
D R A F T S T A T U T O R Y I N S T R U M E N T S

2010 No.

FINANCIAL SERVICES

The Executives' Remuneration Reports Regulations 2010

Made - - - - - ***

Coming into force - - - - - ***

The Treasury make the following Regulations in exercise of the powers conferred by sections 9 and 10 of the Financial Services Act 2010(a).

Citation, commencement and application

1.—(1) These Regulations may be cited as the Executives' Remuneration Reports Regulations 2010.

(2) These Regulations come into force on [] and apply in relation to financial years beginning on or after [].

Interpretation

2.—(1) In these Regulations—

“the Act” means the Financial Services Act 2010;

“associated company” has the same meaning as in section 256 of the Companies Act 2006;

“banking institution” means—

(a) a person who has permission under Part 4 of the Financial Services and Markets Act 2000(b) to accept deposits (within the meaning of section 22 of that Act, taken with Schedule 2 and any order under section 22), other than a person who has such permission only for the purpose of carrying on another regulated activity in accordance with permission under that Part;

(b) an investment firm within the meaning of article 3(1) of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001(c), which has permission under Part 4 of the Financial Services and Markets Act 2000 to carry on one or more regulated activities;

“bonus” includes any element of variable remuneration paid to a relevant executive in respect of his services to the banking institution, or to a parent undertaking, a subsidiary undertaking or associated company of the banking institution, but does not include—

(a) share options, or

(a) 2010 c.

(b) 2000 c.8.

(c) S.I. 2001/544;the relevant amending instrument is S.I. 2006/3384.

(b) any money or other assets paid to or receivable by the executive under any long term incentive scheme;

“building society” means a building society incorporated (or deemed to be incorporated) under the Building Societies Act 1986(a);

“debenture” has the same meaning as in section 738 of the Companies Act 2006(b);

“financial services activities” means activities which when carried out in the United Kingdom are regulated activities for the purposes of the Financial Services and Markets Act 2000, whether those activities are carried out in the United Kingdom or elsewhere;

[Option A

“financial services undertaking” means an undertaking which is wholly or mainly engaged in financial services activities;

“financial services group” means a group where—

- (a) the parent undertaking is a financial services undertaking, or
- (b) the majority of the undertakings in the group are financial services undertakings or undertakings providing services to other members of the group;]

[Option B

“financial services group” means a group where—

- (a) the parent undertaking is wholly or mainly engaged in financial services activities, or
- (b) the parent undertaking’s principal subsidiaries are wholly or mainly engaged in financial services activities, and the parent undertaking does not itself carry on any material business apart from the acquisition, management and disposal of interests in subsidiary undertakings;

and for the purposes of this definition,

- (i) the principal subsidiaries of a parent undertaking are the subsidiary undertakings of the undertaking whose results or financial position would principally affect the figures shown in the group accounts, and
- (ii) the management of interests in subsidiary undertakings includes the provision of services to such undertakings;]

“group” has the same meaning as in section 421 of the Financial Services and Markets Act 2000;

“individual accounts” means, in relation to a company, the accounts required under section 394 of the Companies Act 2006, and in relation to a building society, the accounts required under section 72A of the Building Societies Act 1986;

“listed company” means a company whose equity share capital has been included in the official list in accordance with the provisions of Part 6 of the Financial Services and Markets Act 2000;

“long-term incentive scheme” has the meaning set out in paragraph 11 of the Schedule to these Regulations;

“member” means, in relation to a company, every person whose name is entered in the register of members of that company under section 113 of the Companies Act 2006, and in relation to a building society, every person whose name is entered in the register of members of that building society under paragraph 13 of Schedule 2 to the Building Societies Act 1986;

“officer” has the meaning set out in section 1173(1) of the Companies Act 2006;

“pension scheme” has the meaning set out in paragraph 12 of the Schedule to these Regulations;

“remuneration” of a relevant executive—

(a) 1986 c. 53.
(b) 2006 c.46.

