



Directors' Pay: consultation on revised reporting regulations. Response form.

The closing date for this consultation is 26 September 2012

Please return completed forms to:

Barry Walker
Executive Pay Consultation
Department of Business, Innovation and Skills
1 Victoria Street
SW1H 0ET
020 7215 3930
executive.pay@bis.gsi.gov.uk

Confidentiality & Data Protection

In the interests of transparency, the Department may choose to publish the responses to this consultation. **Please state clearly if you wish your response to remain confidential.**

Please note also that information provided in response to this consultation, including personal information, may be subject to publication or release to other parties or to disclosure in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004). If you want information, including personal data that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence.

In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.

About You	
Name: Roy Colbran	ORGANISATION: UK SHAREHOLDERS' ASSOCIATION ("UKSA")
Email: policy@uksa.org.uk	Address: Chislehurst Business Centre 1 Bromley Lane, Chislehurst BR7 6LH
I am responding on behalf of (please tick):	
	Quoted company
	Other company
	Investor or investment manager
	Business representative organisation
√	Investor representative organisation
	Non governmental organisation
	Trade Union
	Lawyer or accountant
	Other (e.g. consultant or private individual)

OUR OVERALL REACTIONS

It is greatly to be regretted that this consultation was issued only a month before publication of Professor Kay's Review without taking any account of what he might recommend on this subject. The Review was, of course, also sponsored by BIS. The Review demonstrates in Chapter 11 how the general types of remuneration structure currently in use have adverse consequences. It goes on to recommend that incentives should be related to sustainable long-term business performance and then provided only in the form of company shares to be held at least until the executive has retired from the business. Professor Kay also questions, as UKSA has done in its own evidence to the Department, the need for bonuses at this level at all.

Now that we have the benefit of the Review, the draft regulations must surely be withdrawn and detailed thought given to what approach by Government will best help to achieve what he has recommended.

As written, the draft regulations would require a mass of new information to be included in annual reports and this at a time when the Government is committed to the reduction of red tape. The proposed information requirements directly relate to practice currently prevailing, and so, if these regulations are adopted in their present form, they will entrench current practices which is the very opposite of what the Government should be doing.

What we believe Government are really seeking, and certainly what we and Professor Kay are looking for, is a substantial change in present behaviour. Although not in the detail now proposed, sufficient information has been published under present requirements to show that pay levels have been very high and are increasing. Since this publicity has had little effect in curbing pay levels it is doubtful whether adding to the information already provided to shareholders will achieve any more.

We believe it would be wholly wrong to impose the immensely detailed requirements of these draft regulations on companies when Government is still considering its reaction to Kay, and his very strong comments in this area. To require companies to put in all the effort involved in changing their reports to meet these requirements, when further action in this area is clearly required from Government, would be completely wasteful.

General Principles on disclosure

We believe that all remuneration information should be analysed on the basis of

1. Commitments for the future
2. Current payments against past commitments
3. Current discretionary payments (including current payments against new longer term commitments)

Commitments for the future should then be analysed;

1. New commitments made since last report
2. Adjustments to previously reported commitments
3. Balances remaining on previously reported commitments

We are NOT suggesting that all information on all these things should be reported all the time. We are simply suggesting this conceptual framework as a basis for deciding

what is important and what is not; and therefore what levels of approval and reporting should apply in each category. The resulting regulations should require demonstrable adherence to principles, rather than the provision of specific information that may not have the desired consequences.

Remuneration commitments typically cover a multi-year period and are uncertain as to outcome (e.g. pensions and performance-related LTIPs). They are therefore much more important than actual current pay.

The consultation makes no reference to asymmetric performance awards and their consequent incentivisation of volatility and risk (Kay chapter 11). These require particular attention, because they incentivise the wrong things. Any attempt to summarise these into a single number conceals what should be revealed.

We continue with answers to such of the questions as we feel fall within our area of interest and based on the intentions of the consultation as it stands without prejudice to the foregoing general comments:

Questions

Question 1: The Government seeks comments on how well the draft regulations attached at Annex B give effect to the policy set out in this consultation document.

We are concerned that the authors think it necessary to propose such extensive and detailed regulations to cover what should not be a major aspect of company reports. We suggest that they should be reviewed overall to see whether the Government's objectives could not be met by regulations setting out principles rather than fine detail.

Question 2: What costs will companies face in adjusting to these revised reporting regulations?

Relative to the total sum of their overall operations, the monetary cost may be small. However, the cost in time of senior management in producing answers to all the items in the regulations will be immense and a major diversion from their main jobs.

Question 3: The Government intends to introduce a table which sets out the key elements of remuneration and supporting information on the pay policy. The Government does not propose to prescribe the specific disclosures that are required for each element of pay. Is this a practical and informative approach?

