

2018 No. 1155

COMPANIES

LIMITED LIABILITY PARTNERSHIPS

The Companies (Directors' Report) and Limited Liability Partnerships (Energy and Carbon Report) Regulations 2018

Made - - - - *6th November 2018*

Coming into force - - *1st April 2019*

The Secretary of State makes the following Regulations in exercise of the powers conferred by sections 416(4) and 1292(1) of the Companies Act 2006(a) and sections 15 and 17 of the Limited Liability Partnerships Act 2000(b).

In accordance with sections 473(3) and 1290 of the Companies Act 2006 and section 17(6) of the Limited Liability Partnerships Act 2000, a draft of this instrument has been laid before Parliament and approved by a resolution of each House of Parliament.

PART 1

Introductory

Citation

1. These Regulations may be cited as the Companies (Directors' Report) and Limited Liability Partnerships (Energy and Carbon Report) Regulations 2018.

Commencement and application

2.—(1) These Regulations come into force on 1st April 2019.

(2) These Regulations have effect in respect of financial years beginning on or after 1st April 2019.

(3) For the purpose of this regulation, "financial year" in relation to limited liability partnerships has the meaning given in section 390 of the Companies Act 2006 as it has been applied and modified by regulation 7 of the Limited Liability Partnerships (Accounts and Audit) (Application of Companies Act 2006) Regulations 2008(c).

(a) 2006 c.46. There are amendments to the Act which are not relevant.

(b) 2000 c.12. Section 17 of the Act was amended by S.I. 2009/1804. There are other amendments to the Act which are not relevant.

(c) S.I. 2008/1911 is amended by S.I. 2009/1804, 2012/2301, 2012/1439, 2013/472, 2014/1815, 2016/575, 2017/80, 2017/1164 and by Part 3 of these Regulations. There are other amendments which are not relevant.

PART 2

Amendments to the Large and Medium-sized Companies and Groups (Accounts and Reports) Regulations 2008

3. The Large and Medium-sized Companies and Groups (Accounts and Reports) Regulations 2008(a) are amended in accordance with this Part.

Amendment of regulation 10 (directors' report)

4. In regulation 10(2)(b)—

- (a) in the entry relating to Part 7, for “emissions, and”, substitute “emissions, energy consumption and energy efficiency action by quoted companies,”;
- (b) after the entry relating to Part 7, insert “Part 7A relates to disclosures in relation to greenhouse gas emissions, energy consumption and energy efficiency action by unquoted companies, and”.

Amendment of regulation 14 (review)

5.—(1) Regulation 14(c) is amended as follows.

(2) In paragraph (1)—

- (a) at the end of sub-paragraph (a)(i), omit “and”;
- (b) after sub-paragraph (a)(ii), insert—

“(iii) Part 2 of the Companies (Directors' Report) and Limited Liability Partnerships (Energy and Carbon Report) Regulations 2018, and”.

(3) After paragraph (4A), insert—

“(4B) The first report under paragraph (1)(a)(iii) must be published before the end of the period of 5 years beginning with the date on which the Companies (Directors' Report) and Limited Liability Partnerships (Energy and Carbon Report) Regulations 2018 come into force.”.

(4) In paragraph (5), for “paragraphs (1)(a)(i) and (ii)”, substitute “paragraphs (1)(a)(i) to (iii)”.

Amendment of Part 7 of Schedule 7 (disclosures concerning greenhouse gas emissions)

6.—(1) Part 7 of Schedule 7 is amended as follows.

(2) In the heading, after “emissions”, insert “, energy consumption and energy efficiency action by quoted companies”.

(3) In paragraph 15—

- (a) in sub-paragraph (1), at the beginning insert “Subject to sub-paragraph (1A),”;
- (b) after sub-paragraph (1), insert—

“(1A) This Part does not apply if—

- (a) the company is a subsidiary undertaking at the end of the financial year;
- (b) the company is included in the group report of a parent undertaking; and
- (c) the group report is prepared for a financial year of the parent undertaking that ends at the same time as, or before the end of, the company's financial year; and—
 - (i) if the group report is a group directors' report—

(a) S.I. 2008/410 is amended by S.I. 2013/1970, 2016/575 and 2018/860. There are other amendments which are not relevant
(b) Regulation 10 is amended by S.I. 2013/1970 and S.I. 2018/860.
(c) Regulation 14 is amended by S.I. 2016/575 and S.I. 2018/860.

- (aa) of a quoted company, it complies with this Part of this Schedule other than in reliance on paragraph 15(5)(b); or
- (bb) of an unquoted company, it complies with Part 7A of this Schedule other than in reliance on paragraph 20D(7)(b); or
- (ii) if the group report is a group energy and carbon report, it complies with Part 7A of this Schedule as applied and modified by regulation 12B of the Limited Liability Partnerships (Accounts and Audit) (Application of Companies Act 2006) Regulations 2008(a) other than in reliance on paragraph 20D(7)(b).

