

## Transposition Notes

Articles 9a and 9b of Directive 2017/828 of the European Parliament and of the Council of 17<sup>th</sup> May 2017, amending Directive 2007/36 as regards the encouragement of long-term shareholder engagement.

The below table has been prepared by the Department for Business, Energy and Industrial Strategy. It sets out the requirements of articles 9a and 9b of the Directive, and whether and how each requirement is already implemented in the United Kingdom, and how this instrument, the Companies (Directors’ Remuneration Policy and Directors’ Remuneration Report) Regulations 2019, implements those requirements not already implemented in UK law. The Secretary of State is responsible for implementation.

<i>Directive requirement</i>	<i>Implementation</i>
<b>SCOPE</b>	
<p>Scope of companies</p> <p>The Directive applies to a company whose shares carry voting rights and are admitted to trading on a regulated market within the EEA.</p>	<p>The scope of the companies to which the Original directive (2007/36) applies has not been changed by the Directive (2017/828). This was implemented in the UK by inserting the definition of “traded company” in section 360C of the Companies Act 2006.</p> <p>The Companies Act 2006 (“the Act”) and the Large and Medium-sized Companies and Groups (Accounts and Reports) Regulations 2008 (S.I. 2008/410) (“the 2008 Regulations”) already provide the legal framework for members’ approval of directors’ remuneration, and this legislation currently applies to quoted companies which largely include traded companies unless they are unquoted. This instrument brings unquoted traded companies within the existing legal framework for the approval and reporting of directors’ remuneration.</p> <p>This instrument achieves this by:</p> <ul style="list-style-type: none"> <li>• introducing the definition of “unquoted traded company” (which means a traded company as defined in section 360C of the Act that is not a quoted company) in sections</li> </ul>

<b><i>Directive requirement</i></b>	<b><i>Implementation</i></b>
	<p>215, 226A, 430, 439A, 497 and 498 of the Act and paragraph 44 of the 2008 Regulations;</p> <ul style="list-style-type: none"> <li>• using the already defined terms traded company (section 360C) and quoted company (section 385 of the Act) as appropriate in various places in the Act and the 2008 Regulations.</li> </ul>
<p>Definition of director (Article 1(2)(i))</p> <p>“director” means:</p> <p>(i) any member of the administrative, management or supervisory bodies of a company;</p> <p>(ii) where they are not members of the administrative, management or supervisory bodies of a company, the chief executive officer and, if such function exists in a company, the deputy chief executive officer;</p> <p>(iii) where so determined by a Member State, other persons who perform functions similar to those performed under point (i) or (ii);</p>	<p>The remuneration policy and remuneration report requirements already extend in UK law to both executive and non-executive directors on the company board.</p> <p>The instrument amends section 226A of the CA 2006 and paragraph 2 of Schedule 8 to the 2008 Regulations, to provide that a person is to be treated as a director if the person is a chief executive officer or deputy chief executive officer (however described) and who is not a director. This is to include any person not on the board of directors who carries out the function of chief executive officer or deputy chief executive officer for the company.</p>
<b><i>Directors’ remuneration policy – Article 9a</i></b>	
<p>Article 9a(1)</p> <p>Member States shall ensure that companies establish a remuneration policy as regards directors and that shareholders have the right to vote on the remuneration policy at the general meeting.</p>	<p>The directors’ remuneration policy is already required to be prepared and put to a shareholder vote under sections 439A of the Act. This will now apply in relation to unquoted traded companies as well.</p>
<p>9a(2) – first paragraph</p> <p>Member States shall ensure that the vote by the shareholders at the general meeting on the remuneration policy is binding. Companies shall pay remuneration to their directors only in accordance with a</p>	<p>The remuneration policy is already subject to a binding shareholder vote under section 439A of the Act and payment may only be made where it is consistent with an approved remuneration policy (section 226B(1)(a)). The current section</p>