We agree that the proposals already go far enough, possibly too far, in terms of detailed prescription

Question 4: The Government intends to introduce reporting requirements on service contracts, what remuneration directors can receive in different scenarios and the percentage change in profit, dividends and overall expenditure on pay in the reporting period. Is this a practical and informative approach? If an alternative disclosure would be useful, please give details.

We would like to see examples of this in practice before agreeing that this approach is desirable. Like so many things in this paper it accepts the principle that directors' performance can be meaningfully measured over short-term periods, which is contradicted by the conclusions in Professor Kay's Review.

Draft Regulation 21 adds significantly to the amount of information to go in the Annual Report. We suggest it would be better to require service contracts to be available on the Company's website, including full details of bonus plans and their relationship to performance.

Question 5: The Government proposes that a company's statement on its approach to exit payments sets out the principles on which the determination of the payment will be made. If additional information would be useful, please give details.

Surely all exit payments should be prescribed in service contracts and nothing additional allowed unless it receives *prior* approval by shareholders?

Question 6: The Government would welcome views on the proposal for the policy part of the remuneration report to include a statement on whether and if so how a company sought employee views on the remuneration policy.

While it might indeed be appropriate management practice in certain industries to engage in such consultation, it would be quite wrong (and a good example of burdensome regulation) to impose it as a legal obligation.

Question 7: The Government's intention is that the single total figure includes remuneration that becomes receivable as a result of the achievement of conditions relating to performance in the reporting year where the reporting year is the last year of the performance cycle. Do the specific disclosures set out in the table below correctly give effect to this intention?

The idea of reporting a single pay figure is an attractive one but the practical difficulties are enormous and the method proposed would not, in our opinion, achieve the desired outcome. Recognising the total of multi-year awards as a lump sum in the final year will simply lead to occasional high figures that will just be used to create headlines. The method is also ineffectual for year-on-year or company –on- company comparability. The fact is. a single figure for a complex aggregate will obstruct reasoned analysis and leave only knee-jerk reactions. The ‘single figure’ proposal should be abandoned in the interests of proper disclosure.

Question 8: The Government proposes the application of the HMRC methodology to work out the value of defined benefit pension schemes. Is this a practical and informative approach?

It seems a practical solution to a difficult problem. The fact that in some circumstances it may be an inaccurate measure should not matter too much since one would not expect the value of DB pensions to be a large part of the whole package.

Question 9: The Government proposes that claw-back is recorded as part of the single figure. Is this a practical and informative approach?

No. Any claw back must be shown separately, to satisfy shareholders’ need for specific assurance on this highly sensitive issue.

Question 10: The Government would welcome views on whether it would be commercially sensitive to require companies to publish full details of performance against metrics. If so, how can an appropriate degree of flexibility be achieved?

Companies may conceal metrics on grounds of commercial confidentiality but in that case must be required to state a) the general nature of the target (e.g. sales growth, customer diversification) and b) the minimum and maximum awards under the Plan.

Question 11: Will the Government’s proposed disclosure requirements on pensions lead to reporting of sufficient information on the benefits received by directors?

No comment.

Question 12: The Government proposes that scheme interests awarded to directors during the reporting year are disclosed at face value. Is this a practical and informative approach?

No comment.

Question 13: The Government proposes to simplify the reporting requirements regarding directors' interests. What are the costs and benefits of this approach? If an alternative disclosure would be more useful, please give details.

No comment

Question 14: The Government proposes that the remuneration report includes a graph that plots total shareholder return, as a proxy for company performance, against CEO pay. Do you agree that this graph would be useful? If so, do you agree that total shareholder return and CEO pay are the best proxies for company performance and pay? If not, what measures would be more appropriate?

No, we strongly disagree. Total shareholder return is subject to so many factors outside the control of the company, as well as others that can be directly influenced by the actions of the CEO, that this would be a very unsatisfactory measure. Companies should be required to choose from a short list of measures that can be taken straight from the published accounts.

Question 14a: The Government has included disclosure requirements about remuneration consultants in the draft regulations. What is your opinion of their approach?

The considerable amount of new information proposed will lend itself to boilerplate wording and is unlikely to change current practices which, again, Kay sees as undesirable. We believe that remuneration consultants should be appointed by and report to the shareholders thus eliminating the most important conflict of interest (see Kay Para 11.9).

Question 15: The Government proposes that the single figure, detail of performance against metrics, total pension entitlements, exit payments made and detail on variable pay are all subject to audit. Are there any other sections of the report that should be subject to audit?

We are distinctly unenthusiastic to see yet more items made subject to audit. Surely this is an area where companies should be given the benefit of the doubt unless and until there is reason to think otherwise.