SLAUGHTER AND MAY

Incentives Bulletin

June 2019

Welcome to the June edition of our Incentives Bulletin, updating you on the latest developments in remuneration and share schemes. This month, we look at the FAQs issued by BEIS on the **new Directors' Remuneration Regulations** and at the **Government's response to the BEIS Committee report on executive remuneration**. We note HMRC's **deadline for filing annual share schemes returns** and conclude with a timeline of **key dates** in employee incentives coming up in the near future.

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Directors' remuneration - BEIS FAQs on new regulations

Summary and key practice point: The Department for Business, Energy and Industrial Strategy (BEIS) has issued FAQs, dated June 2019, on the Companies (Directors' Remuneration Policy and Directors' Remuneration Report) Regulations 2019 (the Regulations), which implement the EU Shareholder Rights Directive II (SRD II). The Regulations were published on 9 April 2019 and came into force on 10 June 2019.

The Regulations extend the scope of the reporting requirements to include unquoted traded companies. This will primarily affect specialist investment firms, of which most, if not all, already report voluntarily to shareholders on directors' remuneration, so this is unlikely to have a significant practical impact.

The Regulations also extend the scope of the reporting requirements to include "Deputy CEOs" where the function exists in the company, even if they are not statutory directors. In practice, this additional requirement is likely to mean Chief Financial Officers (or other executive directors already sitting on the Board) are designated as "Deputy CEOs".

In order to comply with the new requirement to explain the remuneration committee's "decision-making process", companies may choose to move some of the narrative content currently provided in the remuneration committee chair's statement to their remuneration policy.

More detailed analysis/commentary: The Regulations introduce a number of new reporting requirements for companies, which we summarised in the **April edition** of our Incentives Bulletin. In the FAQs, BEIS explains several of the key changes, including changes to the scope of companies' reporting requirements, and the content of remuneration policies and remuneration reports.

Remuneration Report and Remuneration Policy

- We have summarised the key changes under the Regulations to the requirements for the remuneration policy and the remuneration report in the table below:

Remuneration policy	
Vesting and holding periods	The remuneration policy must include details of vesting and holding periods applicable to long-term incentive awards. Companies which already provide this detail in accordance with the UK Corporate Governance Code will meet the requirements under the Regulations, provided that the information is included in the remuneration policy.
Duration of "arrangements" with directors	The remuneration policy must indicate the duration of directors' service contracts "or arrangements" with the directors. "Arrangements" is not defined in SRD II, but "*may be taken to mean any agreements to provide personal services that a company may enter into with directors for remuneration that do not constitute a service contract*". Where contracts do not contain an end date, the policy should state that there is no fixed or indicative duration, or set out the notice period (which is already required under Listing Rule 9.8.8 for premium-listed companies).
Decision-making process	The remuneration policy must explain the "decision-making process" for determining the policy. The existing regime requires companies to provide information in the remuneration report about the role of the remuneration committee. This information, commonly currently found in the remuneration committee chair's statement, may be included in the remuneration policy in order to meet the new requirement.
Remuneration report	
Comparison to average employee remuneration	The Regulations require companies to report on the annual change in directors' remuneration compared to average employee remuneration. This new requirement differs from the existing CEO pay ratio reporting provisions in that the pay ratio reporting covers employee pay across all categories of the single figure (salary, pension, any bonus, any taxable benefits and any long-term share awards) whereas the Regulations cover salary, any bonus and any taxable benefits only.
Exercise price of share options	The Regulations introduce a new requirement for companies to disclose any changes to the exercise price of share options by directors. BEIS anticipates that this might arise where a company grants share options during the reporting year and subsequently carries out a share capital restructure.
'Single Figure' table	The Regulations require companies to present two sub-totals in the 'Single Figure' table, disclosing each director's fixed and variable remuneration.

Government response to BEIS Committee report on executive remuneration

Summary and key practice point: The Government has published its response to the recent report by the House of Commons BEIS Committee on executive remuneration.

The Government rejected the Committee's central recommendation that all listed companies be required to appoint at least one employee representative to the remuneration committee. It is the Government's view that the diversity of UK companies precludes mandating one method of workforce engagement on executive remuneration. The Government has signalled its intention to have a period of regulatory calm, to allow the executive pay regulations implemented over the last two years time to bed in. This is likely to be welcome news for companies that have been grappling with the new requirements.

The Government also provided further information about the anticipated role of the new regulator, which is expected to replace the Financial Reporting Council (FRC), following the Independent Review of the FRC in 2018.

Further details: In relation to the proposed "revamped" FRC:

- The Government endorsed the Committee's recommendation that the new regulator should monitor remuneration reports and reporting against directors' general statutory duties set out in section 172 of the Companies Act 2006.
- The Government stated that it expects the new regulator to prioritise assessing how effectively companies are reporting against the revised UK Corporate Governance Code. However, the Government does not support the Committee's recommendation that the new regulator encourages or mandates the adoption of any one of the methods of workforce engagement that are available to companies under the revised Code, on the grounds that this is a matter for companies to decide themselves.

On pay ratio reporting requirements:

- The Government does not intend to extend or amend the new pay ratio reporting requirements before it has assessed their impact when reporting becomes mandatory in 2020. As a result, the Government does not currently support the Committee's recommendation to extend the requirements to include all employers with 250 or more employees, and to include an additional requirement to report on companies' lowest pay bands.

HMRC deadline for filing annual share schemes returns

Summary and key practice point: HMRC's deadline for filing annual share schemes returns for 2018-2019 is 5 July 2019.

Given the difficulties of registering plans in the final few days before the deadline, and the recurrent technical problems affecting HMRC's systems on deadline day in recent years, companies should ensure that any new schemes are registered, and all returns are submitted, through their online portal in advance of 5 July 2019. Failure to register tax-advantaged share plans in time will affect the tax favoured status of these plans.

Horizon scanning

What key dates and developments in employee incentives should be on your radar?

5 July 2019	HMRC deadline for filing annual share schemes returns for 2018-2019
31 August 2019	Final settlement date for disguised remuneration loans
31 October 2019	UK to leave the EU (potentially with no deal) if the withdrawal agreement is not ratified by this date
1 January 2020	UK-incorporated quoted companies must start reporting their CEO pay ratios

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