- (a) includes—
 - (i) salary, fees and bonuses, sums paid by way of expenses allowances (so far as they are chargeable to United Kingdom income tax), and
 - (ii) the estimated money value of any other benefits received by the relevant executive otherwise than in cash;

“responsible institution” means—

- (a) in relation to an executives’ remuneration report prepared by the directors of a relevant banking institution in accordance with regulation 5, the relevant banking institution, and
- (b) in relation to an executives’ remuneration report prepared by the directors of the parent undertaking of the group in accordance with regulation 7, the parent undertaking of the group.

(2) References in these Regulations to a person being “connected” with an executive, and to an executive “controlling” a body corporate, are to be construed in accordance with sections 252 to 255 of the Companies Act 2006.

(3) References in these Regulations to a parent undertaking, or a subsidiary undertaking of a banking institution are to be construed in accordance with sections 1161 and 1162 of and Schedule 7 to the Companies Act 2006.

Relevant banking institution

3.—(1) For the purpose of these Regulations, a “relevant banking institution” is a banking institution which—

- (a) is a company within the meaning of section 1 of the Companies Act 2006, or a building society; and
- (b) satisfies condition 1 and either condition 2 or condition 3.

(2) Condition 1 is that the number of employees of the relevant banking institution, including any employees of an associated company of the banking institution which provide services to the relevant banking institution, in the relevant financial year is 1,000 or more.

(3) Condition 2 is that the aggregate of the amounts shown as assets on the banking institution’s balance sheet forming part of the banking institution’s individual accounts for the relevant financial year exceeded £100 billion.

(4) Condition 3 is that, where the banking institution is a member of a financial services group, the aggregate of the amounts shown as assets on the consolidated balance sheet of the group for the relevant financial year exceeded £100 billion.

(5) The number of employees referred to in Condition 1 means the average number of persons employed by the relevant banking institution in the year, determined as follows—

- (a) find for each month in the financial year the number of persons employed under contracts of service by the banking institution in that month (whether through the month or not),
- (b) add together the monthly totals, and
- (c) divide by the number of months in the financial year.

Relevant executives

4.—(1) An individual who—

- (a) is employed by a relevant banking institution under a contract of service, and
- (b) satisfies the condition in paragraph (3),

is an employee within the prescribed description for the purposes of section 9(3)(b) of the Act.

(2) An individual—

- (a) who is engaged or appointed by a relevant banking institution for the purposes of carrying out the business of that banking institution, whether under a contract for services or otherwise, or
- (b) whose services are placed at the disposal of the relevant banking institution under an arrangement between the banking institution and another person, and
- (c) who satisfies the condition in paragraph (3)

is an individual with the prescribed connection with the relevant banking institution for the purposes of section 9(3)(c) of the Act.

(3) A person satisfies the condition in this paragraph where the aggregate remuneration paid or receivable in consideration for the services of that person in the relevant financial year (whether paid or received during or after the financial year in question, and whether paid to, or receivable by, that person, a person connected to that person or a body corporate controlled by that person) exceeded £500,000.

(4) For the avoidance of doubt, a member of a profession regulated by a designated professional body who provides independent professional services to the banking institution is not an individual with a prescribed connection with the relevant banking institution for the purpose of these Regulations.

(5) For the purpose of paragraph (4), “designated professional body” means a body which has been designated by the Treasury under section 326 of the Financial Services and Markets Act 2000, and “professional services” has the meaning given in section 327(8) of that Act.

Duty to prepare executives’ remuneration report

5.—(1) Subject to paragraph (4), the directors of a relevant banking institution must prepare an executives’ remuneration report for each financial year of the institution.

(2) In the case of failure to comply with the requirement to prepare an executives’ remuneration report, every person who—

- (a) was a director of the banking institution immediately before the end of the period for filing accounts and reports for the financial year in question, and
- (b) failed to take all reasonable steps for securing compliance with that requirement,

commits an offence.

(3) A person guilty of an offence under this regulation is liable—

- (a) on conviction on indictment, to a fine;
- (b) on summary conviction, to a fine not exceeding the statutory maximum.

(4) The directors of a relevant banking institution are exempt from the requirement to prepare an executives’ remuneration report under paragraph (1) where—

- (a) the relevant banking institution is a subsidiary undertaking, and
- (b) an executives’ remuneration report is prepared by the directors of the parent undertaking for the group in accordance with regulation 7.

