th>
</tr>
</thead>
<tbody>
<tr>
<td>7</td>
<td><strong>Long-Term Incentive Plans</strong></td>
<td></td>
</tr>
</tbody>
</table>
| 7.1    | Details of any long-term incentive plans (except options otherwise disclosed), as follows:  
- the interests of each director at the start (or, if later, on appointment) and end of the financial period (or, if earlier, on cessation);  
- the end of the period by which the qualifying conditions for any LTIP interests must be fulfilled;  
- a description of any variations to terms and conditions made to any LTIP interests;  
- for interests awarded during the year, the following information:  
  - number of shares;  
  - share price on date of award;  
  - details of qualifying conditions; and  
  - vesting date (when interests crystallise);  
- for interests which vested during the year, the following information:  
  - the money value and number of shares, cash payments or other benefits received by each director during the period;  
  - number of shares receivable;  
  - award date;  
  - share price on award date;  
  - share price on vesting date;  
  - details of qualifying conditions; and  
  - amount of money and value of any other assets receivable. | LR 9.8.8(3), (4),(5) and (6)  
Schedule 8, Para 11, 12  
Para 12(1)(d)(i)  
Para 12(1)(d)(i)  
Para 12(1)(b), (d)  
LR 9.8.8(4)  
LR 9.8.8(5), Schedule 8, Para 12(1)(e)  
Para 11(3) |
| 7.2    | The aggregate of:  
- the amount of money paid to or receivable by directors under long-term incentive schemes; and  
- the net value of assets (other than money and share options) received or receivable by directors. | Schedule 5 the Accounts Regulations, Para 1(1)(c) |
This section of the report must be audited.

Long-term incentive plans means arrangements under which a person may receive money or other assets subject to one or more conditions relating to service or performance over more than one financial year, excluding (i) a bonus where the amount is set by reference to performance over one financial year, (ii) compensation for loss of office, or (iii) breach of contract or other termination payments, and retirement benefits. Deferred bonus conversion plans which require a bonus, in the form of shares, to be held over more than one financial period are included and must be disclosed. This definition is different to that relevant for the Listing Rules.

Where additional shares are awarded representing dividends “earned” on LTIP awards during performance periods, these may need to be included depending on the wording of the plan and the timing of the entitlement. For deferred bonus plans, the portion of the bonus deferred could be disclosed here (even though the grant takes place after the end of the year). However, the more common practice is to disclose the grant the following year but mention it in the disclosure on bonuses for the reporting year. See note 24.

This should include awards vested during the financial year, even after a director leaves office.

Usually awards will vest shortly after the end of the financial year when the performance condition has been determined. This will often be before the publication of the annual report. Whilst it is not a requirement to show what percentage of the award has vested (as the vesting occurs after the year end), some companies include it in the table, typically by way of footnote, if it is known.

See note 29. The aggregate may appear in the LTIP table. The requirement is only to include awards made or vested in the reporting year.
### 8 Retirement Benefits

#### 8.1
For defined benefit pension schemes, in respect of each person who has been a director during the year:

- details of any changes (including the amount of increase) in accrued benefits over the period and of the accumulated total amount of accrued benefit as at the year-end;\(^4\) and
- the transfer value (less directors’ contributions) of the relevant increase in accrued benefit calculated consistently with GN11 as at the year-end (but making no deduction for any under-funding) as at the end of the period, or so much of the following information as is necessary to make a reasonable assessment of the transfer value for each director: current age; normal retirement age; the amount of any contributions paid or payable by the director under the terms of the scheme during the period; details of spouse’s and dependants’ benefits; early retirement rights and options, expectations of pension increases after retirement (whether guaranteed or discretionary); and discretionary benefits for which allowance is made in transfer values on leaving and any other relevant information which will significantly affect the value of the benefits.

Voluntary contributions and benefits should be excluded.

In respect of qualifying services, the following information must be given in respect of each person who has been a director during the year:

- the transfer value (calculated consistently with GN11) of the person’s accrued benefits at the end of the year;
- the transfer values from the preceding year’s report or, if the report contained no such value, the transfer value (calculated consistently with GN11) from the beginning of the relevant year; and
- the difference in these two transfer values. Contributions from the person concerned in the relevant financial year should be excluded.

Changes in pension benefit entitlements or to transfer values reflecting significant changes in actuarial and other relevant assumptions, should be fully explained and justified. Where changes to pension benefit entitlements or transfers are of a discretionary nature, these should be made clear and justification provided.

#### 8.2
For money purchase pension schemes, in respect of each person who has been a director during the period, details of contributions or allowances paid or payable by the company.

