

EXPLANATORY MEMORANDUM TO

THE COMPANIES (DIRECTORS' REPORT) AND LIMITED LIABILITY PARTNERSHIPS (ENERGY AND CARBON REPORT) REGULATIONS 2018

2018 No. [XXXX]

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department for Business, Energy and Industrial Strategy and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

- 2.1 This instrument makes changes to reporting requirements for quoted companies and introduces new reporting requirements for large unquoted companies and large limited liability partnerships (LLPs) to annually report on emissions, energy consumption and energy efficiency action.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

- 3.2 The territorial application of this instrument includes Scotland and Northern Ireland.

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is England, Wales and Scotland. It will also extend by agreement to Northern Ireland.
- 4.2 The territorial application of this instrument is England, Wales and Scotland. It will also apply by agreement in Northern Ireland.
- 4.3 The UK Government is responsible for the operation and regulation of business entities in England and Wales, and in Scotland. Previously the Northern Ireland administration has agreed that, while the operation and regulation of business entities remains a transferred matter within the legislative competence of the Northern Ireland Assembly, amendments to the Companies Act 2006 and legislation regulating business entities should be made in the same terms for the whole of the United Kingdom.

5. European Convention on Human Rights

- 5.1 The Rt. Hon Claire Perry MP has made the following statement regarding Human Rights:

“In my view the provisions of the Companies (Directors' Report) and Limited Liability Partnerships (Energy and Carbon Report) Regulations 2018 are compatible with the Convention rights.”

6. Legislative Context

- 6.1 Part 15 of the Companies Act 2006 and the Large and Medium-sized Companies and Groups (Accounts and Reports) Regulations 2008 (“the 2008 Regulations”) set out the reporting framework for companies. In certain circumstances, companies are required to produce a directors’ report. This instrument specifies further content for the directors’ report for certain companies.
- 6.2 Part 7 of Schedule 7 to the 2008 Regulations requires quoted companies to include information relating to emissions in their directors’ report. This instrument amends Part 7 to require quoted companies to also make statements in their directors’ report concerning energy consumption and action taken to increase energy efficiency if any. This instrument also inserts a new Part 7A into Schedule 7 to provide for new requirements on large unquoted companies to make statements in their directors’ report concerning greenhouse gas emissions, energy consumption and action taken to increase energy efficiency if any. This instrument takes into account changes made to the 2008 Regulations by Part 3 of the Companies (Miscellaneous Reporting) Regulations 2018.
- 6.3 Sections 15 and 17 of the Limited Liability Partnerships Act 2000 enable legislation relating to companies to be applied to LLPs with modifications. Part 3 of this instrument inserts new provisions into the Limited Liability Partnerships (Accounts and Audit) (Application of Companies Act 2006) Regulations 2008 (the “LLP Regulations”) to apply to large LLPs various requirements relating to the directors’ report, modified to an “energy and carbon report”, and specifying the content including statements concerning the LLP’s greenhouse gas emissions, energy consumption and action taken to increase its energy efficiency if any.

7. Policy background

What is being done and why?

- 7.1 Measuring and reporting energy use and emissions can help to drive improvements in energy efficiency and carbon and financial savings for organisations. Energy efficiency is vital to business productivity, security of energy supplies, and supports the transition to a low-carbon economy.
- 7.2 Introduction of new obligations to require the reporting of energy and carbon information (referred to as “streamlined energy and carbon reporting (SECR)”) and the early closure of the CRC Energy Efficiency Scheme are part of a package of changes announced in the 2016 Budget, following a review of the business energy efficiency tax and policy landscape. The review looked at ways to simplify the landscape which stakeholders viewed as overly complex.
- 7.3 A public consultation, ‘Reforming the business energy efficiency tax landscape’, was conducted in 2015. A significant number of respondents to that consultation agreed that mandatory reporting of energy use and carbon data is an important element of the landscape and that board/senior management sign-off for these reports could deliver significant benefits. A significant number of respondents also highlighted the need to rationalise and simplify the landscape.
- 7.4 Accordingly, the UK government announced in the March 2016 response¹ to the above consultation that it will abolish the CRC Energy Efficiency Scheme (CRC)

¹<https://www.gov.uk/government/consultations/consultation-reforming-the-business-energy-efficiency-tax-landscape>

after the 2018-2019 compliance year (please see The CRC Energy Efficiency Scheme (Revocations and Savings) Order 2018). The revenue from the early closure of the CRC scheme will be recovered by increasing the main rates of the Climate Change Levy (CCL). Given the significant support for maintaining mandatory reporting, the UK government also announced that it would consult on a new streamlined energy and carbon reporting (SECR) framework for introduction by April 2019².