(5) In this regulation, the “period for filing accounts and reports”—

- (a) in relation to companies, has the meaning set out in section 442(1) of the Companies Act 2006, and
- (b) in relation to building societies, means the period within which the directors are required to send copies of the annual accounts to the Financial Services Authority under section 81(2) of the Building Societies Act 1986.

Contents of an executives’ remuneration report

6.—(1) The executives’ remuneration report prepared by the directors of a relevant banking institution must contain the information specified in the Schedule to these Regulations, unless paragraph (2) or paragraph (3) applies.

(2) It is not necessary for any information relating to directors' remuneration which has been set out in the directors' remuneration report prepared by the relevant banking institution, or in notes to the accounts of that institution to be repeated in the executives' remuneration report.

(3) It is not necessary for any information relating to executives' remuneration which has been set out in published accounts or reports prepared by the parent undertaking of the relevant banking institution to be repeated in the executives' remuneration report.

Duty to prepare group executives' remuneration report

7.—(1) The directors of a parent undertaking of a group which contains two or more relevant banking institutions must prepare an executives' remuneration report for the group in relation to each financial year of the parent undertaking, and that report must contain the information specified in the Schedule to these Regulations in relation to all relevant executives working in relevant banking institutions in the group.

(2) It is not necessary for any information relating to directors' remuneration which has been set out in the directors' remuneration report prepared by the relevant banking institution, or in notes to the accounts of that institution, or in the consolidated accounts of a group including the relevant banking institution, to be repeated in the executives' remuneration report prepared for the group.

Approval and signing of executives' remuneration report

8.—(1) The executives' remuneration report must be approved by the board of directors and signed on behalf of the board by a director or the secretary of the responsible institution.

(2) If an executives' remuneration report is approved that does not comply with the requirements of these Regulations, every director of the responsible institution who—

- (a) knew that it did not comply, or was reckless as to whether it complied, and
- (b) failed to take reasonable steps to secure compliance with those requirements or, as the case may be, to prevent the report from being approved,

commits an offence.

(3) A person guilty of an offence under this section is liable—

- (a) on conviction on indictment, to a fine,
- (b) on summary conviction, to a fine not exceeding the statutory maximum.

Duty to circulate copies of the executives' remuneration report

9.—(1) Every responsible institution must send a copy of its executives' remuneration report for each financial year to—

- (a) every member of the responsible institution;
- (b) every holder of the responsible institution's debentures, and
- (c) any other person who is entitled to receive notice of general meetings of the responsible institution.

(2) Copies need not be sent to a person for whom the responsible institution does not have a current address.

(3) A responsible institution has a "current address" for a person if—

- (a) an address has been notified to the responsible institution by the person as one at which documents may be sent to that person;
- (b) the banking institution has no reason to believe that documents sent to that person at that address will not reach that person.

(4) A responsible institution must comply with paragraph (1) of this regulation at least 21 days before the date of the general meeting of the responsible institution before which the responsible institution's annual accounts for the financial year are to be laid.

- (5) For the purposes of this regulation, “annual accounts”—
- (a) has the meaning set out in section 471(1) of the Companies Act 2006 in relation to companies, and
 - (b) has the meaning set out in section 81B(1) of the Building Societies Act 1986 in relation to building societies.
- (6) If default is made in complying with the requirements of this regulation, an offence is committed by—
- (a) the responsible institution, and
 - (b) every officer of the institution who is in default.
- (7) A person guilty of an offence under this regulation is liable—
- (a) on conviction on indictment, to a fine;
 - (b) on summary conviction, to a fine not exceeding the statutory maximum.

Right to copies of the executives’ remuneration report

- 10.**—(1) A member of, or holder of debentures of, a responsible institution is entitled to be provided, on demand, and without charge, with a copy of the executives’ remuneration report.
- (2) The entitlement under paragraph (1) is to a single copy of the executives’ remuneration report, but this is in addition to any copy to which a person may be entitled under regulation 9.
- (3) If a demand made under this regulation is not complied with within seven days of receipt by the responsible institution, an offence is committed by—
- (a) the responsible institution, and
 - (b) every officer of the institution who is in default.
- (4) A person guilty of an offence under this regulation is liable—
- (a) on conviction on indictment, to a fine;
 - (b) on summary conviction, to a fine not exceeding the statutory maximum.

