

**DISCLOSURE OF LOANS TO
DIRECTORS IN COMPANY
ACCOUNTS**

Government response to
consultation

NOVEMBER 2009

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Government Response to the Consultation on Disclosure of Loans to Directors in Company Accounts

INTRODUCTION

1. The Department for Business, Innovation and Skills (BIS) issued a consultation document on 5 August 2009 on the disclosure of loans to directors in company accounts. The consultation addressed two related issues:
 - the particular position in respect of the directors of banking companies and the holding companies of credit institutions under section 413(8) of the Companies Act 2006 (the 2006 Act);
 - the general position relating to directors of other companies.
2. The intention of the 2006 Act was to continue to exercise the option available to Member states in article 40(7) of the Bank Accounts Directive to require banks to disclose only aggregate figures for advances credits and guarantees made to directors. This was the position under the Companies Act 1985. But it was pointed out to the Department that the law as currently drafted would seem to require the information for each director, and not an aggregate figure. The Government received representations from banking stakeholders that the law as currently drafted is unclear and may result in banks making many pages of additional disclosure of such matters as individual credit card transactions for each director.
3. In considering what amendments might be made to section 413(8), the Government took the opportunity to seek views on the wider issue of the disclosure of loans etc. to all directors, by raising a number of questions for the stakeholders.
4. The closing date for responses was 23 October 2009.

SUMMARY OF RESPONSES

5. We received 17 responses in total. All the respondents apart from those who asked for their responses to be kept confidential are listed in the Annex, and the responses of those that did not request confidentiality are available on the BIS website. The respondents fell into the following classification:

Classification	Number
Banks and banking associations	5
Accounting firms and accounting bodies	8
Law firms and law societies	1
Public authorities	2
Other	1

Option 1: Amendment to s413(8)

6. There was unanimous support for the Government's proposal for a short term solution to the current unclear state of the law. This would consist of an amendment to s413(8) and thus a return to the disclosure by way of note to the accounts similar to that which existed under the Companies Act 1985 whereby banks were required to disclose the total amount of loans, the total amount of guarantees and the total amount of credits to their directors, even if made on normal commercial terms.

Option 2: Repeal of s413(8)

7. This would require banks to publish in their accounts the same level of detail of advances, credits and guarantees as specified for non-banking companies in section 413. This option was generally not

supported by banks and some others, which pointed out that there was little value in extending disclosure requirements for facilities in the ordinary course of business, on normal commercial terms and of no greater value or favourable terms than would otherwise be granted to an unconnected person of similar financial standing. One bank said that this would require the details of approximately 60 individual facilities to be included in the annual accounts, generating lengthy and immaterial disclosures. . It was also pointed out that aggregate disclosure of such loans would be required under IAS 24 with separate, more detailed, disclosures required if necessary for an understanding of the effects of the transaction on the financial statements of the company.

Option 3: require more disclosure by all companies

8. Some respondents agreed that it would be worth reviewing this option because of the general lack of clarity of section 413. Some considered that there could be more reliance on accounting standards by aligning the section to IAS 24 and FRS8. Others counselled caution, pointing out the disclosure requirements under IFRSs and UK GAAP and advising against duplication of disclosures, since this created significant additional burdens for companies and users and could detract from users' understanding by making financial statements over-complex and cluttered.

Q1. Do you agree that the Government should amend s413(8), as set out in Option 1, in time for the year ended 31 December 2009 annual accounts? The Government could then consider more fundamental reform of s413 on a longer time scale.

9. All respondents agreed that the amendment to section 413(8) was necessary and should be enacted in time for year ended 31 December 2009 annual accounts.

Q2. What are the costs and benefits of each of the options?

10. Most stated that the compliance costs of Option 1 were negligible since the requirements would be consistent with the information currently held and reported. In relation to the costs of the other options, there was a

broad range of replies. The benefits of amending the section to require additional disclosure were considered to be clarity, an enhanced ability to assess governance, stewardship and conflicts of interest and consistency with other disclosure requirements. Others believed that the creation of overlapping but different sets of rules would create costs of complexity.

Q3. Which option do you prefer and why?

11. All banking organisations preferred just Option 1. Most accounting respondents preferred Option 1 but saw merit in considering further amendments to s413.