- 7.5 The Government has already legislated to increase the main rates of the Climate Change Levy in April 2019³ and remove the provision for CRC allowance sales after the compliance year 2018-2019⁴. The current phase of CRC commenced on 1 April 2014 and only requires reporting of, and the purchase and surrender of CRC allowances bought and surrendered for emissions from relevant gas and electricity supplies consumed up to 31 March 2019. Therefore, this instrument introduces new requirements to disclose information about emissions, energy use and energy efficiency action in directors' reports or energy and carbon reports, as applicable, for financial years starting on or after 1 April 2019.
- 7.6 On 12 October 2017 the consultation on Streamlined Energy & Carbon Reporting (SECR)⁵ was published to ask for views on introducing a new Streamlined Energy and Carbon Reporting framework, through company annual reports, to replace the reporting element of the existing UK-wide CRC Energy Efficiency Scheme. The importance of reporting in making decision-makers, (including directors of companies and members of LLPs, investors, employees and other stakeholders) aware of the energy and carbon impacts of businesses, and the existing requirement, under the 2008 Regulations, for quoted companies to report their greenhouse gas emissions underpinned the choice to impose these new reporting requirements within the annual reporting framework. .
- 7.7 The Government is determined to help businesses improve their productivity and competitiveness as part of our Industrial and Clean Growth Strategies. This includes working together to unlock any potential energy and emission savings to help keep bills as low as possible and to support delivery of our ambitious greenhouse gas reduction targets. Transparency and consistency of disclosure have been deemed important by the Taskforce on Climate-related Financial Disclosure, whose recommendations were that there should be disclosure of energy and emissions information in mainstream financial reports, and by the Green Finance Taskforce.
- 7.8 The Government's consultation response [which was published on 18 July 2018] announced the requirements to be introduced by this instrument. The response, and associated Impact Assessment, also set out the benefits of the overall package, including the estimated emissions and energy savings and the benefits in simplifying the landscape and reducing the administrative burden on participants while improving consistency and transparency of disclosure. The new and amended requirements are described below:
- Building on the existing requirements on quoted companies to disclose their emissions and intensity metric (which expresses the company's annual

²https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/508159/reforming_business_energy_efficiency_tax_response_final.pdf

³Finance Act 2016 c.24, sections 147 and 148.

⁴CRC Energy Efficiency Scheme (Allocation of Allowances for Payment) (Amendment) Regulations 2017 (S.I. 2017/211).

⁵<https://www.gov.uk/government/consultations/streamlined-energy-and-carbon-reporting>

emissions in relation to a quantifiable factor associated with the company's activities) under Part 7 of Schedule 7 to the 2008 Regulations, this instrument introduces new requirements for quoted companies to also annually disclose energy consumption and energy efficiency action (if any) in directors' reports for financial years starting on or after 1 April 2019.

- This instrument imposes new requirements on large unquoted companies and large LLPs to annually disclose emissions, energy consumption and energy efficiency action (if any) and an intensity metric in directors' reports or energy and carbon reports as applicable for financial years starting on or after 1 April 2019.
- If the relevant report is a group report, the company or LLP (as applicable) must make the required statements on the basis of its information and its subsidiaries', with provision to exclude any information which a subsidiary would not itself be required to disclose in its report. Provision is also made to the effect that a subsidiary which would itself be required to report is not so required where a parent company prepares such a group report, subject to a number of conditions.
- This instrument provides that companies or LLPs using a small amount of energy are only required to make a statement in their report to the effect that they are small energy users.
- Quoted companies are already required to report on their emissions globally, and this instrument adds a requirement to report on their global energy use given the increased transparency this delivers. Large unquoted companies and large LLPs are required to report on their emissions and energy use in the UK or, if their activities are wholly or mainly offshore, in the UK and the offshore area.
- A number of consultation responses encouraged SECR to be applied to businesses whatever their legal structure. Given that certain unregistered companies which operate for gain are already required to prepare directors' reports under the Unregistered Companies Regulations 2009 (and those reports need to comply with the 2008 Regulations), this instrument imposes the same requirements for disclosures on quoted unregistered companies as quoted registered companies, and on large unquoted unregistered companies as on large unquoted registered companies.
- These requirements only apply to the extent that it is practical for the information to be obtained.
- No disclosures are required which in the opinion of the directors or members they state would be seriously prejudicial to the interests of the company or LLP.
- This instrument requires a narrative commentary on energy efficiency action taken, if any, in the financial year.
- This instrument applies to financial years starting on or after 1 April 2019.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

- 8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

9.1 This instrument amends the Large and Medium-sized Companies and Groups (Accounts and Reports) Regulations 2008 and the Limited Liability Partnerships (Accounts and Audit) (Application of Companies Act 2006) Regulations 2008. The department does not intend to consolidate the relevant legislation.