Executives’ remuneration report to be made available on website

- 11.**—(1) A responsible institution must ensure that its executives’ remuneration report—
- (a) is made available on a website, and
 - (b) remains so available until the executives’ remuneration report for the responsible institution’s next financial year is made available in accordance with this regulation.
- (2) The executives’ remuneration report must be made available on a website that—
- (a) is maintained by or on behalf of the responsible institution, and
 - (b) identifies the responsible institution in question.
- (3) Access to the executives’ remuneration report on the website, and the ability to obtain a hard copy of the executives’ remuneration report from the website, must not be—
- (a) conditional on the payment of a fee, or
 - (b) otherwise restricted, except so far as necessary to comply with any enactment or regulatory requirement (in the United Kingdom or elsewhere).
- (4) The executives’ remuneration report—
- (a) must be made available as soon as reasonably practicable, and
 - (b) must be kept available throughout the period specified in paragraph (1)(b).
- (5) A failure to keep the executives’ remuneration report available on the website for part of that period may be disregarded if—
- (a) the executives’ remuneration report is made available on the website for part of that period, and

(b) the failure is wholly attributable to circumstances that it would not be reasonable to have expected the responsible institution to prevent or avoid.

(6) In the event of default in complying with this section, an offence is committed by every officer of the responsible institution who is in default.

(7) A person guilty of an offence under paragraph (6) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Name of signatory to be stated in published copies of the executives' remuneration report

12.—(1) Every copy of an executives' remuneration report that is published by or on behalf of a responsible institution must state the name of the person who signed it on behalf of the board.

(2) If a copy is published without the required statement of the signatory's name, an offence is committed by—

(a) the responsible institution, and

(b) every officer of the responsible institution who is in default.

(3) A person guilty of an offence under this regulation is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(4) For the purpose of this regulation, a responsible institution is regarded as publishing the executive' remuneration report if it publishes, issues or circulates it or otherwise makes it available for public inspection in a manner calculated to invite members of the public generally, or any class of members of the public, to read it.

Laying of executives' remuneration report before general meeting

13.—(1) The directors of a responsible institution which is a public company or a building society must lay before the institution in general meeting copies of its executives' remuneration report.

(2) This regulation must be complied with not later than the end of the period for filing the annual accounts and reports of the institution in question.

(3) If the requirements of paragraph (1) are not complied with before the end of the period allowed, every person who immediately before the end of that period was a director of the responsible institution commits an offence.

(4) It is a defence for a person charged with such an offence to prove that he took all reasonable steps for securing that those requirements would be complied with before the end of that period.

(5) It is not a defence to prove that the executives' remuneration report in question was not in fact prepared as required by these Regulations.

(6) A person guilty of an offence under this regulation is liable on summary conviction to a fine not exceeding level 5 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 5 on the standard scale.

Members' approval of executives' remuneration report

14.—(1) A responsible institution which is a listed company or a building society must, prior to the general meeting before which the annual accounts and reports of that institution are to be laid, give to the members of the institution entitled to be sent notice of the meeting notice of the intention to move at the meeting, as an ordinary resolution, a resolution approving the executives' remuneration report for the financial year.

(2) The notice may be given in any manner permitted for the service on the member of notice of the meeting.

(3) The business which may be dealt with at that meeting includes the resolution referred to in paragraph (1), regardless of any default in complying with paragraph (1) or (2).

(4) The existing directors must ensure that the resolution is put to the vote of the meeting.

(5) No entitlement of a person to remuneration is made conditional on the resolution being passed by reason only of the provision made by this regulation.

(6) Where the banking institution is required to prepare a directors' remuneration report under section 420 of the Companies Act 2006, a single resolution approving both the executives' remuneration report and the directors' remuneration report may be moved at the meeting.

(7) In the event of default in complying with paragraph (1), an offence is committed by every officer of the responsible institution.

(8) If the resolution is not put to the vote of the accounts meeting, an offence is committed by each existing director.

(9) It is a defence for a person charged with an offence under paragraph (7) to prove that he took all reasonable steps for securing that the resolution was put to the vote of the meeting.

