

DIRECTORY OF SOCIAL CHANGE

INFORMATION AND TRAINING FOR THE VOLUNTARY SECTOR

Company legislation amendments & BIS policy: The road to revisions to the Companies Act 2006

(Or, how did the Government get to the stage of scrapping the legal requirement to list charitable donations over £2,000 before agreeing what better reporting tool might take its place?)

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About the Directory of Social Change

The Directory of Social Change (DSC) has a vision of an independent voluntary sector at the heart of social change. We believe that the activities of charities and other voluntary organisations are crucial to the health of our society.

Through our publications, courses and conferences, we come in contact with thousands of organisations each year. The majority are small to medium-sized, rely on volunteers and are constantly struggling to maintain and improve the services they provide.

We are not a membership body. Our public commentary and the policy positions we take are based on clear principles, and are informed by the contact we have with these organisations. We also undertake campaigns on issues that affect them or which evolve out of our research.

We view our role as that of a 'concerned citizen', acting as a champion on behalf of the voluntary sector in its widest sense. We ask critical questions, challenge the prevailing view, and try to promote debate on issues we consider to be important.

DSC has been researching and monitoring corporate charitable giving for the last 25 years, and campaigns for better reporting, and better giving, from companies as part of its Great Giving campaign (www.dsc.org.uk/greatgiving).

This document maps the pathway of the various consultations initiated by the Department for Business Innovation and Skills (BIS) around corporate social responsibility (CSR) reporting over the last few years since the Coalition Government came to power in May 2010, leading up to the latest consultation in July 2013 and resulting legislation coming into force on October 1st.

In August 2010 BIS launched a series of consultations on narrative reporting of the social and environmental duties of companies. [Why?](#)

On 29 November BIS and HM Treasury published the Growth Review <http://www.bis.gov.uk/growth> which sets out what we are doing to create the best conditions for private sector growth. Corporate governance including narrative reporting is one of the Government's priorities for action in that review.

This was also part of the BIS policy to make companies more accountable to shareholders and the public, in which it has committed to "[improving company reporting](#) through changes to the law on reporting":

Issue

Shareholders and the public have lost confidence in the way companies are run. They believe that companies should be rewarded for success, not failure.

Making companies more accountable in how they work - and showing that they are improving - will increase investor and public confidence, making them more attractive to investors and giving the public more trust in their products and services.

All laudable aims, however the process which then followed seemed a little at odds with its stated aims as far as it related to the reporting of charitable donations in particular.

The whole process in summary:

In 2010 government ran a consultation to find out what improvements could be made to non-financial reporting and in 2011 we published 'Future of narrative reporting' where we proposed a new format for reports.

The new format would replace 'business review' with a 'strategic report'.

Draft regulations were published in October 2012 to make these changes and we expect the changes will become law by October 2013.

The issues under consideration were summarised as follows, from the September 2011 impact assessment document:

What is the problem under consideration? Why is government intervention necessary?

The problem being considered is how to increase the value of company non-financial ("Narrative") reporting by the largest companies. Recent developments in company reporting have favoured increasingly lengthy and complex annual reports, reducing their utility both to investors and other interested parties. There is also general support from stakeholders for measures to simplify the framework, to reduce the incentives to make "boilerplate" disclosures and to increase the comparability of data provided by companies as part of the reporting process. Finally, there is a coalition commitment to "reinstate an Operating and Financial Review(OFR) to ensure that directors' social and environmental duties have to be covered in company reporting, and investigate further ways of improving corporate accountability and transparency".

The intended outcome:

To improve corporate transparency and disclosure by allowing key strategic information to be provided to investors in a focused, concise report, supported by detailed online disclosure of non-financial information to enable comparability of this information between companies.

Sounds brilliant! The paths considered (emphasis added):

Three high level policy options have been considered:

- 1) Reintroduce the 2005 mandatory reporting and audit regime for the Operating and Financial Review*
- 2) Require companies to produce a high level strategic report supplemented (where appropriate) by detailed disclosure online (available in hard copy on request).*
- 3) Do nothing*

Options (1) and (2) involve modifying the existing reporting regime, as set out in the Companies Act 2006. Option (2) is preferred, as it best meets the goals of improving transparency and comparability of data, while minimising the regulatory burden. Option 1 imposes a large regulatory burden, which in turn would likely lead to an increase in tick-box compliance with the regulation. There was a consensus from the 2010 narrative reporting consultation that something needs to be done and therefore option (3) has no support .