#### 8.3
In respect of each person who has served as a director of the company during or before the relevant financial year, details of the amount of retirement benefits paid to or receivable by such person under pensions schemes in respect of qualifying services in excess of the retirement benefits to which he was entitled on the later of 31 March 1997 and the date on which the benefits first became payable.\(^5\)

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<table>
<thead>
<tr>
<th>Number</th>
<th>Disclosure</th>
</tr>
</thead>
<tbody>
<tr>
<td>8</td>
<td>Retirement Benefits”1”</td>
</tr>
<tr>
<td>8.1</td>
<td>For defined benefit pension schemes, in respect of each person who has been a director during the year:</td>
</tr>
<tr>
<td></td>
<td>- details of any changes (including the amount of increase) in accrued benefits over the period and of the accumulated total amount of accrued benefit as at the year-end; and</td>
</tr>
<tr>
<td></td>
<td>- the transfer value (less directors’ contributions) of the relevant increase in accrued benefit calculated consistently with GN11 as at the year-end (but making no deduction for any under-funding) as at the end of the period, or so much of the following information as is necessary to make a reasonable assessment of the transfer value for each director: current age; normal retirement age; the amount of any contributions paid or payable by the director under the terms of the scheme during the period; details of spouse’s and dependants’ benefits; early retirement rights and options, expectations of pension increases after retirement (whether guaranteed or discretionary); and discretionary benefits for which allowance is made in transfer values on leaving and any other relevant information which will significantly affect the value of the benefits. Voluntary contributions and benefits should be excluded. In respect of qualifying services, the following information must be given in respect of each person who has been a director during the year:</td>
</tr>
<tr>
<td></td>
<td>- the transfer value (calculated consistently with GN11) of the person’s accrued benefits at the end of the year;</td>
</tr>
<tr>
<td></td>
<td>- the transfer values from the preceding year’s report or, if the report contained no such value, the transfer value (calculated consistently with GN11) from the beginning of the relevant year; and</td>
</tr>
<tr>
<td></td>
<td>- the difference in these two transfer values. Contributions from the person concerned in the relevant financial year should be excluded. Changes in pension benefit entitlements or to transfer values reflecting significant changes in actuarial and other relevant assumptions, should be fully explained and justified. Where changes to pension benefit entitlements or transfers are of a discretionary nature, these should be made clear and justification provided.</td>
</tr>
<tr>
<td>8.2</td>
<td>For money purchase pension schemes, in respect of each person who has been a director during the period, details of contributions or allowances paid or payable by the company.</td>
</tr>
<tr>
<td>8.3</td>
<td>In respect of each person who has served as a director of the company during or before the relevant financial year, details of the amount of retirement benefits paid to or receivable by such person under pensions schemes in respect of qualifying services in excess of the retirement benefits to which he was entitled on the later of 31 March 1997 and the date on which the benefits first became payable.</td>
</tr>
</tbody>
</table>

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\(^4\) LR 9.8.8(11)

\(^5\) Schedule 8, Para 13(3)
47 This section of the report must be audited.

48 Schedule 8, Paragraph 13(2)(a) is silent as to whether inflation should be excluded. In practice, given the current rate of inflation and the fact that inflation will, in most defined benefit schemes, only be relevant to directors who leave service during the year and become deferred, the difference between the two figures is unlikely to be material.

49 This need not include amounts paid or receivable under a pension scheme if (i) all pensioner members of the scheme received such amounts on the same basis, and (ii) such amounts were or could have been paid without recourse to further contributions (given the funding of the scheme).
| 8.4 | The aggregate value of any contributions paid (or treated as paid) to a pension scheme that affect the calculation of the rate or amount of any money purchase benefits that may become payable.⁵⁰ | Schedule 5 the Accounts Regulations, Para (1)(d); Schedule 8, Para 13(3) |
| 8.5 | Payments in lieu of pension scheme participation (See note 27.) | ABI Section II, 2.2 |
| 8.6 | For money purchase and defined benefit schemes, the number of directors (if any) to whom retirement benefits are accruing under such schemes. | Schedule 5 the Accounts Regulations, Para (2) |
| 8.7 | Pension costs should be clearly explained and any disproportionate costs and values identified and the extent to which liabilities are funded and aggregate outstanding unfunded liabilities disclosed. | ABI Section II, 2.1 |
| 8.8 | Changes being made to pension provision as a result of A Day or other changes to personal taxation should be explained. The ABI states that companies should not compensate pension participants for increased tax as a result of A Day or other changes to personal taxation and so a statement to that effect in the report is good practice. Companies should consider whether there are ways of delivering remuneration that are more cost-effective than a pension fund and more aligned with shareholder value creation. | ABI Section II, 2.6 |
The strict requirement is for this information to appear in the notes to the accounts. However, the auditors may agree to its inclusion as part of the retirement benefits table.
<table>
<thead>
<tr>
<th>Number</th>
<th>Disclosure</th>
<th>Regulatory Reference</th>
</tr>
</thead>
<tbody>
<tr>
<td>9</td>
<td><strong>Service Contracts</strong>&lt;sup&gt;57&lt;/sup&gt;</td>
<td></td>
</tr>
</tbody>
</table>
| 9.1    | • Details must be given of the service contract or contract for services of any person who has served as a director<sup>60</sup> during the relevant financial year as follows:  
  - the date, unexpired term and notice period;  
  - any provision for compensation payable on early termination<sup>51</sup>; and  
  - any other contractual terms that are necessary to estimate the liability of the company in the event of early termination.  
  • The reasons for any notice period in excess of one year should be given.<sup>54</sup> | Schedule 8, Para 6(1) |
| 9.2    | Companies should clearly disclose key elements of directors’ contracts on their website and summarise them in the remuneration report.<sup>55</sup> | JS Principle 2.7 |
This section does not form part of the audited information. It may appear with the summary on the company’s policy on duration of notice periods and termination payments. See section 3.12. The NAPF cites absence of service contract for an executive director (in the absence of sufficient explanation) as one of the factors which may lead a shareholder to vote against the remuneration report (D.1.4).

