

Company Directors' Performance and Compensation Bill

EXPLANATORY NOTES

Explanatory notes to the Bill, prepared by Mr Archie Norman MP, are published separately as Bill 22 – EN.

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Amend the law in relation to payment of a company director by way of compensation for loss of office so as to require boards to take the respective director's performance into account in setting the amount of any such payment, notwithstanding anything contained in his service contract; to require the board to disclose the amount of any such payment upon request by any shareholder; to require the insertion into the company's annual report of an explanation for the amount of any such payment, should it exceed the equivalent of the basic salary payable by contract to the respective employee in the previous 12 months; and for connected purposes.

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

1 Directors' performance and compensation for loss of office or employment

- (1) The Companies Act 1985 (c. 6) is amended as follows.
- (2) After section 316, there is inserted—

“316A Directors' performance and compensation or payment for loss of office or of employment

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- (1) Notwithstanding anything contained in a company's articles, or in any contract, or in any resolution of a company or a company's directors, the amount of any compensation or payment paid or payable to a director of a company by reason of the termination of his office or of his employment or of both shall be such amount as is, at the time of the termination of the director's office or employment or both, fair and reasonable having regard to any failure by the director in the performance of his duties either in his office as director or as an employee or both.

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- (2) Any member of a company may require to be disclosed the amount of any compensation or payment paid or agreed to be paid by that company or any subsidiary or holding company of that company to a

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director by reason of the termination of his office or of his employment or of both.

- (3) Where a request is received by a company from a member in pursuance of subsection (2), the company shall within 10 days beginning the day after that on which the request is received by it disclose such amount either – 5
- (a) by sending it to the member requesting it; or
 - (b) by publishing it on a web site for a period of at least 10 days and notifying the member requesting it of the fact of its publication and of the address of the web site concerned. 10
- (4) Where any compensation or payment is made to a director in breach of subsection (1), the total amount of the compensation or payment received by him is deemed to be received by him in trust for the company.
- (5) In this section “compensation” shall have the meaning attributed to it in paragraph 8(3) of Part I of Schedule 6 to this Act.” 15

2 Explanation for certain compensation to directors for loss of office or employment

- (1) The Companies Act 1985 (c. 6) is amended as follows.
- (2) In Part 3 of Schedule 7A of the 1985 Act, after paragraph 6(4), there is inserted – 20
- “(5) Where the amount referred to in subparagraph (1)(d) exceeds the amount referred to in subparagraph (1)(a), the directors’ remuneration report for the relevant financial year shall also include an explanation as to why the directors consider the amount referred to in sub-paragraph (1)(d) to be fair and reasonable for the purposes of section 316A of this Act.” 25

3 Short title

This Act may be cited as the Company Directors’ Performance and Compensation Act 2003. 30

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*Presented by Mr Archie Norman
supported by
Mr John Bercow, Mr Martin O'Neill
and Mr Mark Lazarowicz.*

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