<i>Directive requirement</i>	<i>Implementation</i>
remuneration policy that has been approved by the general meeting.	226B(1)(b) which allows an inconsistent payment is being amended by the instrument to ensure that payment is made in accordance with an approved remuneration policy through shareholder approval of an amendment to the existing policy to allow a remuneration payment.
<p>9a(2) – second paragraph</p> <p>Where no remuneration policy has been approved and the general meeting does not approve the proposed policy, the company may continue to pay remuneration to its directors in accordance with its existing practices and shall submit a revised policy for approval at the following general meeting.</p>	<p>Section 226D(6) of the Act allows payments to be made without an approved remuneration policy but this is subject to a longstop date of the earlier of the date when the first approved remuneration policy under section 439A takes effect or at the end of the first financial year that a company becomes a quoted company or unquoted traded company. For an unquoted traded company which existed before 10<sup>th</sup> June 2019 which will now be subject to the requirements for the first time, section 226D (6) applies with amendment allowing payments to be made in accordance with existing practices until the first approved remuneration policy takes effect, with a requirement in section 439A(1) that a remuneration policy will need to be brought forward in the financial year beginning 1 January 2020.</p>
<p>9a(2) – third paragraph</p> <p>Where an approved remuneration policy exists and the general meeting does not approve the proposed new policy, the company shall continue to pay remuneration to its directors in accordance with the existing approved policy and shall submit a revised policy for approval at the following general meeting.</p>	<p>Section 226B of the Act already provides for companies to pay directors in accordance with the last approved remuneration policy.</p> <p>This instrument amends section 439A of the Act by inserting new subsection (2A). This requires a new remuneration policy to be put forward for a shareholder approval at</p>

<i>Directive requirement</i>	<i>Implementation</i>
	the next accounts or other general meeting if a proposed new policy was rejected at the last accounts or other general meeting.
<p>9a(3)</p> <p>However, Member States may provide for the vote at the general meeting on the remuneration policy to be advisory. In that case, companies shall pay remuneration to their directors only in accordance with a remuneration policy that has been submitted to such a vote at the general meeting. Where the general meeting rejects the proposed remuneration policy, the company shall submit a revised policy to a vote at the following general meeting.</p>	<p>The option of an advisory vote on the remuneration policy is not being implemented. UK law already provides for the shareholder vote on the remuneration policy to be binding and will continue with that.</p>
<p>9a(4)</p> <p>Member States may allow companies, in exceptional circumstances, to temporarily derogate from the remuneration policy, provided that the policy includes the procedural conditions under which the derogation can be applied and specifies the elements of the policy from which a derogation is possible.</p> <p>Exceptional circumstances as referred to in the first subparagraph shall cover only situations in which the derogation from the remuneration policy is necessary to serve the long-term interests and sustainability of the company as a whole or to assure its viability.</p>	<p>This option will not be implemented.</p> <p>The Act will ensure shareholder approval of remuneration payments in accordance with the remuneration policy.</p>
<p>9a(5)</p> <p>Member States shall ensure that companies submit the remuneration policy to a vote by the general meeting at every material change and in any case at least every four years.</p>	<p>Section 439A of the Act already requires that the remuneration policy be put to a vote when it is revised and at least once every three financial years.</p>
<p>9a(6) – first paragraph</p> <p>The remuneration policy shall contribute to the company’s business strategy and long-term interests and sustainability and shall</p>	<p>Paragraphs 25 and 26 of Schedule 8 to the 2008 Regulations already require the policy to describe each fixed and variable</p>

<i>Directive requirement</i>	<i>Implementation</i>
explain how it does so. It shall be clear and understandable and describe the different components of fixed and variable remuneration, including all bonuses and other benefits in whatever form, which can be awarded to directors and indicate their relative proportion.	component of directors' remuneration, and how they support the short and long-term strategic objectives of the company
9a(6) – second paragraph  The remuneration policy shall explain how the pay and employment conditions of employees of the company were taken into account when establishing the remuneration policy.	This is already required under paragraph 38 of Schedule 8 to the 2008 Regulations.
9a(6) – third paragraph  Where a company awards variable remuneration, the remuneration policy shall set clear, comprehensive and varied criteria for the award of the variable remuneration. It shall indicate the financial and non-financial performance criteria, including, where appropriate, criteria relating to corporate social responsibility, and explain how they contribute to the objectives set out in the first subparagraph, and the methods to be applied to determine to which extent the performance criteria have been fulfilled. It shall specify information on any deferral periods and on the possibility for the company to reclaim variable remuneration.	Paragraph 26 of Schedule 8 to the 2008 Regulations requires performance measures to be set out for each component, including their relative weighting, and how each component supports the short and long-term strategic objectives of the company.  Paragraph 26 requires an explanation of any provisions for with-holding or recovering directors remuneration.  This instrument amends sub-paragraph 26(b) to also require the policy to provide information on any deferral periods.
9a(6) – fourth paragraph  Where the company awards share-based remuneration, the policy shall specify vesting periods and where applicable retention of shares after vesting and explain how the share based remuneration contributes to the objectives set out in the first subparagraph.	Paragraph 26 of Schedule 8 of the 2008 Regulations already requires companies to describe how share-based remuneration supports the long-term strategic objectives of the company.  This instrument adds a new sub-paragraph (ba) to paragraph 26 requiring companies to specify vesting periods and any holding periods where share-based remuneration is awarded.