(1B) For the purpose of sub-paragraph (1A), “group energy and carbon report” means a report prepared in accordance with section 415(2) of the 2006 Act as applied and modified by regulation 12B of the Limited Liability Partnerships (Accounts and Audit) (Application of Companies Act 2006) Regulations 2008;”;

- (c) after sub-paragraph (3), insert—

“(3A) The report must state a figure, in kWh, which is the aggregate of—

- (a) the annual quantity of energy consumed from activities for which the company is responsible, including—
 - (i) the combustion of fuel; and
 - (ii) the operation of any facility; and
- (b) the annual quantity of energy consumed resulting from the purchase of electricity, heat, steam or cooling by the company for its own use.

(3B) The report must state what proportion of the figures reported in accordance with sub-paragraphs (2) and (3) relate to emissions in the United Kingdom and offshore area.

(3C) The report must state what proportion of the figure reported in accordance with sub-paragraph (3A) relates to energy consumed in the United Kingdom and offshore area.

(3D) If the company has in the financial year to which the report relates taken any measures for the purpose of increasing the company’s energy efficiency, the report must contain a description of the principal measures taken for that purpose.”;

- (d) in sub-paragraph (4), for “(2) and (3)”, substitute “(2) to (3D) and paragraphs 16 and 17”;

- (e) after sub-paragraph (4), insert—

“(5) Nothing in sub-paragraphs (2) to (3D) and paragraphs 16 and 17 requires the disclosure of information if—

- (a) the company consumed 40,000 kWh of energy or less during the period in respect of which the directors’ report is prepared and the report states that the information is not disclosed for that reason; or
- (b) the disclosure would, in the opinion of the directors, be seriously prejudicial to the interests of the company, and the report states that the information is not disclosed for that reason.”.

- (4) After paragraph 15, insert—

“**15A.**—(1) If the report is a group directors’ report, subject to sub-paragraph (2), paragraph 15(2) to (3A), (3D) and (5)(a) and paragraph 17 have effect as if references to the company were references to the company and its subsidiary undertakings included in the consolidation that are quoted companies, unquoted companies or limited liability partnerships.

(2) The company may exclude from the report any information which relates to—

(a) Part 3 of these Regulations amends the Limited Liability Partnerships (Accounts and Audits) (Application of Companies Act 2006) Regulations 2008 (S.I. 2008/1911) to apply to LLPs sections 415 and 416 of the Companies Act 2006, and other sections, with modifications. Section 416(2) as it applies to LLPs requires an energy and carbon report to comply, with modifications, with paragraphs 20A(1) and 20D to 20K of Part 7A of Schedule 7 to the Large and Medium-sized Companies and Groups (Accounts and Reports) Regulations 2008 (S.I. 2008/410), which is inserted by regulation 7 of these Regulations.

- (a) a subsidiary undertaking that is a quoted company and which that quoted company would not be required to include in its directors' report by this Part of this Schedule;
- (b) a subsidiary undertaking that is an unquoted company and which that unquoted company would not be required to include in its directors' report by Part 7A of this Schedule;
- (c) a subsidiary undertaking that is a limited liability partnership and which that limited liability partnership would not be required to include in its energy and carbon report by section 416(2) of the 2006 Act as applied and modified by regulation 12B of the Limited Liability Partnerships (Accounts and Audit) (Application of Companies Act 2006) Regulations 2008.

(3) For the purpose of this paragraph, "limited liability partnership" means a limited liability partnership registered under the Limited Liability Partnerships Act 2000(a)."

(5) In paragraph 16, for "and (3)", substitute ", (3) and (3A)".

(6) In paragraph 17, omit "quoted".

(7) After paragraph 18, insert—

"18A. With the exception of the first year for which the directors' report contains the information required by paragraph 15(3A) to (3D), the report must state not only the information required by paragraph 15(3A) to (3D) but that information as disclosed in the report for the preceding financial year."

(8) In paragraph 19—

(a) omit "if";

(b) for "and (3)", substitute "if it".

(9) After paragraph 19, insert—

"19A. The period for which the directors' report is reporting the information required by paragraph 15(3) and (3A) must be the same as the period for which it is reporting the information required by paragraph 15(2)."

(10) In paragraph 20, after the definition of "emissions", insert—

"energy" means all forms of energy products where "energy products" means combustible fuels, heat, renewable energy, electricity, or any other form of energy;

"energy efficiency" means the ratio of output of performance, service, goods or energy to input of energy;

"kWh" means kilowatt hours;

"offshore area" means the areas comprising—

(a) the sea adjacent to the United Kingdom from the low water mark to the landward baseline of the United Kingdom territorial sea;

(b) the United Kingdom territorial sea;

(c) the sea in any designated area within the meaning of section 1(7) of the Continental Shelf Act 1964(b); and

(d) the sea in any area for the time being designated under section 41(3) of the Marine and Coastal Access Act 2009(c),

and includes the places above those areas, and the bed and subsoil of the sea within those areas;"

(a) 2000 c.12. There are amendments to the Act which are not relevant.

(b) 1964 c.29. Section 1(7) was amended by the Oil and Gas (Enterprise) Act 1982 (c.23), Schedule 3, paragraph 1 and the Energy Act 2011 (c.16), section 103.

(c) 2009 c.23. There are amendments to the Act which are not relevant.