“Director” here covers both executive and non-executive directors. The relevant information set out in non-executive directors’ letters of appointment should therefore be disclosed.

See section 3.12.

The CC requires notice periods to be set at one year or less. If it is necessary to offer longer periods to new directors recruited from outside the company, such periods should reduce to one year or less after the initial period (CC B.1.6). The JS suggests that a one-year notice period is not to be seen as a minimum. It encourages boards to consider contracts with a shorter notice period.

Market practice is still developing in this area and it remains to be seen to what extent this will be complied with. The Companies Act 2006 requirement is for companies to have directors’ service contracts available for inspection at their registered office.
10 Summary Financial Statements

10.1 A company that prepares summary financial statements must now include:
- the whole, or a summary, of its statement of policy on remuneration;\(^{56}\)
- the aggregate amount of directors' emoluments;\(^{57}\)
- aggregate amount of gains made by directors on the exercise of share options during the year;\(^{57}\)
- aggregate value of shares awarded or vested during the year under long term incentive schemes;\(^{57}\)
- aggregate value of company pension contributions;\(^{57}\)
- the number of directors to whom benefits are accruing under money purchase and defined benefit schemes;\(^{57}\) and
- a performance graph.

<table>
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<tr>
<th>Number</th>
<th>Disclosure</th>
<th>Regulatory Reference</th>
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</thead>
<tbody>
<tr>
<td>10</td>
<td>10.1</td>
<td>Schedules 1 and 2, Para 2A Summary Financial Statement Regulation 2008</td>
</tr>
</tbody>
</table>

10.2 Summary statements should also:
- state that it is only a summary of information in the annual accounts, directors' report and remuneration report;
- contain an auditor’s opinion as to whether the statement is consistent with those documents and complies with ss427 and 428 CA 06 and the regulations made under it; and
- state whether the auditor’s report on the annual accounts and the auditable part of the remuneration report was qualified or unqualified (and, if qualified, set out the full report and other necessary explanatory material).

<table>
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<tr>
<th>Number</th>
<th>Disclosure</th>
<th>Regulatory Reference</th>
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<tr>
<td>10</td>
<td>10.2</td>
<td>s427(4) and s428(4) CA 06</td>
</tr>
</tbody>
</table>
Companies have included all or most of their remuneration reports in summary financial statements sent to shareholders. This is done on the basis that shareholders are being asked to approve the remuneration report and companies have taken the view that they could not ask shareholders to approve a report they would not see unless the full report was included in the summary financial statements.

The remuneration report in the summary financial statements need not be signed separately from the rest of the report.

This is the information required under paragraph 1 of Schedule 5 the Accounts Regulations to be included as notes to the accounts, see sections 5.5, 6.2, 7.2, 8.4 and 8.6 in this Guide.
PART 1

PROVISIONS APPLYING TO QUOTED AND UNQUOTED COMPANIES

Total amount of directors’ remuneration etc.

1 (1) There must be shown
(a) the aggregate amount of remuneration paid to or receivable by directors in respect of qualifying services;
(b) the aggregate of the amount of gains made by directors on the exercise of share options;
(c) the aggregate of the amount of money paid to or receivable by directors, and the net value of assets (other than money and share options) received or receivable by directors, under long term incentive schemes in respect of qualifying services; and
(d) the aggregate value of any company contributions
   (i) paid, or treated as paid, to a pension scheme in respect of directors’ qualifying services, and
   (ii) by reference to which the rate or amount of any money purchase benefits that may become payable will be calculated.

(2) There must be shown the number of directors (if any) to whom retirement benefits are accruing in respect of qualifying services
(a) under money purchase schemes, and
(b) under defined benefit schemes.

(3) In the case of a company which is not a quoted company and whose equity share capital is not listed on the market known as AIM
(a) sub-paragraph (1) has effect as if paragraph (b) were omitted and, in paragraph (c), “assets” did not include shares; and
(b) the number of each of the following (if any) must be shown, namely
   (iii) the directors who exercised share options, and
   (iv) the directors in respect of whose qualifying services shares were received or receivable under long term incentive schemes.
QUOTED COMPANIES: DIRECTORS’ REMUNERATION REPORT

PART 1
INTRODUCTORY

1 (1) In the directors’ remuneration report for a financial year (“the relevant financial year”) there must be shown the information specified in Parts 2 and 3.

