

CORPORATE ENERGY AND CARBON REPORTING FRAMEWORK – A PRIMER

As from 1 April 2020 the first businesses covered by the UK's new carbon and energy reporting framework began preparing disclosures for their annual reports. The framework imposes more significant carbon and energy reporting obligations on UK quoted companies and UK Large unquoted companies and LLPs than the pre-existing reporting schemes. This primer explains the key obligations under this new framework.

SCOPE AND APPLICATION OF REPORTING PROPOSALS

The new "Streamlined Energy and Carbon Reporting" framework (SECR) applies to all in-scope organisations for financial years beginning on or after 1 April 2019. The scheme applies throughout the UK following the abolition of the CRC Energy Efficiency Scheme on that date.

The coverage of carbon and energy reporting distinguishes between UK quoted companies and UK large unquoted companies and UK large LLPs. Companies that are not registered in the UK would not be required to report, but any UK subsidiaries would need to do so (subject to the provisions mentioned below on group reporting).

Key Issues

- Significant changes from previous carbon reporting regimes:
- Quoted companies have additional obligations to report on energy usage; but apparent reduction in scope of quoted company group reporting
- Large unquoted companies and large LLPs have new more limited obligations to report on greenhouse gas emissions and energy usage
- Data is required broadly on a group basis
- Reporting is on a "comply or explain" approach

Legislation implementing the changes

The changes are implemented by The Companies (Directors' Report) and Limited Liability Partnerships (Energy and Carbon Report) Regulations 2018 (the 2018 Regulations). The 2018 Regulations provide for:

- Changes to obligations of *quoted companies* and the introduction of obligations for *large unquoted companies* through amendments to the Large and Medium-sized Companies and Groups (Accounts and Reports) Regulations 2008. The pre-existing obligations on quoted companies are contained in Schedule 7)
- The introduction of obligations for large *limited liability partnerships (LLPs)* through amendments to the Limited Liability Partnerships (Accounts and Audit) (Application of Companies Act 2006) Regulations 2008

(a) UK quoted companies

The pre-existing requirements for mandatory reporting of global greenhouse gases (GHG) continue for quoted companies, subject to the changes referred to below. A quoted company will continue to report through the directors' report forming part of its annual report. The reporting requirements cover scope 1 direct emissions from combustion of fuel and operation of facilities, and scope 2 indirect emissions from consumption of purchased electricity, heat, steam and cooling. Reporting on scope 3 emissions (supply chain impacts) remains voluntary. Quoted companies also have to include an appropriate intensity ratio tying the emissions to quantifiable factors (e.g. turnover or employees). In addition to GHG emissions, the new reporting requirements require affected companies to include the total energy use associated with their scope 1 and 2 emissions. In addition, for the first time, quoted companies have to split out their figures for: (i) UK and UK offshore area; and (ii) non-UK.

As under the pre-existing regime, quoted companies need to repeat information contained in the previous year's reports so that a rolling comparison can be made to identify changes year upon year.

For the purposes of SECR, a quoted company is a company with its equity share capital included in the FCA's Official List, officially listed in an EEA State or admitted to dealing on either the New York Stock Exchange or the Nasdaq.

(b) UK large unquoted companies and UK large LLPs

In a significant change to the previous regime, carbon and energy reporting is extended to certain UK "large" unquoted companies as well as to UK large LLPs (see box below). A large unquoted company must report on emissions and energy use in the directors' report forming part of its annual report. A large LLP will report on emissions and energy use in a new 'energy and carbon report'.

Large Unquoted Companies and Large LLPs

Large unquoted companies

In basic terms those satisfying two or more of the following conditions:

- More than 250 employees.
- Turnover of more than £36m.
- Balance sheet total of more than £18m.

Large LLPs

The test for being a large LLP tracks the test for being a large unquoted company.

See 'Group Reporting' below for large unquoted companies or LLPs that are part of a group)

Large unquoted companies / LLPs must report on UK scope 1 direct GHG emissions (but only for combustion of gas, and consumption of fuel for transport), and UK scope 2 emissions from consumption of purchased electricity (including for transport). They must also report on energy use associated with these scope 1 and 2 emissions. As for quoted companies, it is voluntary for large unquoted companies / LLPs to report on their scope 3 carbon emissions. Reporting of UK offshore energy and emissions is mandatory for organisations wholly or mainly involved in offshore activities (but otherwise is voluntary).

The requirement to produce only UK figures is different from the position for quoted companies but reflects the position in the Energy Savings Opportunity Scheme for energy auditing (ESOS) and in the former CRC Scheme.

Similarly to a quoted company, a large unquoted company or large LLP needs to include an intensity ratio for its emissions. It would also need to repeat information contained in the previous year's reports.