New Part 7A of Schedule 7

7. After Part 7 of Schedule 7, insert—

“PART 7A

Disclosures concerning greenhouse gas emissions, energy consumption and energy efficiency action by unquoted companies

20A.—(1) Unless the company is exempted under paragraph 20B or 20C, and subject to sub-paragraph (2), this Part of this Schedule applies to the directors’ report for a financial year if the company is an unquoted company.

(2) This Part does not apply if—

- (a) the company is a subsidiary undertaking at the end of the financial year;
- (b) the company is included in the group report of a parent undertaking; and
- (c) the group report is prepared for a financial year of the parent undertaking that ends at the same time as, or before the end of, the company’s financial year; and—
 - (i) if the group report is a group directors’ report—
 - (aa) of a quoted company, it complies with Part 7 of this Schedule other than in reliance on paragraph 15(5)(b); or
 - (bb) of an unquoted company, it complies with this Part of this Schedule other than in reliance on paragraph 20D(7)(b); or
 - (ii) if the group report is a group energy and carbon report, it complies with this Part of this Schedule as applied and modified by regulation 12B of the Limited Liability Partnerships (Accounts and Audit) (Application of Companies Act 2006) Regulations 2008 other than in reliance on paragraph 20D(7)(b).

(3) For the purpose of sub-paragraph (2), “group energy and carbon report” means a report prepared in accordance with section 415(2) of the 2006 Act as applied and modified by regulation 12B of the Limited Liability Partnerships (Accounts and Audit) (Application of Companies Act 2006) Regulations 2008.

20B.—(1) Unless the company is a parent company, the company is exempted under this paragraph—

- (a) in relation to its first financial year if the qualifying conditions in sub-paragraph (2) are met in that year;
- (b) in relation to a subsequent financial year—
 - (i) if the qualifying conditions are met in that year and were also met in relation to the preceding financial year;
 - (ii) if—
 - (aa) the qualifying conditions are met in that year, and
 - (bb) the company was exempted in relation to the preceding financial year; or
 - (iii) if—
 - (aa) the qualifying conditions were met in the preceding financial year, and
 - (bb) the company was exempted in relation to the preceding financial year.

(2) The qualifying conditions referred to in sub-paragraph (1) are met by a company in a year in which it satisfies two or more of the following requirements—

| | | |
|---|---------------------|---------------------------|
| 1 | Turnover | not more than £36 million |
| 2 | Balance sheet total | not more than £18 million |

3 Number of employees not more than 250

(3) For the purposes of sub-paragraph (2)—

- (a) for a period that is a company's financial year but is not in fact a year the figure for turnover must be proportionately adjusted;
- (b) the balance sheet total means the aggregate of the amounts shown as assets in the company's balance sheet;
- (c) the number of employees means the average number of persons employed by the company in the year, determined as follows—
 - (i) find for each month in the financial year the number of persons employed under contracts of service by the company in that month (whether throughout the month or not),
 - (ii) add together the monthly totals, and
 - (iii) divide by the number of months in the financial year.

20C.—(1) A parent company is exempted under this paragraph—

- (a) in relation to the parent company's first financial year if the qualifying conditions in sub-paragraph (2) are met in that year by the group headed by it;
- (b) in relation to a subsequent financial year of the parent company—
 - (i) if the qualifying conditions are met in that year and the preceding financial year by the group headed by the parent company;
 - (ii) if—
 - (aa) the qualifying conditions are met in that year by the group, and
 - (bb) the parent company was exempted in relation to the preceding financial year; or
 - (iii) if—
 - (aa) the qualifying conditions were met in the preceding financial year by the group, and
 - (bb) the parent company was exempted in relation to the preceding financial year.

(2) The qualifying conditions referred to in sub-paragraph (1) are met by a group in a year in which it satisfies two or more of the following requirements—

| | | |
|---|-------------------------------|--|
| 1 | Aggregate turnover | not more than £36 million net (or £43.2 million gross) |
| 2 | Aggregate balance sheet total | not more than £18 million net (or £21.6 million gross) |
| 3 | Aggregate number of employees | not more than 250 |

(3) For the purposes of sub-paragraph (2), the aggregate figures are to be ascertained by aggregating the relevant figures determined in accordance with paragraph 20B for each member of the group.

(4) In relation to the aggregate figures for turnover and balance sheet total—

- (a) "net" means after any set-offs and other adjustments made to eliminate group transactions—
 - (i) in the case of Companies Act accounts, in accordance with regulations under section 404 of the 2006 Act,

- (ii) in the case of IAS accounts, in accordance with international accounting standards;
 - (b) “gross” means without those set-offs and other adjustments; and
 - (c) a company may satisfy any requirements in sub-paragraph (2) on the basis of either the net or the gross figure.
- (5) For the purposes of sub-paragraph (2)—
- (a) the figures for each subsidiary undertaking must be those included in its individual accounts for the relevant financial year, that is—
 - (i) if its financial year ends with that of the parent company, that financial year, and
 - (ii) if not, its financial year ending last before the end of the financial year of the parent company; or
 - (b) if those figures cannot be obtained without disproportionate expense or undue delay, the latest available figures may be taken.