(2) Information required to be shown in the report for or in respect of a particular person must be shown in the report in a manner that links the information to that person identified by name.

PART 2
INFORMATION NOT SUBJECT TO AUDIT

Consideration by the directors of matters relating to directors’ remuneration

2 (1) If a committee of the company’s directors has considered matters relating to the directors’ remuneration for the relevant financial year, the directors’ remuneration report must

(a) name each director who was a member of the committee at any time when the committee was considering any such matter;

(b) name any person who provided to the committee advice, or services, that materially assisted the committee in their consideration of any such matter;

(c) in the case of any person named under paragraph (b), who is not a director of the company, state

(i) the nature of any other services that that person has provided to the company during the relevant financial year; and

(ii) whether that person was appointed by the committee.

(2) In sub-paragraph (1)(b) “person” includes (in particular) any director of the company who does not fall within sub-paragraph (1)(a).

Statement of company’s policy on directors’ remuneration

3 (1) The directors’ remuneration report must contain a statement of the company’s policy on directors’ remuneration for the following financial year and for financial years subsequent to that.

(2) The policy statement must include

(a) for each director, a detailed summary of any performance conditions to which any entitlement of the director

(i) to share options, or

(ii) under a long term incentive scheme,
is subject;

(b) an explanation as to why any such performance conditions were chosen;

(c) a summary of the methods to be used in assessing whether any such performance conditions are met and an explanation as to why those methods were chosen;

(d) if any such performance condition involves any comparison with factors external to the company

(iii) a summary of the factors to be used in making each such comparison, and

(iv) if any of the factors relates to the performance of another company, of two or more other companies or of an index on which the securities of a company or companies are listed, the identity of that company, of each of those companies or of the index;

(e) a description of, and an explanation for, any significant amendment proposed to be made to the terms and conditions of any entitlement of a director to share options or under a long term incentive scheme; and

(f) if any entitlement of a director to share options, or under a long term incentive scheme, is not subject to performance conditions, an explanation as to why that is the case.

(3) The policy statement must, in respect of each director’s terms and conditions relating to remuneration, explain the relative importance of those elements which are, and those which are not, related to performance.

(4) The policy statement must summarise, and explain, the company’s policy on

(a) the duration of contracts with directors, and

(b) notice periods, and termination payments, under such contracts.

(5) In sub-paragraphs (2) and (3), references to a director are to any person who serves as a director of the company at any time in the period beginning with the end of the relevant financial year and ending with the date on which the directors’ remuneration report is laid before the company in general meeting.

Statement of consideration of conditions elsewhere in company and group

4 The directors’ remuneration report must contain a statement of how pay and employment conditions of employees of the company and of other undertakings within the same group as the company were taken into account when determining directors’ remuneration for the relevant financial year.

Performance graph

5 (1) The directors’ remuneration report must

(a) contain a line graph that shows for each of

(i) a holding of shares of that class of the company’s equity share capital whose listing, or admission to dealing, has resulted in the company falling within the definition of “quoted company”, and

(ii) a hypothetical holding of shares made up of shares of the same kinds and
number as those by reference to which a broad equity market index is calculated;

a line drawn by joining up points plotted to represent, for each of the financial years in the relevant period, the total shareholder return on that holding; and

(b) state the name of the index selected for the purposes of the graph and set out the reasons for selecting that index.

(2) For the purposes of sub-paragraphs (1) and (4), “relevant period” means the five financial years of which the last is the relevant financial year.

(3) Where the relevant financial year

(a) is the company’s second, third or fourth financial year, sub-paragraph (2) has effect with the substitution of “two”, “three” or “four” (as the case may be) for “five”; and

(b) is the company’s first financial year, “relevant period”, for the purposes of subparagraphs (1) and (4), means the relevant financial year.

(4) For the purposes of sub-paragraph (1), the “total shareholder return” for a relevant period on a holding of shares must be calculated using a fair method that

(a) takes as its starting point the percentage change over the period in the market price of the holding;

(b) involves making

(i) the assumptions specified in sub-paragraph (5) as to reinvestment of income, and

(ii) the assumption specified in sub-paragraph (7) as to the funding of liabilities, and

(c) makes provision for any replacement of shares in the holding by shares of a different description;

and the same method must be used for each of the holdings mentioned in sub-paragraph (1).

(5) The assumptions as to reinvestment of income are

(a) that any benefit in the form of shares of the same kind as those in the holding is added to the holding at the time the benefit becomes receivable; and

(b) that any benefit in cash, and an amount equal to the value of any benefit not in cash and not falling within paragraph (a), is applied at the time the benefit becomes receivable in the purchase at their market price of shares of the same kind as those in the holding and that the shares purchased are added to the holding at that time.