(10) A person guilty of an offence under this regulation is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(11) In this regulation—

“the accounts meeting” means the general meeting of the responsible institution before which the institution's annual accounts for the financial year are to be laid in accordance with—

(a) section 437 of the Companies Act 2006 (where the responsible institution is a company),
or

(b) section 81 of the Building Societies Act 1986 (where the responsible institution is a building society);

“existing director” means a person who is a director of the responsible institution immediately before that meeting.

Filing of executives' remuneration report

15.—(1) The directors of a responsible institution which is a company must deliver the executives' remuneration report for each financial year to the registrar of companies within the time allowed for filing its accounts for that financial year under section 442 of the Companies Act 2006.

(2) The directors of a responsible institution which is a building society must deliver the executives' remuneration report for each financial year to the Financial Services Authority within the time allowed for filing its accounts under section 81(2) of the Building Societies Act 1986.

Default in filing executives' remuneration report

16.—(1) If the requirements of regulation 15 are not complied with in relation to a relevant responsible institution's executives' remuneration report for a financial year before the end of the period for filing that report, every person who immediately before the end of that period was a director of the responsible institution commits an offence.

(2) It is a defence for a person charged with such an offence to prove that he took all reasonable steps for securing that those requirements would be complied with before the end of that period.

(3) It is not a defence to prove that the executives' remuneration report in question was not in fact prepared as required by these Regulations.

(4) A person guilty of an offence under this regulation is liable on summary conviction to a fine not exceeding level 5 on the standard scale and for continued contravention, a daily default fine not exceeding one-tenth of level 5 on the standard scale.

Date _____
Name _____
Name _____
Two of the Lords Commissioners of Her Majesty's Treasury

EXECUTIVES' REMUNERATION REPORT: CONTENTS

1. In the executives' remuneration report for a financial year ("the relevant financial year") there must be shown the information specified in paragraphs 2 to 5.

Statement of relevant banking institution's policy on executives' remuneration

2.—(1) The executives' remuneration report must contain a statement of the relevant banking institution's policy on relevant executives' remuneration for the following financial year, and for financial years subsequent to that.

(2) The policy statement must include—

- (a) a summary of any performance conditions to which any entitlement of a relevant executive—
 - (i) to share options,
 - (ii) under a long term incentive scheme, or
 - (iii) to any bonusis subject;
- (b) an explanation as to why any such performance conditions were chosen;
- (c) if any entitlement of an executive to share options, or a bonus or under a long-term incentive scheme is not subject to performance conditions, an explanation as to why that is the case;
- (d) an explanation of the way in which the remuneration policy of the relevant banking institution takes account of the risks to which the institution is exposed, including information on—
 - (i) the deferral policy adopted by the institution in relation to bonuses, share options or benefits under long-term incentive schemes paid or payable to relevant executives;
 - (ii) any criteria used to determine when deferred benefits (other than benefits due under a pension scheme) shall vest in relevant executives; and
 - (iii) how amounts allocated for bonuses, share options or benefits under long-term incentive schemes to executives are adjusted to ensure effective management of risk.

Remuneration committee report

3.—(1) If the relevant banking institution has a remuneration committee, the executives' remuneration report must contain a report from the remuneration committee setting out the decision making process used to determine the remuneration policy of the relevant banking institution, and stating whether it considers the performance conditions adopted in relation to relevant executives to be appropriate, and whether it considers that the remuneration policy and practices of the institution are compatible with effective management of risks.

(2) If the relevant banking institution in question does not have a remuneration committee, the executives' remuneration report must contain a report from the board of directors on the matters set out in sub-paragraph (1).

(3) Where the relevant banking institution is a member of a group, and the remuneration policy of one or more companies within the group including the relevant banking institution is determined by a single remuneration committee, the report referred to in sub-paragraph (1) should be made by that remuneration committee.