<i>Directive requirement</i>	<i>Implementation</i>
<p>9a(6) – fifth paragraph</p> <p>The remuneration policy shall indicate the duration of the contracts or arrangements with directors and the applicable notice periods, the main characteristics of supplementary pension or early retirement schemes and the terms of the termination and payments linked to termination.</p>	<p>Paragraph 30 of Schedule 8 to the 2008 Regulations already requires information on directors’ service contracts. Paragraphs 36 and 37 require the policy on payments for loss of office. Paragraph 7(1)(e) and paragraph 10 already provide information on pension payments, their valuation and their characteristics.</p> <p>This instrument inserts a new paragraph 30A in Schedule 8 to require the policy to indicate the duration of contracts or arrangements with directors.</p>
<p>9a(6) – sixth paragraph</p> <p>The remuneration policy shall explain the decision-making process followed for its determination, review and implementation, including, measures to avoid or manage conflicts of interests and, where applicable, the role of the remuneration committee or other committees concerned. Where the policy is revised, it shall describe and explain all significant changes and how it takes into account the votes and views of shareholders on the policy and reports since the most recent vote on the remuneration policy by the general meeting of shareholders.</p>	<p>Paragraph 40 of Schedule 8 to the 2008 Regulations already requires the remuneration policy to state how any shareholder views have been taken into account in the formulation of the policy.</p> <p>This instrument adds a new sub-paragraph (1A) to paragraph 24 of Schedule 8 to the 2008 Regulations to require the policy to explain the decision-making process for its determination, review and implementation and measures to avoid or manage conflicts of interest.</p> <p>This instrument also amends paragraph 42 of Schedule 8 to require a revised remuneration policy to describe and explain all significant changes compared to the previous policy.</p>
<p>9a(7)</p> <p>Member States shall ensure that after the vote on the remuneration policy at the</p>	<p>A remuneration report must contain the remuneration policy when it is put forward for approval (paragraph 1 of Schedule 8 to the 2008 Regulations) and section 430 of</p>

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<p>general meeting the policy together with the date and the results of the vote is made public without delay on the website of the company and remains publicly available, free of charge, at least as long as it is applicable.</p>	<p>the Act requires a remuneration report to be published on the company website. Section 430 also requires a revised remuneration policy (which would not be in the remuneration report) to be published on the company website. In both instances the material is required to be available free of charge.</p> <p>This instrument amends section 430 by inserting new sub-paragraph (4ZA) to require that the remuneration report be kept on the website for 10 years. In doing so, where the remuneration policy is contained in the remuneration report, this fulfils the requirement for the remuneration policy to be available for as long as it is applicable.</p> <p>This instrument adds a new subsection (2C) to section 430 to implement the requirement to publish the date and results of the vote on the remuneration policy on the same website as the policy and to remain available for as long as it is applicable. Section 430(3) has been amended to include new subsection (2C) to ensure the information is accessible free of charge.</p>
<b><i>Directors' remuneration report – Article 9b</i></b>	
<p>9b(1) – first paragraph</p> <p>Member States shall ensure that the company draws up a clear and understandable remuneration report, providing a comprehensive overview of the remuneration, including all benefits in whatever form, awarded or due during the most recent financial year to individual directors, including to newly recruited and to former directors, in accordance with the</p>	<p>Section 420 of the Act requires companies to prepare a remuneration report for each financial year.</p> <p>Paragraphs 4-7 of Schedule 8 to the 2008 Regulations require a component by component breakdown of remuneration to each director, including new and former</p>