20D.—(1) The directors’ report must state the annual quantity of emissions in tonnes of carbon dioxide equivalent resulting from activities for which the company is responsible involving—

- (a) the combustion of gas; or
- (b) the consumption of fuel for the purposes of transport.

(2) The report must state the annual quantity of emissions in tonnes of carbon dioxide equivalent resulting from the purchase of electricity by the company for its own use, including for the purposes of transport.

(3) The report must state a figure, in kWh, which is the aggregate of—

- (a) the annual quantity of energy consumed from activities for which the company is responsible involving—
 - (i) the combustion of gas; or
 - (ii) the consumption of fuel for the purposes of transport; and
- (b) the annual quantity of energy consumed resulting from the purchase of electricity by the company for its own use, including for the purposes of transport.

(4) If the company has in the financial year to which the report relates taken any measures for the purpose of increasing the company’s energy efficiency, the report must contain a description of the principal measures taken for that purpose.

(5) The figures reported in accordance with sub-paragraphs (1) to (3)—

- (a) if the company is an offshore undertaking, may exclude emissions and energy consumed outside of the United Kingdom and offshore area;
- (b) in any other case, may exclude emissions and energy consumed outside of the United Kingdom.

(6) Sub-paragraphs (1) to (4) and paragraphs 20F and 20G apply only to the extent that it is practical for the company to obtain the information in question; but where it is not practical for the company to obtain some or all of that information, the report must state what information is not included and why.

(7) Nothing in sub-paragraphs (1) to (4) and paragraphs 20F and 20G requires the disclosure of information if—

- (a) the company consumed 40,000 kWh of energy or less in the United Kingdom during the period in respect of which the directors’ report is prepared, and the report states that the information is not disclosed for that reason; or
- (b) the disclosure would, in the opinion of the directors, be seriously prejudicial to the interests of the company, and the report states that the information is not disclosed for that reason.

20E.—(1) If the report is a group directors’ report, subject to sub-paragraph (2) and (3), paragraph 20D(1) to (4) and (7)(a) and paragraph 20G have effect as if references to the company were references to the company and its subsidiary undertakings included in the consolidation that are quoted companies, unquoted companies or limited liability partnerships.

(2) If a subsidiary undertaking is a quoted company, paragraph 20D(1) to (4) have effect as if references to the disclosures required were references to the disclosures required for the purpose of paragraph 15(2) to (3D) of Part 7 of this Schedule.

(3) The company may exclude from the report any information which relates to—

- (a) a subsidiary undertaking that is a quoted company and which that quoted company would not be required to include in its directors’ report by Part 7 of this Schedule;
- (b) a subsidiary undertaking that is an unquoted company and which that unquoted company would not be required to include in its directors’ report by this Part of this Schedule;
- (c) a subsidiary undertaking that is a limited liability partnership and which that limited liability partnership would not be required to include in its energy and carbon report by section 416(2) of the 2006 Act as applied and modified by regulation 12B of the Limited Liability Partnerships (Accounts and Audit) (Application of Companies Act 2006) Regulations 2008.

(4) For the purpose of this paragraph, “limited liability partnership” means a limited liability partnership registered under the Limited Liability Partnerships Act 2000(a).

20F. The directors’ report must state the methodologies used to calculate the information disclosed under paragraph 20D(1), (2) and (3).

20G. The directors’ report must state at least one ratio which expresses the company’s annual emissions in relation to a quantifiable factor associated with the company’s activities.

20H. With the exception of the first year for which the directors’ report contains the information required by paragraphs 20D(1) to (4) and 20G, the report must state not only the information required by those paragraphs, but also that information as disclosed in the report for the preceding financial year.

20I. The directors’ report must state the period for which it is reporting the information required by paragraph 20D(1) if it is different to the period in respect of which the directors’ report is prepared.

20J. The period for which the directors’ report is reporting the information required by paragraph 20D(2) and (3) must be the same as the period for which it is reporting the information required by paragraph 20D(1).

20K. The following definitions apply for the purposes of this Part of this Schedule—

“aircraft” means a self-propelled machine that can move through the air other than against the earth’s surface;

“emissions”, “energy” and “energy efficiency” have the same meaning as in Part 7 of this Schedule;

“for the purposes of transport” means, in relation to the consumption of fuel or the purchase of electricity, for consumption by an aircraft, road-going vehicle, train or a vessel during the course of any journey which—

- (a) starts,
- (b) ends, or

(a) 2000 c.12. There are amendments to the Act which are not relevant.