Total amount of executives' remuneration

4. The executives' remuneration report must state the number of relevant executives whose remuneration in relation to the preceding financial year fell within each of the following bands—

- (a) more than £500,000 but not more than £1,000,000;
- (b) more than £1,000,000 but not more than £1,500,000;
- (c) more than £1,500,000 but not more than £2,000,000;
- (d) more than £2,000,000 but not more than £2,500,000;
- (e) more than £2,500,000 but not more than £3,000,000;
- (f) more than £3,000,000 but not more than £3,500,000;
- (g) more than £3,500,000 but not more than £4,000,000;
- (h) more than £4,000,000 but not more than £4,500,000;
- (i) more than £4,500,000 but not more than £5,000,000;
- (j) more than £5,000,000 but not more than £6,000,000;

and in successive bands of £1,000,000.

Categories of remuneration

5.—(1) In respect of those relevant executives whose remuneration in relation to the preceding financial year fall within one of the bands referred to in paragraph 4, there shall be stated—

- (a) the aggregate amounts of remuneration paid to or receivable by the executives in that band in respect of their services as a relevant executive, attributable to—
 - (i) basic salary, fees or other contractual payments paid to or receivable by the executives in that band,
 - (ii) sums paid by way of expenses allowances (so far as they are chargeable to United Kingdom Income Tax),
 - (iii) bonuses paid to or receivable by the executives in that band, divided into the following categories—
 - (aa) benefits granted in cash,
 - (bb) shares granted to the relevant executive,
 - (cc) other benefits,
- (b) the aggregate of the amount of money paid to or receivable by the executives in that band, and the net value of assets (other than money) received by or receivable by executives in that band, under long term incentive schemes in respect of their services as relevant executives;
- (c) the aggregate value of any share options granted to executives in that band;
- (d) the aggregate value of any contributions by the relevant banking institution—
 - (i) paid, or treated as paid, to a pension scheme in respect of services of relevant executives, and
 - (ii) by reference to which the rate or amount of any money purchase benefits that may become payable will be calculated.

General nature of obligations

6.—(1) This Schedule requires information to be given only so far as it is contained in the relevant banking institution's books and papers or the relevant banking institution has the right to obtain it from the persons concerned.

(2) For the purposes of this Schedule any information is treated as shown if it is capable of being readily ascertained from other information which is shown.

Provisions as to amounts to be shown

7.—(1) The following provisions apply with respect to the amounts to be shown under this Schedule.

(2) The amount in each case includes all relevant sums, whether paid by or receivable from the relevant banking institution, any of the relevant banking institution's subsidiary undertakings or any other person.

(3) References 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).

(4) Except as otherwise provided, the amounts to be shown for any financial year are—

- (a) the sums receivable in respect of that year (whenever paid), or
- (b) in the case of sums not receivable in respect of a period, the sums paid during that year.

Meaning of “shares” and “share option” and related expressions

8. In this Schedule—

- (a) “shares” means shares (whether allotted or not) in the relevant banking institution, or any undertaking which is a group undertaking in relation to the relevant banking institution, and includes a share warrant as defined by section 779(1) of the 2006 Act; and
- (b) “share option” means a right to acquire shares.

Meaning of “long-term incentive scheme”

9.—(1) In these Regulations “long-term incentive scheme” means an agreement or arrangement—

- (a) under which money or other assets may become receivable by a relevant executive, and
- (b) which includes one or more qualifying conditions with respect to service or performance which cannot be fulfilled within a single financial year.

(2) For this purpose the following must be disregarded—

- (a) bonuses the amount of which falls to be determined by reference to service or performance within a single financial year;
- (b) compensation for loss of position, payments for breach of contract and other termination payments; and
- (c) benefits payable under a pension scheme.

Meaning of “pension scheme” and related expressions

10.—(1) In these Regulations, “pension scheme” means a pension scheme within the meaning of section 150(1) of the Finance Act 2004(a) which is—

- (a) operated by or on behalf of the relevant banking institution, or
- (b) one to which the relevant banking institution paid a contribution during the period of account.

(2) In these Regulations, in relation to a relevant executive—

“defined benefits” means benefits payable under a pension scheme that are not money purchase benefits;

“defined benefit scheme” means a pension scheme that is not a money purchase scheme;

“money purchase benefits” means benefits payable under a pension scheme the rate or amount of which is calculated by reference to payments made, or treated as made, by the executive or by any other person in respect of the relevant executive and which are not average salary benefits; and

(a) 2004 c. 12.

