



Draft Regulations on the Operating and Financial Review and Directors' Report

IOSH response to the DTI
consultative document on
OFR and Directors' Report

Consultative
document

06.08.04

Introduction

Founded in 1945, IOSH has around 28,000 individual members, is Europe's largest occupational safety and health (OSH) professional body and has strong OSH links worldwide. A chartered body and registered charity, we are the guardian of OSH standards of competence in the UK and provider of professional development and awareness training courses. The Institution regulates and steers the profession, maintaining standards and providing impartial, authoritative, free guidance on OSH issues. Our members work at a variety of strategic and operational levels across all employment sectors and our vision is: "A world of work which is safe, healthy and sustainable"

The Institution was pleased to respond to the previous consultation by the Operating Financial Review Working Group on Materiality in 2003 and welcomes the opportunity to comment on this important Department of Trade and Industry consultative document on the subsequent draft regulations:

The Companies Act 1985 (Operating and Financial Review and Directors' Report) Regulations 2004.

General Comments

IOSH advocates the inclusion of occupational safety and health performance data in internal and public annual reports as a driver to improved performance and recommends organisations adopt a holistic approach to the management of business risk. We welcome the government's proposal to implement the expanded directors' report requirements required under the Modernisation Directive and introduce a statutory OFR, together with an auditors' review. However, we are disappointed that more companies are not covered and suggest wider inclusion to encompass 'non-quoted' companies and medium-sized enterprises, with a longer transition period for the smaller firms.

We are pleased to note that 'health and safety' is specifically mentioned several times in the discussion document and believe it is important that this term is used in the regulations themselves and in the Accounting Standards Board's proposed OFR standard. We also suggest that terms such as 'social', 'community' and 'employee' should be explained, using examples of what is covered eg health, safety and environment and that the definition of SMEs (pages 52 and 53) should outline what is meant by the term 'employees' ie whether these include temporary staff and contractors, as well as direct employees.

In the pages that follow we answer your specific consultation questions where we feel able to do so.

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Specific Comments

Q 2: Do you agree that quoted companies comprise the appropriate class of companies to be required to prepare an OFR?

- We agree that 'quoted companies' are appropriately included, but we are disappointed that medium/large 'non-quoted companies' are not included, as there are 'stakeholders' other than investors, who may be interested in their performance.
- We do not agree with the exemption of medium-sized companies from the non-financial information reporting requirements, as we feel they may well have data-gathering systems already in place and are generally part of a supply-chain in which larger 'customers' need information concerning their 'extended risk profiles'.

Q 4: Do you agree that directors should be required to state the fact where they have concluded that there is nothing relevant to report in respect of the items covered by paragraphs 4 to 7 of Schedule 7ZA?

- We agree that directors should be required to state this, however, we suggest paragraphs 4 and 6 should explicitly refer to health and safety as follows:

4. The review shall include information about -
(a) the employees of the company and its subsidiary undertakings,
(b) environmental matters, and
(c) social and community issues, including health and safety.

6. (1) The review shall include analysis using financial and other key performance indicators, including information relating to environmental, employee and health and safety matters.

Q 5: Do you agree with the approach taken in, and the drafting of, Schedule 7ZA?

- In general we agree with the drafting of this schedule, though in addition to our suggested changes above, we also recommend: *Details of particular matters*, paragraph 5 (a), should explain that the information may include details of the OSH criteria used for selecting contractors and the OSH management systems of the supply-chain companies.

Q 6: Do you agree with the proposed role of the auditors as set out in regulation 8, including whether 'due and careful enquiry' is a reasonable and practicable standard to require of directors?

- We agree with the proposed approach for auditors, but suggest that regulation 8 should read: '...directors have prepared the review after due and careful enquiry and consideration.' We would also emphasise the need for auditors to have an adequate understanding of health, safety and environmental

issues, sufficient for them to be able to judge whether due and careful enquiry has taken place in these risk areas (see also answer to Q10).