(6) In sub-paragraph (5) “benefit” means any benefit (including, in particular, any dividend) receivable in respect of any shares in the holding by the holder from the company of whose share capital the shares form part.

(7) The assumption as to the funding of liabilities is that, where the holder has a liability to the company of whose capital the shares in the holding form part, shares are sold from
the holding

(a) immediately before the time by which the liability is due to be satisfied, and
(b) in such numbers that, at the time of the sale, the market price of the shares sold equals the amount of the liability in respect of the shares in the holding that are not being sold.

(8) In sub-paragraph (7) “liability” means a liability arising in respect of any shares in the holding or from the exercise of a right attached to any of those shares.

Service contracts

6  (1) The directors’ remuneration report must contain, in respect of the contract of service or contract for services of each person who has served as a director of the company at any time during the relevant financial year, the following information

(a) the date of the contract, the unexpired term and the details of any notice periods;
(b) any provision for compensation payable upon early termination of the contract; and
(c) such details of other provisions in the contract as are necessary to enable members of the company to estimate the liability of the company in the event of early termination of the contract.

(2) The directors’ remuneration report must contain an explanation for any significant award made to a person in the circumstances described in paragraph 15.

PART 3
INFORMATION SUBJECT TO AUDIT

Amount of each director’s emoluments and compensation in the relevant financial year

7  (1) The directors’ remuneration report must for the relevant financial year show, for each person who has served as a director of the company at any time during that year, each of the following

(a) the total amount of salary and fees paid to or receivable by the person in respect of qualifying services;
(b) the total amount of bonuses so paid or receivable;
(c) the total amount of sums paid by way of expenses allowance that are
   (i) chargeable to United Kingdom income tax (or would be if the person were an individual), and
   (ii) paid to or receivable by the person in respect of qualifying services;
(d) the total amount of
   (i) any compensation for loss of office paid to or receivable by the person, and
   (ii) any other payments paid to or receivable by the person in connection with the termination of qualifying services;
(e) the total estimated value of any benefits received by the person otherwise than in
cash that  
(i) do not fall within any of paragraphs (a) to (d) or paragraphs 8 to 12,  
(ii) are emoluments of the person, and  
(iii) are received by the person in respect of qualifying services; and  
(f) the amount that is the total of the sums mentioned in paragraphs (a) to (e).

(2) The directors’ remuneration report must show, for each person who has served as a director of the company at any time during the relevant financial year, the amount that for the financial year preceding the relevant financial year is the total of the sums mentioned in paragraphs (a) to (e) of sub-paragraph (1).

(3) The directors’ remuneration report must also state the nature of any element of a remuneration package which is not cash.

(4) The information required by sub-paragraphs (1) and (2) must be presented in tabular form.

Share options

8 (1) The directors’ remuneration report must contain, in respect of each person who has served as a director of the company at any time in the relevant financial year, the information specified in paragraph 9.

(2) Sub-paragraph (1) is subject to paragraph 10 (aggregation of information to avoid excessively lengthy reports).

(3) The information specified in sub-paragraphs (a) to (c) of paragraph 9 must be presented in tabular form in the report.

(4) In paragraph 9 “share option”, in relation to a person, means a share option granted in respect of qualifying services of the person.

9 (1) The information required by sub-paragraph (1) of paragraph 8 in respect of such a person as is mentioned in that sub-paragraph is

(a) the number of shares that are subject to a share option  
   (i) at the beginning of the relevant financial year or, if later, on the date of the appointment of the person as a director of the company, and  
   (ii) at the end of the relevant financial year or, if earlier, on the cessation of the person’s appointment as a director of the company,  
   in each case differentiating between share options having different terms and conditions;

(b) information identifying those share options that have been awarded in the relevant financial year, those that have been exercised in that year, those that in that year have expired unexercised and those whose terms and conditions have been varied in that year;

(c) for each share option that is unexpired at any time in the relevant financial year  
   (i) the price paid, if any, for its award,
(ii) the exercise price,

(iii) the date from which the option may be exercised, and

(iv) the date on which the option expires;

(d) a description of any variation made in the relevant financial year in the terms and conditions of a share option;

(e) a summary of any performance criteria upon which the award or exercise of a share option is conditional, including a description of any variation made in such performance criteria during the relevant financial year;

(f) for each share option that has been exercised during the relevant financial year, the market price of the shares, in relation to which it is exercised, at the time of exercise; and

(g) for each share option that is unexpired at the end of the relevant financial year

(i) the market price at the end of that year, and

(ii) the highest and lowest market prices during that year,

of each share that is subject to the option.

