

Performance of Companies and Government Departments (Reporting) Bill

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Make provision for the production and publication of annual reports on the social, environmental and economic impacts and performance of companies and Government departments; to specify certain duties of directors and Ministers; 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 Operating and financial review

- (1) The directors of a company must, for each financial year of the company in which it is a major company, prepare an operating and financial review.
- (2) The directors must secure that the information contained in the operating and financial review is such that the review will, in their opinion, achieve the review objective. 5
- (3) The review objective is: providing such information as will permit the members of the company, as of the approval date, to make an informed assessment of—
 - (a) the company's operations; 10
 - (b) its financial position;
 - (c) its future strategies and prospects; and
 - (d) its impacts on the environment and on any communities in which the company operates.
- (4) The directors must also secure that the operating and financial review — 15
 - (a) complies with the requirements of this Act as to its content; and
 - (b) complies with any rules as to its content or as to its form.
- (5) The directors must comply with any rules about the manner in which the operating and financial review is to be prepared.
- (6) Information contained in a document annexed to the operating and financial review is, for the purposes of this section, contained in that review, but that is subject to any rules. 20

- (7) In this section “the approval date” means the date on which the operating and financial review is approved by the board of directors under section 4.
- (8) As to the companies which are major companies for the purposes of this section, see sections 5 and 6.
- (9) Rules under this section may be made by regulations made by the Secretary of State. 5
- (10) Regulations made by the Secretary of State under this section are subject to annulment in pursuance of a resolution of either House of Parliament.
- 2 Compulsory content of operating and financial review**
- (1) In order to achieve the review objective, an operating and financial review must contain at least the core elements. 10
- (2) The core elements are –
- (a) a statement of the company’s business in the financial year to which the operating and financial review relates;
 - (b) a fair review of the performance during the financial year and of the position of the company at the end of that year; and 15
 - (c) a fair projection of the prospects for the company’s business and of events which will, or are likely to, substantially affect that business.
- 3 Duty to consider including other matters in operating and financial review**
- (1) If the directors of a company are required to form an opinion for the purposes of section 1(2), they must consider whether the inclusion of information about any matter mentioned in subsection (2) is necessary in order to achieve the review objective. 20
- (2) The matters are –
- (a) the management structure of the company; 25
 - (b) receipts from, and returns to, members of the company in the financial year to which the operating and financial review relates in relation to shares held by them;
 - (c) the impact of the company’s operations, policies, products and procurement practices in relation to employment; 30
 - (d) the impact of the company’s operations, policies, products and procurement practices on the environment;
 - (e) the impact of the company’s operations, policies, products and procurement practices on social and community issues;
 - (f) the company’s performance, in the financial year to which the operating and financial review relates, in carrying out the policies mentioned in paragraphs (c) to (e); and 35
 - (g) matters not falling within the preceding paragraphs which affect, or may affect, the company’s reputation.
- (3) Nothing in this section limits the duty imposed by section 1(2). 40
- 4 Approval and signature of operating and financial review**
- (1) The operating and financial review prepared for a financial year must be approved by the board of directors.

- (2) After the review has been approved by the board, it must be signed on behalf of the board director.
- (3) The review must—
 - (a) record the date on which it was approved by the board;
 - (b) state the name of the director who signs it on behalf of the board; and
 - (c) record the date when it is signed by that director.

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5 Companies required to publish operating and financial review

- (1) For the purposes of section 1, a company is a major company in a financial year of the company if—
 - (a) two or more of the conditions in this section are met in relation to that company in that year;
 - (b) two or more of the conditions were met in relation to that company in that year; and
 - (c) it is not a subsidiary undertaking of a European Economic Area parent undertaking.
- (2) A company shall be treated for the purposes of section 1 as being a major company in a financial year—
 - (a) if it was a major company in the preceding financial year or was treated as being such a company under paragraph (b); or
 - (b) if it was treated as being a major company in relation to the previous financial year by virtue of paragraph (a) and it satisfies paragraphs (a) and (c) of subsection (1) in relation to the year in question.
- (3) The first condition is that the company's turnover is at least £50 million in the financial year in question.
- (4) The second condition is that the company has a balance sheet total of at least £25 million at the end of the financial year in question.
- (5) The third condition is that the average number of the company's employees is at least 500 in the financial year in question.
- (6) In this section "European Economic Area parent undertaking" means a parent undertaking incorporated in a European Economic Area State.
- (7) The Secretary of State shall from time to time review the conditions in this section, and he may make regulations to reduce the quantities in subsections (3), (4) and (5).
- (8) Regulations made by the Secretary of State under this section are subject to annulment in pursuance of a resolution of either House of Parliament.