Q 8: Do you agree with the Government's approach to the OFR enforcement regime as set out in paragraphs 3.60 – 3.73 and draft regulations 9-12?

- We agree with this approach to OFR enforcement.

Q 9: Do you agree with the Government's proposal to implement the Member State option in the Modernisation Directive by providing an exemption for medium-sized companies from the requirement to include non-financial information?

- We do not agree with the exemption of medium-sized companies from the non-financial information reporting requirements, as we feel they may well have data-gathering systems already in place and are generally part of a supply-chain in which larger 'customers' need information concerning their 'extended risk profiles'.

Q 10: Do you agree with the Government's proposal to bring the OFR Regulations into effect for years beginning 1 January 2005? We would welcome suggestions on how the Government can best implement the Regulations.

- We agree in general terms with the proposed implementation timescales, however, as we advocate the inclusion of medium-sized enterprises, we would suggest that these companies are allowed a longer transition period to prepare and so suggest that the regulations become effective for them in years beginning 1 January 2006.
- Regarding implementation, we believe effective communication to be key. We suggest distributing the regulations, the standard and appropriate guidance (including on OSH performance reporting*) to all quoted companies, together with access to examples of anonymised OFRs, provided on the DTI website. We believe adequate health, safety and environmental training will be required by OFR auditors and will need to take place prior to the commencement of any OFR auditing (see also answer to Q6).

Q 11: Do you have any general comments or specific suggestions on the drafting of the Regulations at Annex A?

- In Part 1 (General), Citation, commencement and interpretation, we suggest explanation of what is covered by the terms 'social', 'community' and 'employee' matters, for example, that they will include significant health, safety and environmental issues. Also that the term 'employee' includes temporary staff and contractors, as well as direct employees.

* Free IOSH guide *Reporting Performance* is downloadable from: www.iosh.co.uk/technical and HSE *A guide to measuring health and safety performance* from: www.hse.gov.uk/opsunit/perfmeas.htm

- We suggest that Part 2 (Directors reports), Section 3(2)(b) of Business Review, reads ‘...including information relating to environmental, employee and **health and safety** matters.’ Also, that the whole of Section 3(3) be replaced by the transitional arrangements for medium-sized enterprises as described in our answer to Q10 above.

Q 12. Do you agree that all shareholders should receive the OFR? Do you agree that it is not appropriate to legislate to permit companies to send a summary OFR in place of the full version?

- We agree all shareholders should receive a full OFR. We do not feel it inappropriate to legislate to permit companies to send only a summary; as the overall aim of the OFR is to produce quality information rather than quantity, there should be little scope or need to summarise.
- We would also encourage public reporting of performance and for this to be done via company websites, thereby saving publication and postage costs; providing wider stakeholder access; and allowing regular updating of information.

Q 13 Do you believe that the draft Regulations should omit any requirement on directors to include information on corporate governance in their OFR, or do you think that such information is sufficiently key to company performance that repetition is justified?

- We do not believe that the regulations should omit corporate governance reporting, as we favour application of the regulations to non-quoted companies and these may not already report on this (see answer to Q2). Also, we feel that significant corporate governance issues need to be included in the OFR, regardless of whether they are covered elsewhere.

Q 14: Do you agree with the Government’s proposal that a provision for confidentiality should not be included for the OFR?

- We agree with the proposal to exclude provision for confidentiality.

Q 15: Do you agree with the omission of “safe harbour” provisions? If you think a “safe harbour” is necessary how should this be framed?

- We agree with the proposal to omit ‘safe harbour’ provisions.

Q 17: Can you identify and quantify any additional costs or benefits resulting from these proposals that have not been identified in the RIA?

- Although we cannot quantify them, we suggest possible additional benefits might include: helping to drive improvement in health, safety and environmental performance (with a reduction of costs associated with poor performance in these areas); ability to negotiate lower insurance premiums; attraction of ethical investment; and improved ability to recruit and retain key personnel.