

Bank Executive Remuneration Disclosure

Yesterday the Government launched a consultation on new requirements for large banks operating in the UK to disclose the remuneration of their eight highest paid senior executives. The new disclosure regime is expected to operate from 2012. The consultation is open until 14 February 2012.

Summary of proposals

In summary, the proposed executive remuneration disclosure regime is as follows:

- New disclosure obligations will apply to large UK banks and the UK operations of large foreign non-EEA banks.
- An executive remuneration report must be produced in relation to the eight highest paid senior executives in the organisation.
- Comprehensive remuneration disclosure will be required on an individual but unnamed basis.
- The first executive remuneration reports must be filed no later than 31 December 2012.
- Directors may be subject to criminal penalties for non compliance.

Which banking institutions are covered?

The underlying aim of the draft Financial Services Act 2010 (Executives' Remuneration Report) Regulations 2011 (the Regulations) is to bridge a gap in current disclosure regimes imposed by the Companies Act and the FSA Remuneration Code so that there is greater transparency in relation to the remuneration of highly remunerated non board executives. The Government believes that this will encourage better shareholder governance.

The proposed Regulations will apply to large UK banks and the UK operations of large foreign non-EEA banks. The Government anticipates that the Regulations will apply to approximately 15 banks. It considers that the following firms will be in scope:

- UK banks (as defined in the FSA Handbook);
- BIPRU 730k UK firms (as defined in the FSA Handbook); and
- Third country BIPRU firms (as defined in the FSA Handbook).

The Government expects that a banking institution will be obliged to disclose under the Regulations when its assets are £50 billion or more or when it is part of a group in which any single banking institution in the UK has assets in excess of £50 billion.

Key issues

- New executive remuneration disclosure obligations mooted
- Which institutions will the disclosure obligations apply to?
- First reports to be published by 31 December 2012
- Whose remuneration details will have to be disclosed?
- Disclosure may lead to increased retention and recruitment costs may arise
- Individual privacy will be compromised.

The UK operations of EEA firms will not be subject to the disclosure obligations as under EEA passporting arrangements their activities are subject to home state regulation.

Where a single banking group includes a number of UK firms, in order to avoid multiple disclosure, firms that are part of the same group may elect to make a single collective disclosure covering the eight most highly paid senior executives with management responsibility for banking institutions within their group.

Whose remuneration must be disclosed?

Banks in scope must produce a remuneration report disclosing on an unnamed individual basis the remuneration awarded to "relevant executives".

Under the Regulations a person is a "relevant executive" if:

- they are a manager; and
- they are one of the eight most highly remunerated managers working for the institution; or
- in the case of a third country BIPRU firm, they are one of the eight most highly remunerated managers working for any branch of the firm established in the UK or any subsidiary undertaking incorporated in the UK; and
- the individual is not a director whose remuneration is already disclosed under a Directors' Remuneration Report in accordance with the Large and Medium-sized Companies and Group (Accounts and Reports) Regulations 2008.

The definition of relevant executive means that UK quoted companies that make disclosures in relation to named executive directors will under the Regulations have to disclose details in respect of a further eight relevant executives.

The consultation paper suggests that the eight relevant executives will have roles that disproportionately influence the risk profile of the firm and are likely to satisfy some or all of the following criteria:

- they will have significant managerial responsibility;
- they are likely have the highest level of operational decision-making responsibility outside the board room;
- they will have significant budgetary control;
- they are likely be business unit heads or otherwise be at the highest level of seniority in the corporate management hierarchy; and
- they are likely to report directly to the CEO.

An individual may be caught by the Regulations whether or not they are an employee of the institution. In reality the eight relevant executives are likely to be Remuneration Code staff in relation to whom the remuneration data will already be collated for the purposes of the aggregate disclosure obligations under the FSA Remuneration Code.

Individuals without managerial responsibility who may earn in excess of some senior managers, for example, star traders, will not be covered by the Regulations and there will be no obligation to disclose their remuneration.

Content and timing of remuneration reports

An executive remuneration report will have to be prepared for each financial year of the relevant banking institution or of the parent where a collective report is produced on behalf of a group.

The remuneration reports will have to be published online and through a regulated information service and must be filed at Companies House within the timeframe for filing the annual report and accounts.

Transitional rules will apply in respect of financial years beginning on or after 1 January 2011; in this case the executive remuneration report must be filed at Companies House prior to 31 December 2012.

The Board of Directors must approve the remuneration report prior to publication and may be guilty of a criminal offence punishable by a fine in the event of breach of the Regulations.

The Government proposes that the executive remuneration report should include the following detail in relation to each relevant executive:

	Relevant Executive 1	Relevant Executive 2 etc
Fixed Remuneration		
Upfront variable remuneration – cash		
Upfront variable remuneration – equity		
Upfront variable remuneration – other		
Deferred variable remuneration – cash		
Deferred variable remuneration – equity		
Deferred variable remuneration – other		
Total variable remuneration		
Long term incentive plan awards		
Pension Awards		
Total Remuneration		
Sign on awards – cash and equity		
Severance awards – cash and equity		

The above disclosure requirements are in fact less onerous than those currently applicable in respect of board directors.

The Regulations contain a 'sunset clause' so that they will cease to apply seven years after the date they come into force in the absence of the Government legislating to the contrary. In addition, the Treasury is required to conduct a review of the Regulations within five years of them coming into force.

Practical issues

Pay data is commercially sensitive and although these disclosures will be provided on an unnamed basis in reality it may be relatively easy to identify the individuals concerned. Greater transparency of remuneration information will almost certainly have an impact on retention and recruitment costs and could lead to an upward ratchet of remuneration in certain circumstances; although the Government believes that in the context of an international market this is unlikely.

The Government's consultation in relation to the Draft Regulations closes on 14 February 2012. If the proposals are then progressed, final Regulations will be laid before Parliament in the 2011/12 Parliamentary session. Depending precisely on when the Regulations are finalised banking institutions in scope may then have a relatively short window within which to produce the remuneration report prior to the 1 January 2012 deadline for publication.

The Government's consultation can be accessed [here](#)

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