10 (1) If, in the opinion of the directors of the company, disclosure in accordance with paragraphs 8 and 9 would result in a disclosure of excessive length then, (subject to sub-paragraphs (2) and (3))

(a) information disclosed for a person under paragraph 9(a) need not differentiate between share options having different terms and conditions;

(b) for the purposes of disclosure in respect of a person under paragraph 9(c)(i) and (ii) and (g), share options may be aggregated and (instead of disclosing prices for each share option) disclosure may be made of weighted average prices of aggregations of share options;

(c) for the purposes of disclosure in respect of a person under paragraph 9(c)(iii) and (iv), share options may be aggregated and (instead of disclosing dates for each share option) disclosure may be made of ranges of dates for aggregation of share options.

(2) Sub-paragraph (1)(b) and (c) does not permit the aggregation of

(a) share options in respect of shares whose market price at the end of the relevant financial year is below the option exercise price, with

(b) share options in respect of shares whose market price at the end of the relevant financial year is equal to, or exceeds, the option exercise price.

(3) Sub-paragraph (1) does not apply (and accordingly, full disclosure must be made in accordance with paragraphs 8 and 9) in respect of share options that during the relevant financial year have been awarded or exercised or had their terms and conditions varied.
Long term incentive schemes

11 (1) The directors’ remuneration report must contain, in respect of each person who has served as a director of the company at any time in the relevant financial year, the information specified in paragraph 12.

(2) Sub-paragraph (1) does not require the report to contain share option details that are contained in the report in compliance with paragraphs 8 to 10.

(3) The information specified in paragraph 12 must be presented in tabular form in the report.

(4) For the purposes of paragraph 12

(a) “scheme interest”, in relation to a person, means an interest under a long term incentive scheme that is an interest in respect of which assets may become receivable under the scheme in respect of qualifying services of the person; and

(b) such an interest “vests” at the earliest time when

(i) it has been ascertained that the qualifying conditions have been fulfilled, and

(ii) the nature and quantity of the assets receivable under the scheme in respect of the interest have been ascertained.

(5) In this Schedule “long term incentive scheme” means any agreement or arrangement under which money or other assets may become receivable by a person and which includes one or more qualifying conditions with respect to service or performance that cannot be fulfilled within a single financial year, and for this purpose the following must be disregarded, namely

(a) any bonus the amount of which falls to be determined by reference to service or performance within a single financial year;

(b) compensation in respect of loss of office, payments for breach of contract and other termination payments; and

(c) retirement benefits.

12 (1) The information required by sub-paragraph (1) of paragraph 11 in respect of such a person as is mentioned in that sub-paragraph is

(a) details of the scheme interests that the person has at the beginning of the relevant financial year or if later on the date of the appointment of the person as a director of the company;

(b) details of the scheme interests awarded to the person during the relevant financial year;

(c) details of the scheme interests that the person has at the end of the relevant financial year or if earlier on the cessation of the person’s appointment as a director of the company;

(d) for each scheme interest within paragraphs (a) to (c)

(i) the end of the period over which the qualifying conditions for that interest have to be fulfilled (or if there are different periods for different
conditions, the end of whichever of those periods ends last); and
(ii) a description of any variation made in the terms and conditions of the
scheme interests during the relevant financial year; and
(e) for each scheme interest that has vested in the relevant financial year
(i) the relevant details (see sub-paragraph (3)) of any shares,
(ii) the amount of any money, and
(iii) the value of any other assets,
that have become receivable in respect of the interest.

(2) The details that sub-paragraph (1)(b) requires of a scheme interest awarded during
the relevant financial year include, if shares may become receivable in respect of the
interest, the following
(a) the number of those shares;
(b) the market price of each of those shares when the scheme interest was
awarded; and
(c) details of qualifying conditions that are conditions with respect to
performance.

(3) In sub-paragraph (1)(e)(i) “the relevant details”, in relation to any shares that have
become receivable in respect of a scheme interest, means
(a) the number of those shares;
(b) the date on which the scheme interest was awarded;
(c) the market price of each of those shares when the scheme interest was
awarded;
(d) the market price of each of those shares when the scheme interest vested; and
(e) details of qualifying conditions that were conditions with respect to
performance.

13 (1) The directors' remuneration report must, for each person who has served as a director
of the company at any time during the relevant financial year, contain the information
in respect of pensions that is specified in sub-paragraphs (2) and (3).

(2) Where the person has rights under a pension scheme that is a defined benefit
scheme in relation to the person and any of those rights are rights to which he has
become entitled in respect of qualifying services of his
(a) details
(i) of any changes during the relevant financial year in the person's accrued
benefits under the scheme, and
(ii) of the person's accrued benefits under the scheme as at the end of that
year;
(b) the transfer value, calculated in accordance with regulations 7 to 7B of the
Occupational Pension Schemes (Transfer Values) Regulations 1996, of the
person's accrued benefits under the scheme at the end of the relevant financial
the transfer value of the person’s accrued benefits under the scheme that in compliance with paragraph (b) was contained in the directors’ remuneration report for the previous financial year or, if there was no such report or no such value was contained in that report, the transfer value, calculated in such a manner as is mentioned in paragraph (b), of the person’s accrued benefits under the scheme at the beginning of the relevant financial year;

(d) the amount obtained by subtracting

(i) the transfer value of the person’s accrued benefits under the scheme that is required to be contained in the report by paragraph (c), from

(ii) the transfer value of those benefits that is required to be contained in the report by paragraph (b),

and then subtracting from the result of that calculation the amount of any contributions made to the scheme by the person in the relevant financial year.