What would this new Strategic Report include and what else might be needed?

THE FUTURE OF NARRATIVE REPORTING

Consulting on a new reporting framework

SEPTEMBER 2011

The Annual Directors' Statement

3.23 The Strategic Report will provide enough information for most users of company reports to make an assessment of the company's historic performance and future prospects. However, a significant number of users will require more detailed specific information on aspects of company performance or governance – for example on specific environmental, social or employee issues that are not material to the company as a whole and that will not therefore be included in the Strategic Report.

3.24 There are issues with how this information is reported under the current framework. Many respondents to the 2010 BIS consultation "The Future of Narrative Reporting" noted that specific information can be difficult to find and, where it is included in current narrative reports, it increases the length of the report to extent that it can obscure the strategic information sought by other users.

3.25 The Government is therefore proposing that this information, including both disclosures that are required regardless of materiality or impact on the business as a whole, and information that is provided by companies voluntarily in response to investor or stakeholder demand, should be located in an Annual Directors' Statement, separate from the Strategic Report.

3.28 The structure of the Annual Directors' Statement could therefore accommodate detailed disclosure on, for example, directors' remuneration, greenhouse gas emissions, board diversity and corporate governance, as well as voluntary disclosures, for example highlighting charitable giving by the company or its employees as part of a payroll giving programme or voluntary gender equality reporting.

So hang on, while there will be mandatory reporting of non-financial information, the sections on charitable giving will be voluntary? But there'll still be the mandatory disclosure of charitable donations over £2,000, presumably?

THE FUTURE OF NARRATIVE REPORTING

Consulting on a new reporting framework, SEPTEMBER 2011 (emphasis added):

Question 9

Do you support removal of the disclosure requirements, arising from company law, identified in Table 1? If not, please provide evidence of their relevance to users, including why disclosure in the Annual Directors' Statement is necessary for meeting their needs.

Table 1:

Requirement in current Directors' Report:

Charitable donations – where in aggregate donations exceed £2,000, disclose amount given and the charitable purpose.

Recommendation:

Remove Companies Act disclosure requirement for all companies

Reason for recommendation:

There is no evidence of continuing conflicts of interest in respect of corporate charitable donations or that this requirement has increased levels of charitable giving from companies.

As Minister Jo Swinson MP confirmed in a letter dated 19 August 2013:

The Department for Business Innovation & Skills consulted on its proposals to improve the form and content of narrative reporting between September and November 2011. As part of this we suggested some disclosure requirements that could be removed but, if sufficient evidence was provided of their value to users of company reports, these would be retained. We received no such evidence on the disclosure of charitable donations.

DSC would argue that lack of evidence is not evidence! The reason given for recommending the revision was that: *“There is no evidence of continuing conflicts of interest in respect of corporate charitable donations or that this requirement has increased levels of charitable giving from companies.”* DSC maintains that in the interests of transparency and signalling good intent,

making this requirement voluntary negates its usefulness as a tool for those interested in assessing and measuring company giving.

A trawl through the responses to these consultations did not turn up any specific concerns or issues mooted by companies or others regarding the necessity to report all charitable donations above £2,000.

As a result of the consultation, several changes were proposed. The government's response to the consultation:

Next steps

The format of Narrative Reports (questions 1-8)

Given the large degree of support from consultation responses we are minded to develop proposals to change the structure of narrative reporting to allow companies to produce a high level Strategic Report that is backed-up with an Annual Director's Statement.

Simplifying disclosure requirements (questions 9-14)

One of the key drivers for looking at the format of narrative reporting was the need to simplify reports for the benefit both of those who write them and those who want to read them. We want the reports to be more user-friendly, providing more helpful information concisely. There was a lot of support to remove the Companies Act disclosure requirements listed in the table on page 23 of the consultation paper [about Directors' remuneration] and to address the areas of overlap highlighted in the consultation. The Government will develop proposals to do this as part of the Red Tape Challenge. Those responding to the consultation also suggested other possible simplifications or areas of overlap. We will also consider these as part of the Red Tape Challenge.