Q4 Should the directors in receipt of loans etc. be named in the disclosure?

12. Most banking respondents opposed naming directors, on the grounds that accounting standards should result in disclosure of a material loan to a director and in circumstances where the name of the director is relevant to an understanding of the transaction. Some respondents stated that naming directors would have advantages for public authorities. Accounting respondents saw advantages in naming directors in receipt of loans (apart from transactions with banking companies): disclosures of details of which directors benefitted from transactions would increase meaningfulness of the current disclosures and would enhance the ability of shareholders to assess governance, stewardship and potential conflicts. However they recognised that this would increase the regulatory burdens on companies. On balance, most accounting respondents thought that it was not necessary for directors to be named.

Q5 If they should be named, should this be only if the transaction exceeds a certain limit?

13. Several respondents thought that if additional disclosures were linked to the requirements of sections 197 to 214 of the 2006 Act that this should include the exemptions for minor loans in sections 204 and 207.

Q6 Should additional disclosure be required only for certain types of company, such as banks, large companies or traded companies?

14. Banking companies did believe that it should be. Some accounting respondents said that additional disclosure should be for all types of companies, apart from banks and credit institutions; others thought that small and medium sized enterprises should be exempt from any additional disclosure.

Q7 Should a director's connected persons be caught by these provisions? Section 200 (Loans or quasi-loans to persons connected with directors: requirement of members' approval), and section 201 (Credit transactions: requirement of members' approval) apply to connected persons if the company is a public company or a company associated with a public company.

15. Some respondents would support such an amendment. Others were concerned at increasing complexity by extending disclosures to connected persons due to the different definition of connected persons in the 2006 Act and in accounting standards.

Q8 Is it necessary to add further disclosures under section 413 particularly in the light of the additional requirements of the Companies Act, accounting standards and the Listing Rules concerning disclosure of related party transactions?

16. Most respondents felt that this was not necessary.

Q9 Do you have alternative proposals?

17. Proposals made included.

- a. amending section 413 to use the Part 10 terminology, that is, "loans, quasi-loans and credit transactions and arrangements", instead of "advances", since the former expressions are familiar to users of the 2006 Act;

- b. extending disclosures to transactions of a company or its subsidiary undertakings, whether or not group accounts are prepared;
- c. clarifying what falls to be disclosed under section 413(3) by reverting to the 1985 Act position of requiring disclosure of opening, closing and highest balance during the year;
- d. amending section 413(8) by including in the exemption covered by this sub-section credit institutions, rather than the holding company of a credit institution.

18. The Government is grateful to all those who took the time and trouble to respond which has given it a much clearer understanding of the difficulties being experienced with section 413 and the likely impact of changes to that section.

GOVERNMENT RESPONSE

19. Given that there was full support for correcting the incorrect cross-reference in section 413(8), the Government proposes to make this change which can be made quickly by negative resolution regulations in time for the 2009 accounts for the majority of banking companies. To enable early application of this technical amendment, it will apply to financial years ending on or after 23 December 2009.
20. Any further amendments to section 413, whether to clarify its meaning and/or to extend its scope, will need to be done on a longer timescale and after full consultation on their exact terms. For example, some respondents questioned the requirement to give details of “amounts” repaid, but this needs to be read in the light of the Directives’ requirements. Others preferred the previous 1985 Act requirement for disclosure of opening, closing and maximum balances, even though this would go beyond the Directives’ requirements. If the Government did decide to make further changes, it would publish draft Regulations for comment. Any amendments that would impose additional burdens on companies, as recommended by some respondents, would need to be debated in Parliament. The coming into force date of any further regulations amending section 413 would depend on the extent of the changes from current requirements and the need for the Government to allow companies a reasonable length of time to put new systems into place to gather additional information.

ANNEX

Respondents:

The Royal Bank of Scotland (Confidential response)

Serious Organised Crime Agency (Confidential response)

HM Revenue & Customs (Confidential response)

The Institute of Chartered Accountants of Scotland

The British Bankers Association

The Institute of Chartered Accountants in England & Wales

Ernst & Young

KPMG

HSBC

Grant Thornton

C Hoare & Co

PriceWaterhouseCoopers

Deloitte

Barclays Plc

The Law Society of Scotland

ACCA

CBI