<i>Directive requirement</i>	<i>Implementation</i>
remuneration policy referred to in Article 9a.	directors in accordance with the remuneration policy.
<p>9b(1)(a)</p> <p>Where applicable, the remuneration report shall contain the following information regarding each individual director's remuneration:</p> <p>(a) the total remuneration split out by component, the relative proportion of fixed and variable remuneration, an explanation how the total remuneration complies with the adopted remuneration policy, including how it contributes to the long-term performance of the company, and information on how the performance criteria were applied;</p>	<p>Paragraphs 4 and 12 of Schedule 8 to the 2008 Regulations already require the remuneration report to set out each directors' remuneration by component and to explain how the performance criteria specified in the policy under paragraphs 25 and 26 of Schedule 8, including the criterion on meeting the short and long-term strategic objectives of the company, have been applied.</p> <p>This instrument adds two new columns to the Single Figure table in paragraph 5, to require companies to set out the total fixed and total variable remuneration for each director.</p>
<p>9b(1)(b)</p> <p>Where applicable, the remuneration report shall contain the following information regarding each individual director's remuneration:</p> <p>the annual change of remuneration, of the performance of the company, and of average remuneration on a full-time equivalent basis of employees of the company other than directors over at least the five most recent financial years, presented together in a manner which permits comparison;</p>	<p>Paragraph 19 of Schedule 8 to the 2008 Regulations currently requires companies to report each year the annual change in the chief executive officer's remuneration compared to average employee remuneration, with the option to use an employee 'comparator group'.</p> <p>This instrument amends paragraph 19 to require the remuneration report to specify the annual change of each directors' remuneration compared to average employee remuneration on a full-time equivalent basis, based on fixed salary, any annual bonus and any taxable benefits. The comparator group option has been removed.</p> <p>The amendments include a a rolling comparison for the previous five financial</p>



<i>Directive requirement</i>	<i>Implementation</i>
	<p>years beginning on or after 10<sup>th</sup> June 2019 (the transposition date for the Directive).</p> <p>Paragraph 18 already obliges companies to report, over 10 financial years, the performance of the company and has been amended to include unquoted traded companies.</p>
<p>9b(1)(c) Where applicable, the remuneration report shall contain the following information regarding each individual director's remuneration: any remuneration from any undertaking belonging to the same group as defined in point (11) of Article 2 of Directive 2013/34/EU of the European Parliament and of the Council</p>	<p>This is given effect in paragraphs 4(3) and 44 of Schedule 8 to the 2008 Regulations.</p>
<p>9b(1)(d) Where applicable, the remuneration report shall contain the following information regarding each individual director's remuneration: the number of shares and share options granted or offered, and the main conditions for the exercise of the rights including the exercise price and date and any change thereof.</p>	<p>Paragraphs 14 and 17 of Schedule 8 to the 2008 Regulations already provide this information, with the exception of information on any change in the exercise price or date for shares awarded to directors.</p> <p>This instrument amends paragraph 14(1)(b)(v) to require information on any change in the exercise price or date.</p>
<p>9b(1)(e) Where applicable, the remuneration report shall contain the following information regarding each individual director's remuneration: information on the use of the possibility to reclaim variable remuneration.</p>	<p>This is already covered in paragraph 8(2) of Schedule 8 to the 2008 Regulations.</p>

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<p>9b(1)(f)</p> <p>Where applicable, the remuneration report shall contain the following information regarding each individual director's remuneration:</p> <p>information on any deviations from the procedure for the implementation of the remuneration policy referred to in Article 9a(6) and on any derogations applied in accordance with Article 9a(4), including the explanation of the nature of the exceptional circumstances and the indication of the specific elements derogated from.</p>	<p>This instrument amends paragraph 21(3) of Schedule 8 to require information in the remuneration report on any deviation there may have been from the procedure set out in the company's remuneration policy for determining directors remuneration.</p> <p>This instrument does not implement the option of 'temporary derogations' from the remuneration policy.</p>
<p>9b(2)</p> <p>Member States shall ensure that companies do not include in the remuneration report special categories of personal data of individual directors within the meaning of Article 9(1) of Regulation (EU) 2016/679 of the European Parliament and of the Council (***) or personal data which refer to the family situation of individual directors.</p>	<p>This instrument amends paragraph 2 of Schedule 8 to the 2008 Regulations by inserting new sub-paragraph (2A) to require that this kind of personal data is not included in remuneration report.</p>
<p>9b(3)</p> <p>Companies shall process the personal data of directors included in the remuneration report pursuant to this Article for the purpose of increasing corporate transparency as regards directors' remuneration with the view to enhancing directors' accountability and shareholder oversight over directors' remuneration.</p> <p>Without prejudice to any longer period laid down by any sector-specific Union legislative act, Member States shall ensure that companies no longer make publicly available pursuant to paragraph 5 of this Article the personal data of directors included in the remuneration report in accordance with this Article after 10 years from the publication of the remuneration report.</p> <p>Member States may provide by law for processing of the personal data of directors for other purposes.</p>	<p>This instrument amends section 430 of the Act by inserting new subsection (4ZA) requiring the remuneration report to be kept for 10 years and that it may be kept for longer if it doesn't include personal data.</p> <p>The UK already has a regime in place and data on the remuneration of directors may be used for purposes as allowed in the Directive and for other purposes. Data processing is also subject to the GDPR and Data Protection Act 2018.</p>
<p>9b(4)</p>	