Many of the requirements for preparing and submitting an energy and carbon report (and consequences for failure to comply) mirror those in respect of a company's directors' report. For example, failure to comply with a duty to prepare an energy and carbon report would be a criminal offence if the member fails to take all reasonable steps for securing compliance with this duty. Civil penalties for late filing of the energy and carbon report would also apply.

Unregistered companies

The SECR framework extends the reporting requirements to a small number of unregistered companies that are required to prepare a directors' report.

Increase in numbers of companies covered

The Department for Business, Energy and Industrial Strategy (BEIS) has estimated that SECR is likely to increase the total number of reporting companies from around 1,200 to 11,900. While the 'large unquoted companies' definition mentioned above should provide a relatively straightforward method of determining qualifying companies, it creates a divergence from the approach under the ESOS regime which also applies to large companies, but large companies in this context are defined as those that are not 'small or medium-sized enterprises' under EU law, which is slightly different (see our earlier briefing "[The UK Clean Growth Strategy – New Energy and Carbon Reporting Rules](#)").

GROUP REPORTING

Where a UK parent company or LLP has to prepare group accounts, reporting is required on a group basis subject to the qualifications set out below.

An unquoted company or LLP that is a parent is only required to report if the group headed by the parent meets two or more of the following conditions:

- More than 250 employees in aggregate.
- Aggregate turnover of more than £36m net (or £43.2m gross).
- Aggregate balance sheet total of more than £18m net (or £21.6m gross).

No subsidiary (whether quoted, or unquoted, company or LLP) is required to report where it is included in the consolidated group directors' report or consolidated group energy and carbon report (as applicable) of the parent, provided that the parent's financial year ends at the same time or before that of

the subsidiary. As a result, the type of consolidated report required depends solely on the nature of the reporting parent entity (irrespective of the nature of the subsidiary entities contained in the group), as shown in the table below.

Reporting Parent	Type of Report Required
Quoted company	Consolidated group directors' report
Large unquoted Company	Consolidated group directors' report
Large LLP	Consolidated group energy and carbon report

A change in the scope of group reporting?

Under SECR, a group report can omit data about a subsidiary's operations that that subsidiary would not have to report if it was a standalone company (i.e. not part of a group). This has the potential to reduce significantly the current scope of reporting in circumstances where a quoted company prepares a consolidated group directors' report. For example, if a quoted company's directors' report covers a large unquoted company subsidiary, under the previous framework it would generally have to report in relation to the combustion of all fuels at the subsidiary's facilities. Under SECR, however, it appears that it would only have to report in relation to combustion of gas at those facilities. However, for practical or reputational reasons, companies may well decide not to reduce their existing level of reporting.

ENERGY EFFICIENCY ACTION

All obligated organisations (whether quoted companies, unquoted companies or LLPs) are required to provide a "narrative commentary" on all action they have taken on energy efficiency in the relevant financial year.

EXEMPTIONS AND 'COMPLY OR EXPLAIN' APPROACH

A company or LLP is exempt from the requirements where its energy use does not exceed 40,000kWh during the relevant year. Where a directors' report or energy and carbon report is produced on a group basis, the threshold is applied to the aggregated energy use of all group entities covered by the report.

Similarly to the previous mandatory GHG reporting obligations, all SECR obligations are on a "comply or explain" approach: organisations do not have to report information where it would be impractical to do so.

In exceptional circumstances, an organisation is able to withhold data where the directors (or, in the case of an LLP, the members) think this would be seriously prejudicial to the organisation's interests.

TCFD AND THE BROADER PICTURE

BEIS originally considered whether to incorporate the recommendations of the Taskforce on Climate-related Financial Disclosures (TCFD) into its SECR framework (See our briefing "[Report urges Companies to Disclose Climate Change Impacts in Financial Filings](#)"). While it did not do so when implementing the framework, the Government has since announced that it expects all listed companies and large asset owners to be disclosing in line with the TCFD recommendations by 2022. The key consequence of TCFD-compliant reporting would be the specific requirement for companies to include forward-looking

analysis of climate impacts based on different climate change scenarios, and analysis of governance structures, strategy, and risk management approach for dealing with climate change impacts. Government guidance on SECR already encourages companies who want to report on forward-looking financial risks and opportunities to report in line with TCFD. It remains to be seen whether these requirements will be brought more formally into SECR.

It should be noted that, although the CRC has now been abolished, ESOS remains in place as an overlapping mechanism with slightly divergent qualification criteria from the SECR framework.

If you would like assistance in analysing how the new reporting requirements under SECR apply to your organisation, please do get in touch.

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