“money purchase scheme” means a pension scheme under which all of the benefits that may become payable to or in respect of the executive are money purchase benefits.

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

- (a) money purchase benefits as determined by or under the scheme; and
- (b) defined benefits as so determined,

the banking institution may assume for the purposes of this paragraph that those benefits will be money purchase benefits, or defined benefits, according to whichever appears more likely at the end of the financial year.

(4) For the purpose of determining whether a pension scheme is a money purchase or defined benefit scheme, any death in service benefits provided for by the scheme are to be disregarded.

References to subsidiary undertakings

11. Any reference in this Schedule to a subsidiary undertaking of the relevant banking institution, in relation to a person who is or was, while a relevant executive of the institution, a relevant executive also, by virtue of the banking institution’s nomination (direct or indirect) or any other undertaking, includes that undertaking, whether or not it is or was in fact a subsidiary undertaking of the banking institution.

Other minor definitions

12.—(1) In these Regulations, “net value”, in relation to any assets received or receivable by an executive, means the value after deducting any money paid or other value given by the relevant executive in respect of those assets.

(2) For the purposes of this Schedule, remuneration paid or receivable or share options granted in respect of a person’s accepting a position as an executive are treated as remuneration paid or receivable or share options granted in respect of his services as an executive.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations require banking institutions which satisfy the conditions set out in regulation 3 (relevant banking institutions) to prepare and publish an executives’ remuneration report and specify the information in relation to relevant executives which must be included in that report. Regulation 4 defines a “relevant executive” for the purposes of the Regulations.

Regulation 5 sets out the duty to prepare an executives’ remuneration report, and the criminal offence which is committed if this duty is breached. This duty applies unless an executives’ remuneration report is prepared by the directors of the parent undertaking of the banking institution under Regulation 7.

Regulation 6, and the Schedule to the Regulations set out the information which must be included in the report. Under paragraph 2 of the Schedule, the report must contain a statement of the banking institution’s policy on executives’ remuneration, including an explanation of any performance conditions attached to executive remuneration, and an explanation of the way in which the firm’s remuneration policy takes account of the risks to which it is subject. Under paragraph 3, there must also be a report from the firm’s remuneration committee (or from the board of directors where there is no such committee) explaining the way in which the firm’s remuneration policy is decided.

Under paragraphs 4 and 5 of the Schedule, the report must contain a statement of the number of executives whose total remuneration falls within the specified bands, and information on the aggregate amounts earned by executives in each band in the following categories—

remuneration attributable to basic salary, expense allowances, bonuses, and other benefits;

benefits receivable under long term incentive schemes;

share options granted to the relevant executive

contributions by the firm to pension schemes in respect of employees in that band.

Paragraphs 6 and 7 of the Schedule make general provision in relation to the information to be given in the executives' remuneration report and the amounts to be shown in the report.

Paragraphs 8 to 12 of the Schedule define a number of expressions used in the Schedule, and the Regulations.

Regulation 7 imposes a duty to prepare an executives' remuneration report on the directors of a parent undertaking of a group which contains two or more relevant banking institutions. A report prepared by the directors of a parent undertaking under this regulation must contain the required information in relation to all relevant executives employed in relevant banking institutions in the group.

Regulation 8 provides for the approval and signature of the executives' remuneration report.

Regulation 9 provides for the circulation of the executives' remuneration report to members of the banking institution, holders of debentures issued by the relevant banking institution, and every other person entitled to receive notice of general meetings of the banking institution.

Regulation 10 gives members of the relevant institution and holders of debentures of a relevant institution a right to be provided with a copy of the executives' remuneration report.

Regulation 11 requires the relevant institution to place the executives' remuneration report on its website.

Regulation 12 requires the name of the person who has signed the executives' remuneration report to be included in any published copy of that report.

Regulation 13 requires the executives' remuneration report of a banking institution which is a public company or a building society to be laid before the general meeting of that institution.

Regulation 14 requires banking institutions which are listed companies, or building societies, to seek the approval of their members to the executives' remuneration report in general meeting.

Regulation 15 provides for the filing of the executives' remuneration report with the relevant registration body.

Regulation 16 provides for a criminal offence for failure to comply with the duty to file the executives' remuneration report.