<i>Directive requirement</i>	<i>Implementation</i>
<p>Member States shall ensure that the annual general meeting has the right to hold an advisory vote on the remuneration report of the most recent financial year. The company shall explain in the following remuneration report how the vote by the general meeting has been taken into account.</p> <p>However, for small and medium-sized companies as defined, respectively, in Article 3(2) and (3) of Directive 2013/34/EU, Member States may provide, as an alternative to a vote, for the remuneration report of the most recent financial year to be submitted for discussion in the annual general meeting as a separate item of the agenda. The company shall explain in the following remuneration report how the discussion in the general meeting has been taken into account.</p>	<p>These requirements are already met through sections 430 and 439 of the Act, and paragraph 23 of Schedule 8 to the 2008 Regulations.</p> <p>The UK is not exercising the option to remove the advisory shareholder vote on the remuneration reports of SMEs that are traded or quoted companies.</p>
<p>9b(5) – first paragraph</p> <p>Without prejudice to Article 5(4), after the general meeting the companies shall make the remuneration report publicly available on their website, free of charge, for a period of 10 years, and may choose to keep it available for a longer period provided it no longer contains the personal data of directors. The statutory auditor or audit firm shall check that the information required by this Article has been provided.</p>	<p>Section 430 of the Act already requires the remuneration report to be available on the company website.</p> <p>This instrument amends section 430 by inserting new subsection (4ZA) in respect of the 10 year period and personal data.</p> <p>On audit, this is covered in paragraph 41 of Schedule 8 to the 2008 Regulations. Sections 497 and 498 of the Act are amended to bring unquoted traded companies with the scope of the audit of remuneration report that currently applies to quoted companies.</p>
<p>9b(5) – second paragraph</p> <p>Member States shall ensure that the directors of the company, acting within its field of competence assigned to them by national law, have collective responsibility for ensuring that the remuneration report is drawn up and published in accordance with the requirements of this Directive. Member</p>	<p>In section 420 of the Act the directors' duty to prepare a remuneration report, is a collective responsibility with the offence for failing to comply with this requirement falling on every person who is a director of the company at that relevant time. The</p>

<i>Directive requirement</i>	<i>Implementation</i>
States shall ensure that their laws, regulations and administrative provisions on liability, at least towards the company, apply to the directors of the company for breach of the duties referred to in this paragraph.	requirements on publication are dealt with in section 430 with the offence for failure to comply falling on every officer of the company. Under section 1121 of the Act, officer includes any director.
Article 9b (6) The Commission shall, with a view to ensuring harmonisation in relation to this Article, adopt guidelines to specify the standardised presentation of the information laid down in paragraph 1.	These are non binding guidelines, which do not require transposition.
<i>Measures and Penalties – Article 14b</i>	
<p>Member states shall lay down the rules on measures and penalties applicable to infringements of national provisions adopted pursuant to this Directive and shall take all measures necessary to ensure that they are implemented.</p> <p>The measures and penalties provided for shall be effective, proportionate and dissuasive. Member States shall, by 10 June 2019, notify the Commission of those rules and of those implementing and shall notify it, without delay, of any subsequent amendment affecting them.</p>	<p>The measure and penalties for failing to comply with the existing requirements in the Act and the 2008 Regulations are provided in the Act. The amendments made by this instrument ensure that measures and penalties apply to the implementation of the new requirements in the Directive as appropriate and that they apply to unquoted traded companies.</p> <p>The measures and penalties are as follows:</p> <ul style="list-style-type: none"> <li>• Section 226E (2), (3) and (5) of the Act – there are civil consequences for payments made without approval.</li> <li>• Section 420 (3) and 421 (4) of the Act – offence and fine in relation to duty to prepare the remuneration report, the contents to be included and provided by directors (remuneration policy sits within the remuneration report). The revised remuneration policy that does not sit in the remuneration report is covered by section 422A(4) and (5) which apply the same requirements as a remuneration report as to content and the attendant offences.</li> <li>• Section 430 (6) and (7) of the Act-offence and fine in relation to</li> </ul>

<i>Directive requirement</i>	<i>Implementation</i>
	<p>publication of annual accounts and reports, and includes the remuneration report, remuneration policy and revised remuneration policy, including the results of the vote on the remuneration policy.</p> <ul style="list-style-type: none"> <li>• Section 440 of the Act - offences in connection with procedure for approval of remuneration report (section 439) and remuneration policy (section 439A).</li> </ul> <p>The details of measures and penalties will be communicated to the Commission.</p>