

# SRD II: UK Implementation of remuneration changes

On 20 May 2019, [the Companies \(Directors' Remuneration Policy and Directors' Remuneration Report\) Regulations](#) (Regulations) were published which implement the directors' remuneration provisions<sup>1</sup> in the EU Shareholder Rights Directive II<sup>2</sup> (SRD II). The Regulations came into force on 10 June 2019, with some transitional provisions. The Government has also published [FAQs on these Regulations](#).

Most of the new remuneration requirements in SRD II already apply in UK law and so there are only a few changes in these Regulations.

The European Commission is also preparing non-binding guidelines on the format of the remuneration report and has published a summary report of the responses received to its consultation.

See "[SRD2 - are you ready?](#)" for the new obligations on asset managers and life insurers and "[SRD II: UK implementation: new related party transaction regime](#)" for further information on the other changes to implement SRD II.

Old UK Requirements	New UK Requirements
Which companies are in scope?	
<p>The UK rules applied to UK registered companies which are "quoted companies". Quoted companies are companies whose equity share capital is listed on the Main Market (but not AIM), an EEA regulated market, the New York Stock Exchange or NASDAQ.</p> <p>SRD II has not changed the scope and it continues to apply to companies whose shares carry voting rights and are admitted to trading on a regulated market in the EEA.</p>	<p>UK registered companies that are quoted companies continue to have to comply but UK registered companies whose shares carry voting rights and are admitted to trading on a regulated market in the UK or the EEA (called unquoted trading companies) will also be subject to these rules.</p> <p>The new rules do not apply to companies whose shares are traded on AIM.</p>
Which officers are in scope?	
<p>The UK rules applied to directors and shadow directors</p>	<p>The rules on directors' remuneration policy, directors' remuneration report, remuneration payments and payments for loss of office are widened to include payments to the company's chief executive officer (however described) and, if any, the deputy chief executive officer, even if they do not sit on the board.</p>

### Duty to prepare a directors' remuneration report

Directors of a quoted company must prepare a directors' remuneration report for each financial year and that report must include the remuneration policy and the remuneration report.

The duty applies to quoted companies and unquoted traded companies.

### Binding shareholder vote on remuneration policy

The remuneration policy must be approved by shareholders (by ordinary resolution) in the first financial year after the company becomes a quoted company and then, at least every three years or earlier if any change is made to the policy or the vote on the directors' remuneration report has not passed (see below).

This remains the same but also applies to unquoted traded companies. If a shareholder vote on a proposed remuneration policy is lost, then the company must put a new remuneration policy to a vote at the next AGM or other general meeting.

### Advisory vote on directors' remuneration report

Shareholders have an annual advisory vote on the directors' remuneration report (other than the part comprising the directors' remuneration policy). This report describes how the prior year's remuneration policy has been implemented, including details of amounts actually paid to the directors.

This remains the same but also applies to unquoted traded companies.

### Content of directors' remuneration report

The directors' remuneration report must include the following additional information:

- the single total figure table has to include two new columns showing the total fixed remuneration and the total variable remuneration awarded to each director and CEO (in addition to the other components already shown), and
- any changes to the exercise price or date for the exercise of shares or share options awarded to directors/the CEO.

The comparison of CEO/employees remuneration is changed to a comparison of the annual percentage change of each director's remuneration to the annual average change in the remuneration of the company's employees over a rolling five-year period. The Regulations have guidance on how to carry out this comparison and how it differs from the pay ratio disclosures required under the Companies (Miscellaneous Reporting) Regulations 2018.

## Directors' remuneration policy

The directors' remuneration policy has to include the following additional information:

- an explanation of the decision-making process for its determination, review and implementation, including measures to avoid or manage conflicts of interest and, where applicable, the role of remuneration committee or any other committee
- in respect of share-based remuneration, details of any deferral periods, vesting periods and holding periods, and
- an indication of the duration of directors' service contracts or arrangements. The Regulations state that arrangements can be taken to mean any agreement to provide personal services for remuneration that does not constitute a service contract.

Any revised remuneration policy has to include a description and explanation of all significant changes compared to the previous one.

## Restrictions on remuneration/loss of office payments

Remuneration payments and payments for loss of office to directors (including former and new directors) must be consistent (at the time that the payment is made) with the approved remuneration policy.

Any payment which is not consistent has to be approved by a separate shareholder vote.

Provisions on remuneration payments and payments for loss of office will be widened to include payments to the chief executive officer and, if any, the deputy chief executive officer.

Payments can only be made if they are consistent with an approved remuneration policy or if an amendment to the policy authorising the payment is approved by shareholders.

Any payment which is not consistent will still need shareholder approval but through an amendment to the remuneration policy, however this will not be treated as approval of a new policy.

The Regulations state that payments can continue to be made to the chief executive officer and, if any, the deputy chief executive officer in accordance with existing practices until a new remuneration policy is put to shareholders for approval.

### Availability on website

Annual accounts and reports of a quoted company must be made available on the company's website and remain available until the accounts and reports for the next financial year are made available.

If the directors' remuneration policy is revised, then the revised policy must be made available as soon as reasonably practicable.

Annual accounts and reports of a quoted company and unquoted traded company must be made available on the company's website and remain available until the accounts and reports for next financial year are made available.

The directors' remuneration report must, however, be available for 10 years from the date that it is first made available and may be kept for longer if it does not include personal data (within the meaning of the Data Protection Act 2018).

If the directors' remuneration policy is revised or amended, then the revised or amended policy must be made available as soon as reasonably practicable.

There is a new requirement that, when a remuneration policy is approved by shareholders, the following information must also be made available on the company's website as soon as reasonably practicable:

- date of the resolution
- number of votes validly cast
- proportion of company's issued share capital represented by those votes, and
- number of votes cast in favour, against and abstentions (for abstentions, companies may want to only record those submitted as vote withheld).

This information must remain there for as long as the information is applicable.

### Filing obligations

There is a new obligation to file the directors' remuneration report with the Registrar of Companies.

## Transitional provisions

These are the transitional provisions for quoted companies:

- amendments to remuneration payments/payments for loss of office apply from the date when any remuneration policy is approved on or after 10 June 2019
- the new website publication requirements apply to a directors' remuneration policy and remuneration report published on or after 10 June 2019
- the new content requirements for the directors' remuneration report apply for financial years beginning on or after 10 June 2019, and
- the new content requirements for the directors' remuneration policy apply to any policy approved on or after 10 June 2019.

Unquoted traded companies that have been brought into scope must:

- put a directors' remuneration policy to a shareholder vote no later than 01 January 2020, unless they already had an approved policy on 10 June 2019 in which case they can continue to rely on that policy until the end of its three-year period or they decide to put a new policy to a vote, and
- comply with all other requirements as they apply to quoted companies on or after 10 June 2019.

For more information, please contact:



**Charles Mayo**

Senior Advisor

T +44 207 825 4410

E [charles.mayo@simmons-simmons.com](mailto:charles.mayo@simmons-simmons.com)

or your usual contact.

(1) Articles 9a and 9b

(2) Directive (EU) 2017/828 which amends the Shareholder Rights Directive 2007/36/EC.