(c) both starts and ends

within the United Kingdom;

“gas” means, except in the definition of “offshore activity”, any combustible substance which is gaseous at a temperature of 15 degrees Celsius and a pressure of 101.325 kPa (1013.25 mb) and which consists wholly or mainly of methane, ethane, propane, butane, hydrogen or carbon monoxide, or a combination of those, or a combustible mixture of those and air;

“kWh” means kilowatt hours;

“offshore activity” means activity which includes—

- (a) the exploitation of mineral resources in or under the shore or bed of waters in the offshore area,
- (b) the conversion of a place under the shore or bed of such waters for the purpose of storing gas,
- (c) the storage of gas in, under or over such waters or the recovery of gas so stored,
- (d) the unloading of gas at a place in, under or over such waters, or
- (e) the provision of accommodation for persons who work on or from an offshore installation which is maintained for the production of petroleum or the storage or unloading of gas

where storing gas includes storing gas with a view to its permanent disposal and where “gas” for this purpose means gas within the meaning of section 2(4) of the Energy Act 2008(a) or carbon dioxide;

“offshore area” has the same meaning as in Part 7 of this Schedule;

“offshore installation” means an installation or structure used for carrying on a relevant offshore activity, and which is situated in the waters of, or in the seabed in, the offshore area, but excluding a ship or a floating structure which is not being maintained on station during the course of a relevant offshore activity; and for this purpose “relevant offshore activity” means an activity falling within paragraphs (a) to (d) of the definition of “offshore activity”;

“offshore undertaking” means an undertaking whose activities consist wholly or mainly of offshore activities;

“road-going vehicle” means any vehicle—

- (a) in respect of which a vehicle licence is required under the Vehicle Excise and Registration Act 1994(b); or
- (b) which is an exempt vehicle under that Act;

“tonne of carbon dioxide equivalent” has the same meaning as in Part 7 of this Schedule;

“train” has the meaning given in section 83 of the Railways Act 1993(c);

“vessel” means any boat or ship which is self-propelled and operates in or under water.”

(a) 2008 c.32. There are amendments to the Act which are not relevant.
(b) 1994 c.22. There are amendments to the Act which are not relevant.
(c) 1993 c.43. There are amendments to the Act which are not relevant.

PART 3

Amendments to the Limited Liability Partnerships (Accounts and Audit) (Application of Companies Act 2006) Regulations 2008

8.—(1) The Limited Liability Partnerships (Accounts and Audit) (Application of Companies Act 2006) Regulations 2008(a) are amended in accordance with this Part.

(2) For the purposes of this Part, “the 2006 Act”, means the Companies Act 2006(b).

Amendment of regulation 4 (scheme of Part 15 as applied to LLPs)

9. In regulation 4, in the modified version of section 380(1) of the 2006 Act for “and auditor’s reports”, substitute “, auditor’s reports and energy and carbon reports”.

New Part 5A

10. After regulation 12A (strategic report), insert—

“PART 5A

ENERGY AND CARBON REPORT

Energy and carbon report

12B. Sections 415, 415A, 416 and 419 apply to LLPs, modified so that they read as follows—

“Duty to prepare energy and carbon report

415.—(1) Unless the LLP is exempted under section 415A(1) or (4), and subject to subsection (4), the members of an LLP must prepare an energy and carbon report for each financial year of the LLP.

(2) For a financial year in which—

- (a) the LLP is a parent LLP, and
- (b) the members of the LLP prepare group accounts,

the energy and carbon report must be a consolidated report (“a group energy and carbon report”) relating to the undertakings included in the consolidation.

(3) A group energy and carbon report may, where appropriate, give greater emphasis to the matters that are significant to the undertakings included in the consolidation, taken as a whole.

(4) Subsection (1) does not apply if—

- (a) the LLP is a subsidiary undertaking at the end of the financial year;
- (b) the LLP is included in the group report of a parent undertaking;
- (c) the group report is prepared for a financial year of the parent undertaking that ends at the same time as, or before the end of, the LLP’s financial year; and—
 - (i) if the group report is a group energy and carbon report, it complies with Part 7A of Schedule 7 to the Large and Medium-sized Companies and

(a) S.I. 2008/1911 is amended by S.I. 2009/1804, 2012/2301, 2012/1439, 2013/472, 2014/1815, 2016/575, 2017/80, 2017/1164. There are other amendments which are not relevant.

(b) 2006 c.46. There are amendments to the Act which are not relevant.

Groups (Accounts and Reports) Regulations 2008(a) as applied and modified by regulation 12B of the Limited Liability Partnerships (Accounts and Audit) (Application of Companies Act 2006) Regulations 2008 other than in reliance on paragraph 20D(7)(b); or

- (ii) if the group report is a group directors' report—
 - (aa) of a quoted company, it complies with Part 7 of Schedule 7 to the Large and Medium-sized Companies and Groups (Accounts and Reports) Regulations 2008 other than in reliance on paragraph 15(5)(b); or
 - (bb) of an unquoted company it complies with Part 7A of Schedule 7 to those Regulations other than in reliance on paragraph 20D(7)(b).

(5) For the purpose of subsection (4)—

“group directors' report” means a report prepared in accordance with section 415(2);

“quoted company” and “unquoted company” have the meanings given in section 385.

(6) In the case of failure to comply with the requirement to prepare an energy and carbon report, an offence is committed by every person who—

- (a) was a member of the LLP immediately before the end of the period for filing accounts and reports for the financial year in question; and
- (b) failed to take all reasonable steps for securing compliance with that requirement.

(7) A person guilty of an offence under this section is liable—

- (a) on conviction on indictment, to a fine;
- (b) on summary conviction—
 - (i) in England and Wales, to a fine(b);
 - (ii) in Scotland or Northern Ireland, to a fine not exceeding the statutory maximum.