(3) Where

(a) the person has rights under a pension scheme that is a money purchase scheme in relation to the person, and

(b) any of those rights are rights to which he has become entitled in respect of qualifying services of his,

details of any contribution to the scheme in respect of the person that is paid or payable by the company for the relevant financial year or paid by the company in that year for another financial year.

Excess retirement benefits of directors and past directors

14 (1) Subject to sub-paragraph (3), the directors’ remuneration report must show in respect of each person who has served as a director of the company

(a) at any time during the relevant financial year, or

(b) at any time before the beginning of that year,

the amount of so much of retirement benefits paid to or receivable by the person under pension schemes as is in excess of the retirement benefits to which he was entitled on the date on which the benefits first became payable or 31st March 1997, whichever is the later.

(2) In subsection (1) “retirement benefits” means retirement benefits to which the person became entitled in respect of qualifying services of his.

(3) Amounts paid or receivable under a pension scheme need not be included in an amount required to be shown under sub-paragraph (1) if

(a) the funding of the scheme was such that the amounts were or, as the case may be, could have been paid without recourse to additional contributions; and

(b) amounts were paid to or receivable by all pensioner members of the scheme on the same basis;

and in this sub-paragraph “pensioner member”, in relation to a pension scheme, means any person who is entitled to the present payment of retirement benefits under
the scheme.

(4) In this paragraph

(a) references to retirement benefits include benefits otherwise than in cash; and

(b) in relation to so much of retirement benefits as consists of a benefit otherwise than in cash, references to their amount are to the estimated money value of the benefit,

and the nature of any such benefit must also be shown in the report.

**Compensation for past directors**

15 The directors’ remuneration report must contain details of any significant award made in the relevant financial year to any person who was not a director of the company at the time the award was made but had previously been a director of the company, including (in particular) compensation in respect of loss of office and pensions but excluding any sums which have already been shown in the report under paragraph 7(1)(d).

**Sums paid to third parties in respect of a director’s services**

16 (1) The directors’ remuneration report must show, in respect of each person who served as a director of the company at any time during the relevant financial year, the aggregate amount of any consideration paid to or receivable by third parties for making available the services of the person

(a) as a director of the company, or

(b) while director of the company

   (i) as director of any of its subsidiary undertakings, or

   (ii) as director of any other undertaking of which he was (while director of the company) a director by virtue of the company’s nomination (direct or indirect), or

   (iii) otherwise in connection with the management of the affairs of the company or any such other undertaking.

(2) The reference to consideration includes benefits otherwise than in cash; and in relation to such consideration the reference to its amount is to the estimated money value of the benefit.

The nature of any such consideration must be shown in the report.

(3) The reference to third parties is to persons other than

(a) the person himself or a person connected with him or a body corporate controlled by him, and

(b) the company or any such other undertaking as is mentioned in sub-paragraph (1)(b)(ii).
PART 4
INTERPRETATION AND SUPPLEMENTARY

17 (1) In this Schedule
“amount”, in relation to a gain made on the exercise of a share option, means the
difference between

(a) the market price of the shares on the day on which the option was exercised; and

(b) the price actually paid for the shares;

“company contributions”, in relation to a pension scheme and a person, means
any payments (including insurance premiums) made, or treated as made, to
the scheme in respect of the person by anyone other than the person;

“defined benefit scheme”, in relation to a person, means a pension scheme
which is not a money purchase scheme in relation to the person;

“emoluments” of a person

(a) includes salary, fees and bonuses, sums paid by way of expenses allowance
(so far as they are chargeable to United Kingdom income tax or would be if the
person were an individual), but

(b) does not include any of the following, namely

(i) the value of any share options granted to him or the amount of any
gains made on the exercise of any such options;

(ii) any company contributions paid, or treated as paid, in respect of him
under any pension scheme or any benefits to which he is entitled under
any such scheme; or

(iii) any money or other assets paid to or received or receivable by him
under any long term incentive scheme;

“long term incentive scheme” has the meaning given by paragraph 11(5);

“money purchase benefits”, in relation to a person, means retirement benefits
the rate or amount of which is calculated by reference to payments made, or
treated as made, by the person or by any other person in respect of that
person and which are not average salary benefits;

“money purchase scheme”, in relation to a person, means a pension scheme
under which all of the benefits that may become payable to or in respect of the
person are money purchase benefits in relation to the person;

“pension scheme” means a retirement benefits scheme within the meaning
given by section 611 of the Income and Corporation Taxes Act 1988;