We note the increasing interest from investors, consumers and wider society in the environmental and social impacts of business, and believe this should encourage businesses to include these impacts in core business planning.

The resulting policy:

A new structure for narrative reporting in the UK

Summary of proposals

The draft regulations will require companies to produce a strategic report. This will be similar to the business review, but quoted companies (those incorporated in the UK and listed on certain UK, EU or US markets) will be required to report, to the extent necessary for an understanding of the business, on their strategy, their business model, and any human rights issues. Quoted companies will also be asked to report on the number of men and women on their board, in executive committees and in the organisation as a whole.

At the moment some companies choose to produce a summary financial statement (SFS) which they can send instead of the whole report to shareholders who have elected to receive it. In the future companies will be able to send, to shareholders who agree, only the strategic report. Shareholders' previous election to receive the SFS will in future apply to the strategic report.

The draft regulations also remove several reporting requirements from all or some companies. This is covered in more detail in the section on simplification, but essentially we intend to remove from the business review, the requirement for companies to include information about essential contractual arrangements. From the directors' report we plan to remove the following reporting requirements which have either been superseded, are already required elsewhere or do not provide meaningful information:

Information about any essential contractual or other arrangements

Information about the principal activities of the company in the course of the year

Information about asset values

Information about charitable donations

The requirement for private companies to give information about the acquisition of their own shares

Information about the policy and practice of payment to creditors.

The regulations will come into force in October 2013. This means that companies with reporting years ending after October next year will be expected to prepare their annual report in line with the new regulations.

The detail of this as it pertains to charitable donations:

In addition to the repeals provided by Regulations 4 and 5 to the Companies Act 2006, we propose to remove the following requirements from secondary instruments.

The Large and Medium-sized Companies and Groups (Accounts and Reports) Regulations 2008 (schedule 7)

The Small Companies and Groups (Accounts and Directors' Report) Regulations 2008 (schedule 5)

Charitable donations - This requires companies to report on any charitable donations they have made above £2000 and the purpose of these donations.

Following this, the resulting proposed legislation was produced in June 2013 and approved by both houses in July, for enactment in October 2013.

In August 2013, the Financial Reporting Council produced an Exposure Draft 'Guidance on the Strategic Report' which is non-mandatory guidance for companies in the interim period before a new framework for reporting is published by the Government. The guidance as it stands does not provide any further guidance as to social reporting e.g. charitable donations.

A further follow-up consultation was put out in Summer 2013 to guide the design of the new framework for reporting CSR by companies, which is due to result in a new framework by the end of 2013 (two months after the new reporting structure comes into force).

To all intents and purposes it seems that the whole process has been gone about the wrong way around, with mandatory disclosures about charitable donations removed from the legislation before any further guidelines about voluntary disclosures on this are put in place.

The new consultation states that it would like to:

Encourage more businesses to report in a consistent, comparable manner

Confirm a set of voluntary metrics for businesses of all sizes to adopt and, if desired, make public, e.g. in an annual report (in addition to the basic legal reporting requirements)

DSC is campaigning for one of these voluntary metrics to be charitable donations. We have submitted a full response to this consultation which you can access [HERE](#).

Appendix A: Links to the consultation papers

The original consultation on new narrative reporting (August, 2010):

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/31440/10-1057-future-narrative-reporting-consultation.pdf

Summary of responses (August, 2010): <https://www.gov.uk/government/consultations/the-future-of-narrative-reporting-a-consultation>

The further consultation on the narrative reporting framework (September, 2011):

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/31402/11-945-future-of-narrative-reporting-consulting-new-framework.pdf

The Government response (September, 2011):

<https://www.gov.uk/government/consultations/the-future-of-narrative-reporting-a-further-consultation>

“Impact Assessment on Narrative Reporting” (September, 2011):

<https://www.gov.uk/government/publications/narrative-reporting-impact-assessment>

The resulting policy & draft regulations for the new Strategic Report (October, 2012):

<https://www.gov.uk/government/publications/the-future-of-narrative-reporting-a-new-structure-for-narrative-reporting-in-the-uk>

The resulting proposed legislation (June, 2013):