Exemption to duty to prepare energy and carbon report

415A.—(1) Unless the LLP is a parent LLP, an LLP is exempted under this subsection—

- (a) in relation to its first financial year if the qualifying conditions in subsection (2) are met in that year;
- (b) in relation to a subsequent financial year—
 - (i) if the qualifying conditions are met in that year and were also met in relation to the preceding financial year;
 - (ii) if—
 - (aa) the qualifying conditions are met in that year, and
 - (bb) the LLP was exempted in relation to the preceding financial year; or
 - (iii) if—

(a) S.I. 2008/410 is amended by S.I. 2013/1970, 2016/575, 2018/860 and by Part 2 of these Regulations. There are other amendments which are not relevant.

(b) Section 85(1) of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c.10) applies to section 415(5)(b) of the Companies Act 2006 (c.46) to provide that the offence is punishable by a fine of any amount.

- (aa) the qualifying conditions were met in the preceding financial year, and
- (bb) the LLP was exempted in relation to the preceding financial year.

(2) The qualifying conditions referred to in subsection (1) are met by an LLP in a year in which it satisfies two or more of the following requirements—

| | | |
|---|---------------------|---------------------------|
| 1 | Turnover | not more than £36 million |
| 2 | Balance sheet total | not more than £18 million |
| 3 | Number of employees | not more than 250 |

(3) For the purposes of subsection (2)—

- (a) for a period that is an LLP's financial year but not in fact a year the figure for turnover must be proportionately adjusted;
- (b) the balance sheet total means the aggregate of the amounts shown as assets in the LLP's balance sheet;
- (c) the number of employees means the average number of persons employed by the LLP in the year, determined as follows—
 - (i) find for each month in the financial year the number of persons employed under contracts of service by the LLP in that month (whether throughout the month or not),
 - (ii) add together the monthly totals, and
 - (iii) divide by the number of months in the financial year.

(4) A parent LLP is exempted under this subsection—

- (a) in relation to the parent LLP's first financial year if the qualifying conditions in subsection (5) are met in that year by the group headed by it;
- (b) in relation to a subsequent financial year of the parent LLP—
 - (i) if the qualifying conditions are met in that year and the preceding financial year by the group headed by the parent LLP;
 - (ii) if—
 - (aa) the qualifying conditions are met in that year by the group, and
 - (bb) the parent LLP was exempted in relation to the preceding financial year; or
 - (iii) if—
 - (aa) the qualifying conditions were met in the preceding financial year by the group, and
 - (bb) the parent LLP was exempted in relation to the preceding financial year.

(5) The qualifying conditions referred to in subsection (4) are met by a group in a year in which it satisfies two or more of the following requirements—

| | | |
|---|-------------------------------|--|
| 1 | Aggregate turnover | not more than £36 million net (or £43.2 million gross) |
| 2 | Aggregate balance sheet total | not more than £18 million net (or £21.6 million gross) |
| 3 | Aggregate number of employees | not more than 250 |

(6) For the purposes of subsection (5), the aggregate figures are to be ascertained by aggregating the relevant figures determined in accordance with subsections (1) to (3) for each member of the group.

(7) In relation to the aggregate figures for turnover and balance sheet total—

(a) “net” means after any set-offs and other adjustments made to eliminate group transactions—

(i) in the case of non-IAS accounts, in accordance with Schedule 3 to the Large and Medium-sized Limited Liability Partnerships (Accounts) Regulations 2008(a);

(ii) in the case of IAS accounts, in accordance with international accounting standards; and

(b) “gross” means without those set-offs and other adjustments.

(8) An LLP may satisfy any requirements in subsection (5) on the basis of either the net or the gross figure.

(9) For the purposes of subsection (5)—

(a) the figures for each subsidiary undertaking must be those included in its individual accounts for the relevant financial year, that is—

(i) if its financial year ends with that of the parent LLP, that financial year, and

(ii) if not, its financial year ending last before the end of the financial year of the parent LLP; or

(b) if those figures cannot be obtained without disproportionate expense or undue delay, the latest available figures may be taken.

Contents of energy and carbon report

416.—(1) The energy and carbon report for a financial year must state—

(a) the names of the persons who, at any time during the financial year, were members of the LLP; and

(b) the name of the designated member signing the report in accordance with section 419.

(2) Regulation 10(1) and Part 7A of Schedule 7 to the Large and Medium-sized Companies and Groups (Accounts and Reports) Regulations 2008 apply to LLPs with the following modifications—

(a) in regulation 10(1)—

(i) for “directors of a company”, substitute “members of an LLP”;

(ii) for “directors’ report”, substitute “energy and carbon report”;

(iii) for “Schedule 7”, substitute “Part 7A of Schedule 7”;

(b) in Part 7A—

(i) in the heading, omit “by unquoted companies”;

(ii) for paragraph 20A(1), substitute “This Part of this Schedule applies to the energy and carbon report for a financial year.”;

(iii) omit paragraphs 20A(2) and (3), 20B and 20C;

(iv) in paragraphs 20D, 20E(1) and 20E(3), for each reference to “company” except on the third and fourth occasion it appears in paragraph 20E(1) and where it appears in paragraphs 20E(3)(a) and (b), substitute “LLP”;

(a) S.I. 2008/1913 as amended by S.I. 2016/575.