“qualifying services”, in relation to any person, means his services as a director
of the company, and his services at any time while he is a director of the
company;

(a) as a director of an undertaking that is a subsidiary undertaking of the company
at that time;
(b) as a director of any other undertaking of which he is a director by virtue of the company's nomination (direct or indirect); or

(c) otherwise in connection with the management of the affairs of the company or any such subsidiary undertaking or any such other undertaking;

“retirement benefits” means relevant benefits within the meaning given by section 612(1) of the Income and Corporation Taxes Act 1988;

“shares” means shares (whether allotted or not) in the company, or any undertaking which is a group undertaking in relation to the company, and includes a share warrant as defined by section 779(1) of the 2006 Act;

“share option” means a right to acquire shares;

“value”, in relation to shares received or receivable on any day by a person who is or has been a director of the company, means the market price of the shares on that day.

(2) In this Schedule “compensation in respect of loss of office” includes compensation received or receivable by a person for

(a) loss of office as director of the company, or

(b) loss, while director of the company or on or in connection with his ceasing to be a director of it, of

(i) any other office in connection with the management of the company’s affairs, or

(ii) any office as director or otherwise in connection with the management of the affairs of any undertaking that, immediately before the loss, is a subsidiary undertaking of the company or an undertaking of which he is a director by virtue of the company’s nomination (direct or indirect);

(c) compensation in consideration for, or in connection with, a person’s retirement from office; and

(d) where such a retirement is occasioned by a breach of the person’s contract with the company or with an undertaking that, immediately before the breach, is a subsidiary undertaking of the company or an undertaking of which he is a director by virtue of the company’s nomination (direct or indirect)

(i) payments made by way of damages for the breach; or

(ii) payments made by way of settlement or compromise of any claim in respect of the breach.

(3) References in this Schedule to compensation include benefits otherwise than in cash; and in relation to such compensation references in this Schedule to its amounts are to the estimated money value of the benefit.

(4) References in this Schedule to a person being “connected” with a director, and to a director “controlling” a body corporate, are to be construed in accordance with sections 252 to 255 of the 2006 Act.
18 (1) For the purposes of this Schedule emoluments paid or receivable or share options granted in respect of a person’s accepting office as a director are to be treated as emoluments paid or receivable or share options granted in respect of his services as a director.

(2) Where a pension scheme provides for any benefits that may become payable to or in respect of a person to be whichever are the greater of

(a) such benefits determined by or under the scheme as are money purchase benefits in relation to the person; and

(b) such retirement benefits determined by or under the scheme to be payable to or in respect of the person as are not money purchase benefits in relation to the person,

the company may assume for the purposes of this Schedule that those benefits will be money purchase benefits in relation to the person, or not, according to whichever appears more likely at the end of the relevant financial year.

(3) In determining for the purposes of this Schedule whether a pension scheme is a money purchase scheme in relation to a person or a defined benefit scheme in relation to a person, any death in service benefits provided for by the scheme are to be disregarded.

19 (1) The following applies with respect to the amounts to be shown under this Schedule.

(2) The amount in each case includes all relevant sums paid by or receivable from

(a) the company; and

(b) the company’s subsidiary undertakings; and

(c) any other person,

except sums to be accounted for to the company or any of its subsidiary undertakings or any other undertaking of which any person has been a director while director of the company, by virtue of section 219 of the 2006 Act (payment in connection with share transfer: requirement of members’ approval), to past or present members of the company or any of its subsidiaries or any class of those members.

(3) Reference to amounts paid to or receivable by a person include amounts paid to or receivable by a person connected with him or a body corporate controlled by him (but not so as to require an amount to be counted twice).

20 (1) The amounts to be shown for any financial year under Part 3 of this Schedule are the sums receivable in respect of that year (whenever paid) or, in the case of sums not receivable in respect of a period, the sums paid during that year.

(2) But where

(a) any sums are not shown in the directors’ remuneration report for the relevant financial year on the ground that the person receiving them is liable to account for them as mentioned in paragraph 19(2), but the liability is thereafter wholly or partly released or is not enforced within a period of 2 years; or

(b) any sums paid by way of expenses allowance are charged to United Kingdom income tax after the end of the relevant financial year or, in the case of any
such sums paid otherwise than to an individual, it does not become clear until the end of the relevant financial year that those sums would be charged to such tax were the person an individual,

those sums must, to the extent to which the liability is released or not enforced or they are charged as mentioned above (as the case may be), be shown in the first directors’ remuneration report in which it is practicable to show them and must be distinguished from the amounts to be shown apart from this provision.

21 Where it is necessary to do so for the purpose of making any distinction required by the preceding paragraphs in an amount to be shown in compliance with this Part of this Schedule, the directors may apportion any payments between the matters in respect of which these have been paid or are receivable in such manner as they think appropriate.

22 The Schedule requires information to be given only so far as it is contained in the company’s books and papers, available to members of the public or the company has the right to obtain it.