10. Consultation outcome

10.1 The SECR public consultation⁶ closed on 4 January 2018. During the 12-week consultation period, which included stakeholder events in England, Scotland, Wales and Northern Ireland, views were sought on a range of issues, particularly:

- Whether there should be mandatory annual reporting and disclosure of energy and carbon information through company reports across the UK from 2019.
- Who these requirements should apply to, including whether the requirements should extend to all large companies and whether there should be any exemption / de minimis energy use thresholds.
- Whether there should be reporting of energy efficiency opportunities, such as those identified through energy audits under the Energy Savings Opportunity Scheme (ESOS).

10.2 The Government received 155 formal responses to the consultation. The Government's response sets out the levels of support for the range of proposals and the decisions on implementation. Analysis relevant to the content of this instrument is as follows:

- There was strong support for the approach to be UK-wide (93% of those who responded to the question) and for the use of annual reports (75%). Whilst there were mixed views on where in annual reports was the most appropriate place for energy and carbon reporting, the directors' report was the most favoured option.
- There was also support for continuation of mandatory greenhouse gas reporting by quoted companies and the proposed extension to unquoted companies.
- There was particularly strong support for the inclusion of LLPs (91%).
- While a good majority supported the focus on large organisations (65%), there were a number of requests for exemptions from reporting or reductions in scope to reduce administrative burdens or to protect information that was commercially sensitive. The Government has taken these representations into account in the final decisions through, for example, inclusion of a lighter touch approach for low energy users and options not to disclose information that is seriously prejudicial to the company's or LLP's interests or that is not practical to obtain.
- There were also mixed views on the definition of large companies, where the Government has decided to approach taken in the Companies Act 2006 for consistency, rather than the approach taken in the Energy Savings Opportunity Scheme (ESOS).

⁶<https://www.gov.uk/government/consultations/streamlined-energy-and-carbon-reporting>

- 10.3 The Government also sought views from the Devolved Administrations on the streamlined energy and carbon reporting framework. These included seeking consent, which was received, for this instrument to apply to Northern Ireland.

11. Guidance

- 11.1 Detailed guidance on how to comply with the new obligations to disclose emissions, energy consumption and energy efficiency action in directors' reports or energy and carbon reports as applicable for financial years starting on or after 1 April 2019 is expected to be published by January 2019. This will build on the current guidance on mandatory greenhouse gas reporting available at:
<https://www.gov.uk/government/publications/environmental-reporting-guidelines-including-mandatory-greenhouse-gas-emissions-reporting-guidance>

12. Impact

- 12.1 The impact on business of the combined package, including SECR is a reduction of £1.3m in Estimated Annual Net Direct Costs to Business along with 4TWh of energy savings and associated carbon savings of 0.8MtCO₂e, leading to a total Net Present Value benefit to society of £1,549 million. As stated, these impacts are based on a number of assumptions which have been tested with stakeholders and clearly outlined in the IA. The uncertainty of these assumptions has also been tested using sensitivity analysis which concludes that even when using pessimistic estimates for the combination of assumptions with the greatest impacts, the policy package still delivers a net societal benefit of £698 million.
- 12.2 There is no impact on public organisations, charities or voluntary bodies unless they operate as companies or LLPs and are above the relevant reporting thresholds where applicable, in which case the impact on these organisations is accounted for in the Impact Assessment.
- 12.3 A full Impact Assessment is submitted with this memorandum and published alongside the Explanatory Memorandum on the legislation.gov.uk website.

13. Regulating small business

- 13.1 The provisions in regulation 7 and Part 3 of this instrument apply only to large unquoted companies and large LLPs. The amendments to the 2008 Regulations in regulation 6 expand the emissions reporting already undertaken by small quoted businesses and add requirements to report the company's energy use and action taken to increase its energy efficiency. The impacts on small quoted companies in the scope of this instrument are assessed to be minimal and no specific action is proposed to minimise regulatory burdens on the small businesses in scope.

14. Monitoring & review

- 14.1 The Government will monitor how companies respond to the amendments made by this instrument to the 2008 Regulations and LLP Regulations. Review provisions have been included (one for companies, one for LLPs) and the amended provisions will be reviewed after 5 years to assess their impact on businesses and the wider economy.

15. Contact

- 15.1 Gary Shanahan at the Department for Business, Energy and Industrial Strategy, Telephone: 0300 068 6172 or email: gary.shanahan@beis.gov.uk, can be contacted with any queries regarding the instrument.
- 15.2 Michael Rutter, Deputy Director – Business Energy Use at the Department for Business, Energy and Industrial Strategy can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 The Rt. Hon Claire Perry MP at the Department for Business, Energy and Industrial Strategy can confirm that this Explanatory Memorandum meets the required standard.