- (v) in paragraphs 20D and 20G, for each reference to “company’s”, substitute “LLP’s”;
- (vi) in paragraphs 20D, 20F, 20G, 20H, 20I and 20J, for each reference to “directors’ report”, substitute “energy and carbon report”;
- (vii) in paragraph 20D(7)(b), for the reference to “directors”, substitute “members”;
- (viii) in paragraph 20E(1), for the reference to “group directors’ report”, substitute “group energy and carbon report”;
- (ix) in paragraphs 20E(2) and (3)(a) and 20K, for each reference to “Part 7 of this Schedule”, substitute “Part 7 of Schedule 7 to the Large and Medium-sized Companies and Groups (Accounts and Reports) Regulations 2008”;
- (x) in paragraph 20E(3)(b), for the reference to “this Part of this Schedule”, substitute “Part 7A of Schedule 7 to the Large and Medium-sized Companies and Groups (Accounts and Reports) Regulations 2008”;
- (xi) for paragraph 20E(4), substitute “For the purpose of this paragraph, “quoted company” and “unquoted company” have the meanings given in section 385.”.

Approval and signing of energy and carbon report

419.—(1) The energy and carbon report must be approved by the members and signed on behalf of all the members by a designated member.

(2) If an energy and carbon report is approved that does not comply with the requirements of this Act, every member who—

- (a) knew that it did not comply, or was reckless as to whether it complied, and
- (b) failed to take reasonable steps to secure compliance with those requirements or, as the case may be, to prevent the report from being approved,

commits an offence.

(3) A person guilty of an offence under this section is liable—

- (a) on conviction on indictment, to a fine;
- (b) on summary conviction—
 - (i) in England and Wales, to a fine(a);
 - (ii) in Scotland or Northern Ireland, to a fine not exceeding the statutory maximum.”.

Amendment of Part 6 (publication of accounts and auditor’s report)

11. In Part 6, in the heading, for “and auditor’s report”, substitute “, auditor’s report and energy and carbon report”.

Amendment of regulation 13 (publication of accounts and auditors’ report)

12.—(1) Regulation 13 is amended as follows.

(2) In the heading, for “and auditor’s report”, substitute “, auditor’s report and energy and carbon report”.

(3) In the modified version of section 423 of the 2006 Act—

- (a) in the heading, after “auditor’s report”, insert “and energy and carbon report”;

(a) Section 85(1) of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c.10) applies to section 419(4)(b) of the Companies Act 2006 (c.46) to provide that the offence is punishable by a fine of any amount.

- (b) in subsection (1)—
 - (i) after “auditor’s report”, where it first appears, insert “and energy and carbon report (if any)”;
 - (ii) for the words “and the auditor’s report on them”, substitute “, the auditor’s report on them and the energy and carbon report”; and
 - (iii) after “accounts”, in the fourth place in which it appears, insert “and the energy and carbon report (if any)”.

Amendment of regulation 14 (default in sending out copies of accounts and auditor’s report)

13.—(1) Regulation 14 is amended as follows.

(2) In the heading, for “and auditor’s report”, substitute “, auditor’s report and energy and carbon report”.

(3) In the modified version of section 425 of the 2006 Act, in the heading, for “and auditor’s report”, substitute “, auditor’s report and energy and carbon report”.

Amendment of regulation 15 (right of member or debenture holder to copies of accounts and auditor’s report)

14.—(1) Regulation 15 is amended as follows.

(2) In the heading, for “and auditor’s report”, substitute “, auditor’s report and energy and carbon report”.

(3) In the modified version of section 431 of the 2006 Act—

- (a) in the heading, for “and auditor’s report”, substitute “, auditor’s report and energy and carbon report”;
- (b) in subsection (1)—
 - (i) in paragraph (a), omit “and”;
 - (ii) at the end of paragraph (b), insert “, and”;
 - (iii) after paragraph (b), insert—

“(c) the last energy and carbon report (if any).”.

Amendment of regulation 16 (requirements in connection with publication of accounts and auditor’s report)

15.—(1) Regulation 16 is amended as follows.

(2) In the heading, for “and auditor’s report”, substitute “, auditor’s report and energy and carbon report”.

(3) In the modified version of section 433 of the 2006 Act—

- (a) in the heading, after “accounts”, insert “and energy and carbon report”;
- (b) in subsection (1), after “sheet”, insert “and energy and carbon report”.

(4) In the modified version of section 436 of the 2006 Act—

- (a) in the heading, for “and auditor’s report”, substitute “, auditor’s report and energy and carbon report”;
- (b) in subsection (1), after “accounts” where it first appears, insert “and energy and carbon report”.

Amendment of Part 7 (filing of accounts and auditor’s report)

16. In Part 7, in the heading, for “and auditor’s report”, substitute “, auditor’s report and energy and carbon report”.

Amendment of regulation 17 (duty to file accounts and reports)

17.—(1) Regulation 17 is amended as follows.

(2) In the modified version of section 441(1) of the 2006 Act, after “auditor’s report”, insert “and energy and carbon report”.