<https://www.gov.uk/government/publications/draft-companies-act-2006-strategic-report-and-directors-report-regulations-2013>

The further consultation on a framework for reporting, etc (Summer, 2013):

<https://www.gov.uk/government/consultations/corporate-responsibility-call-for-views>

In August 2013, the Financial Reporting Council produced an Exposure Draft ‘Guidance on the Strategic Report’: <http://www.frc.org.uk/Our-Work/Publications/Accounting-and-Reporting-Policy/Exposure-Draft-Guidance-on-the-Strategic-Report.pdf>

BIS Policy (Updated 4 July 2013): <https://www.gov.uk/government/policies/making-companies-more-accountable-to-shareholders-and-the-public>

Appendix B: List of respondents

September 2011

Addison
Aldersgate Group
Amnesty International
Association of Chartered Certified Accountants (ACCA)
Association of British Insurers (ABI)
Association of Investment Companies
Aviva Investors
Barclays
Black Sun Plc
British American Tobacco
British Property Federation
British Safety Council
British Standards Institution
BT Group Plc
Business in the Community
CAFOD
Carbon Disclosure Project
Chartered Institute of Management Accountants
Chartered Institute of Personnel and Development
Chartered Management Institute
Church Investors Group
ClientEarth
Communication Workers Union
Confederation of British Industry (CBI)
Deloitte
Elementus Ltd
Environment Agency
Ernst & Young
F&C Management Ltd
FairPensions
Financial Reporting Council (FRC)

GC100
GlaxoSmithKline
Governance for Owners
Grant Thornton
HammersonPlc
Henderson Global Investors
Hermes
Hundred Group
Institute of Environmental Management & Assessment
Institute of Chartered Accountants in England and Wales (ICAEW)
Institute of Chartered Accountants of Scotland (ICAS)
Institute of Chartered Secretaries and Administrators (ICSA)
Institute of Directors
Institute of Practitioners in Advertising
Institution of Occupational Safety and Health
Investis Limited
Investment Management Association
ITV
KPMG
Law Society
Legal & General Group Plc
Legal & General Investment Management
Local Authority Pension Fund Forum
London School of Business & Finance
Mazars
MM&K Limited
National Association of Pension Funds (NAPF)
Newton Investment Management Limited
Osborne Clarke
Pensions Investment Research Consultants (PIRC)
Portsmouth Business School
PricewaterhouseCoopers (PWC)
Prism Cosec
Publish What You Pay

Quoted Companies Alliance (QCA)
RadleyYeldar
Railpen Investments
Sabien Technology Group Plc
Serco Group Plc
Tax Partners Ltd
Tesco Plc
The City of London Law Society
The Communication Workers Union
The Cooperation Incubator
The Co-operative Asset Management
The Corporate Responsibility (CORE) Coalition
The Investor Relations Society
The Strategic Planning Society &FutureValue
The Virtuous Circle Limited
Tomorrow's Company
Trades Union Congress (TUC)
TrucostPlc
UK Commission for Employment and Skills
UK Shareholders' Association
Universities Superannuation Scheme
University of Glasgow Business School
WorkMatters Consulting
WWF

Annex C: Research on reporting

List of principal studies or sources cited by respondents or referred to during the consultation

ACCA

Narrative Reporting: Analysts' Perception of its Value and Relevance

http://www.accaglobal.com/pubs/economy/analysis/acca/technical_papers/tech_3.pdf

ACCA & Deloitte

Hitting the notes but what's the tune? An international survey of CFO's views on narrative reporting

http://www.accaglobal.com/pubs/af/narrative/new/hitting_the_notes.pdf

Accounting for Sustainability

Connected Reporting – A practical guide with worked examples

<http://www.accountingforsustainability.org/files/pdf/Connected%20Reporting.pdf>

Practical Insights – A summary of case studies in embedding and reporting sustainability

<http://www.accountingforsustainability.org/files/pdf/Practical%20Insights.pdf>

Governance & Collaboration – Establishing an “International Integrated Reporting Committee”

<http://www.accountingforsustainability.org/files/pdf/Governance%20&%20Collaboration.pdf>

The Accounting Standards Board (ASB)

Rising to the Challenge -

A Review of Narrative Reporting by UK Listed companies – 2008/9

<http://www.frc.org.uk/images/uploaded/documents/Rising%20to%20the%20challenge%20October%202009.pdf>