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6 Meaning of "turnover" and "balance sheet total"

- (1) A company's "turnover" is the amounts derived from the provision of goods and services falling within the company's ordinary activities after the deduction of—
 - (a) trade discounts;
 - (b) value added tax; and
 - (c) any other taxes based on the amounts so derived.

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- (2) If a company's financial year is not in fact a year, a calculation which is required, for the purposes of this Act, to be made by reference to the amount of the company's turnover shall be proportionally adjusted.
- (3) A company's "balance sheet total" is the aggregate amount of the company's assets after the deduction of any amount representing the depreciation of those assets. 5

7 Calculation of number of employees

- (1) This section applies for the purpose of calculating the average number of employees of a company in a financial year.
- (2) That number is determined by dividing the annual number of employees for the financial year by the number of months in that year. 10
- (3) The annual number of employees for a financial year is the sum of the monthly numbers for that year.
- (4) A monthly number is the number of the persons employed (whether throughout the month or not) under contracts of service by the company in a month of the financial year in question. 15

8 Directors' duties

A director of a company must act in accordance with—

- (a) the company's constitution, and
- (b) decisions taken under the constitution (or by the company, or any class of members, under any enactment or rule of law as to means of taking company or class decisions), 20

and must exercise his powers for their proper purpose.

9 Promotion of company's objectives

- (1) A director of a company must in any given case— 25
- (a) act in the way he decides, in good faith, would be most likely to promote the success of the company for the benefit of its members as a whole (excluding anything which would breach his duty under section 8);
- (b) in deciding what would be most likely to promote that success, take account in good faith of all the material factors that it is practicable in the circumstances for him to identify; and 30
- (c) take all reasonable steps to minimise the impact of the company's impact on the communities it affects and on the environment.
- (2) In this section "the material factors" means— 35
- (a) the likely consequences (short and long term) of the actions open to the director, so far as a person of care and skill would consider relevant; and
- (b) all such other factors as a person of care and skill would consider relevant, including such of the matters in subsection (3) below as he would consider so. 40
- (3) Those matters are—

- (a) the company's need to foster its business relationships, including those with its employees and suppliers and the customers for its products or services;
 - (b) its need to have regard to the impact of its operations on the communities affected and on the environment; 5
 - (c) its need to maintain a reputation for high standards of business conduct; and
 - (d) its need to achieve outcomes that are fair as between its members.
- (4) In subsection (2) a "person of care and skill" means a person exercising the care, skill and diligence required by section 11. 10
- (5) A director's decision as to what constitutes the success of the company for the benefit of its members as a whole must accord with the constitution and any decision mentioned in section 8.

10 Delegation and independence of judgement

- (1) A director of a company must not, except where authorised to do so by the company's constitution or any decisions as mentioned in section 8— 15
- (a) delegate any of his powers; or
 - (b) fail to exercise his independent judgement in relation to any exercise of his powers.
- (2) Where a director has, in accordance with this section, entered into an agreement which restricts his power to exercise independent judgement later, this section does not prevent him from acting as the agreement requires where (in his independent judgement, and according to the other provisions of this Act) he should do so. 20

11 Care, skill and diligence 25

A director of a company must exercise the care, skill and diligence which would be exercised by a reasonably diligent person with both—

- (a) the knowledge, skill and experience which may reasonably be expected of a director in his position; and
- (b) any additional knowledge, skill and experience which he has. 30

12 Citation, commencement and extent

- (1) This Act shall be known as the Performance of Companies and Government Departments (Reporting) Act 2004.
- (2) This Act shall come into force on a day determined by order by the Secretary of State, but no later than 18 months after the passing of this Act. 35
- (3) This Act shall apply to the whole of the United Kingdom.

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