Black Sun

Rethinking Reporting – annual analysis of FTSE100 corporate reporting trends 2009

Talking the Talk, Walking the Walk - Examining corporate responsibility reporting trends in Annual Reports

http://www.blacksunplc.com/corporate/ideas_insight/index.jsp

Church Investors Group

The Ethics of Executive Remuneration: A Guide for Christian Investors

http://www.churchinvestorsgroup.org.uk/~churchin/system/files/4pager_Ethics_of_executive_remuneration_09A.pdf

Danish Commerce and companies Agency

Corporate social Responsibility and Reporting in Denmark: Impact of the legal requirements for reporting CSR in the Danish Financial Statements Act

http://www.dcca.dk/graphics/publikationer/CSR/CSR_and_Reporting_in_Denmark.pdf

DEFRA

Guidance on how to measure and report your greenhouse gas emissions

<http://www.defra.gov.uk/environment/business/reporting/index.htm>

Deloitte

Swimming in Words – Surveying narrative reporting in annual reports

http://www.deloitte.com/assets/Dcom-UnitedKingdom/Local%20Assets/Documents/Services/Audit/Corporate%20Governance/UK_Audit_Swimming_in_words.pdf

The Financial Reporting Review Panel (FRRP)

Annual Report 2010

<http://www.frc.org.uk/images/uploaded/documents/ANNUAL%20REPORT%202010%20-%20FINAL4.pdf>

Financial Reporting Council (FRC)

Louder than Words: Principles and actions for making corporate reports less complex and more relevant

http://www.frc.org.uk/images/uploaded/documents/FRC_DiscussionPaper_020609.pdf

Grant Thornton

Corporate Governance Review 2010

http://www.grant-thornton.co.uk/thinking_blogs/publications/corporate_governance_review.aspx

IASB

IFRS Practice Statement: Management Commentary

<http://www.ifrs.org/News/Press+Releases/Management+Commentary+Practice+Statement.htm>

A framework for presentation - Dec 2010

ICAS

Making Corporate Reports Readable – time to cut to the chase

http://www.icas.org.uk/site/cms/download/AA/Making_Corporate_Reports_Readable.pdf

Voluntary Annual Report Disclosures: What Users Want

<http://www.icas.org.uk/site/cms/contentviewarticle.asp?article=2125>

ICSA

Board Performance Evaluation – Review of the annual reports of the FTSE 200 companies

<http://www.icsa.org.uk/products-services/icsa-board-evaluation?c=1>

Institute of Environmental Management & Assessment

Special Report GHG Management and Reporting

<http://www.iema.net/ghgreport>

Professor Adrian Henriques, Middlesex University

The reporting of non financial information in annual reports by FTSE 100 companies

<http://corporate-responsibility.org/wp/wp-content/uploads/2010/04/Reporting-of-Non-Financial-Information-by-the-FTSE1003.pdf>

PWC

Insight or fatigue FTSE 350 reporting

http://www.pwc.co.uk/eng/publications/what_does_your_reporting_really_say.html

RadleyYeldar

How does it stack up? Annual Reports and sustainability reports 2010

<http://ry.com/hdisu2010/>

Railpen Investments & PIRC Limited

Say on Pay – Six Years On Lessons from the UK Experience

<http://www.railpen.co.uk/responsible-investment%5Cresearch-papers-p172.html>

The Report Leadership Group - <http://www.reportleadership.com/>

V Beattie, B McInnes & J Pierpoint

The Management Commentary: comparing narrative outcomes from alternative regulatory regimes - a report published by ICAEW

http://www.icaew.com/index.cfm/route/159806/icaew_ga/en/Technical_amp_Business_Topics/Thought_leadership/The_management_commentary

V Beattie & K. Pratt

Voluntary Annual Report Disclosures: What Users Want – published by ICAS

<http://www.icas.org.uk/site/cms/contentviewarticle.asp?article=2125>

V Beattie & SJ Thomson

Intellectual Capital Reporting: Academic Utopia or Corporate Reality in a Brave New World – published by ICAS

<http://www.icas.org.uk/site/cms/contentviewarticle.asp?article=6837>