(3) In the modified version of section 442 of the 2006 Act—

(a) in the heading, after “accounts”, insert “and reports”;

(b) in subsection (1)—

(i) for “and the auditor’s report”, substitute “, the auditor’s report and the energy and carbon report”;

(ii) for “that report”, substitute “those reports”.

(4) In the modified version of section 443(1) of the 2006 Act, for “and auditor’s report”, substitute “, auditor’s report and energy and carbon report”.

Amendment of regulation 19 (filing obligations of large LLPs)

18. In regulation 19, in the modified version of section 446 of the 2006 Act, after subsection (2), insert—

“(2A) The designated members must also deliver to the registrar a copy of the energy and carbon report for each financial year of the LLP, unless the members of the LLP are, by virtue of sections 415(4) or 415A, not under a duty to prepare an energy and carbon report.”

Amendment of regulation 22 (failure to file accounts and auditor’s report)

19.—(1) Regulation 22 is amended as follows.

(2) In the heading, for “and auditor’s report”, substitute “, auditor’s report and energy and carbon report”.

(3) In the modified version of section 451 of the 2006 Act—

(a) in the heading, for “and auditor’s report”, substitute “, auditor’s report and energy and carbon report”;

(b) in subsection (1), for the words from “year” to “that report”, substitute “year, the auditor’s report on those accounts and the energy and carbon report before the end of the period for filing those accounts and reports”.

(4) In the modified version of section 452 of the 2006 Act—

(a) in the heading, for “and auditor’s report”, substitute “, auditor’s report and energy and carbon report”;

(b) in subsection (1)(a)—

(i) after “auditor’s report”, where it first appears, insert “and energy and carbon report”;

(ii) for the words from “year” to “that report”, substitute “year, the auditor’s report on those accounts and the energy and carbon report before the end of the period for filing those accounts and reports”.

(5) In the modified version of section 453 of the 2006 Act—

(a) in the heading, for “and auditor’s report”, substitute “, auditor’s report and energy and carbon report”;

(b) in subsection (1), for the words from “year” to “that report”, substitute “year, the auditor’s report on those accounts and the energy and carbon report before the end of the period for filing those accounts and reports”.

Amendment of Part 8 (revision of defective accounts)

20. In Part 8, in the heading, after “accounts”, insert “or energy and carbon report”.

Amendment of regulation 23 (revision of defective accounts)

- 21.**—(1) Regulation 23 is amended as follows.
- (2) In the heading, after “accounts”, insert “or energy and carbon report”.
- (3) In the modified version of section 454 of the 2006 Act—
- (a) for subsection (1), substitute—

“(1) If it appears to the members of an LLP that the LLP’s annual accounts or the LLP’s energy and carbon report did not comply with the requirements of this Act, they may prepare revised accounts or a revised energy and carbon report.”;
 - (b) in subsection (2), after “previous accounts”, in both places in which it appears, insert “or energy and carbon report”;
 - (c) in subsection (3)(a), omit “and”;
 - (d) after subsection (3)(b), insert—
 - “(c) references to a directors’ report include references to an energy and carbon report;
 - (d) references to a revised directors’ report include references to revised energy and carbon report except for the purposes of regulation 7;
 - (e) references to the date on which the original directors’ report was approved by the board of directors include references to the date on which the original energy and carbon report was approved by the members of an LLP;
 - (f) references to the date on which a revised directors’ report is approved by the board of directors include references to the date on which a revised energy and carbon report is approved by the members of an LLP; and
 - (g) the reference in regulation 5 to section 419(3) and (4) includes a reference to section 419(2) and (3) as applied and modified by regulation 12B.”.
- (4) In the modified version of section 455 of the 2006 Act—
- (a) in the heading, after “accounts”, insert “or energy and carbon report”;
 - (b) in subsection (1)—
 - (i) after “annual accounts”, insert “or energy and carbon report”;
 - (ii) after “the accounts”, insert “or report”;
 - (c) in subsection (3)—
 - (i) after “accounts”, where it first appears, insert “or energy and carbon report”;
 - (ii) after “accounts”, in the second place in which it appears, insert “or a revised energy and carbon report”;
 - (d) in subsection (4), after “accounts”, in both places in which it appears, insert “or report”;
 - (e) in subsection (5)—
 - (i) after “accounts”, where it first appears, insert “and revised energy and carbon reports”;
 - (ii) after “accounts”, in the second and third places in which it appears, insert “or reports”.
- (5) In the modified version of section 456 of the 2006 Act—
- (a) in the heading, after “accounts”, insert “or energy and carbon report”;
 - (b) in subsection (1)—
 - (i) after “comply”, insert “, or an energy and carbon report does not comply,”;
 - (ii) after “accounts” in the second place in which it appears, insert “or a revised report”;
 - (c) in subsection (3)—
 - (i) omit “and” where it first appears;
 - (ii) after (a) insert—

- “(aa) the revision of any energy and carbon report, and”;
- (d) after subsection (3), insert—
- “(3A) If the court orders the preparation of a revised energy and carbon report, it may give directions as to—
- (a) the taking of steps by the members to bring the making of the order to the notice of persons likely to rely on the previous report, and
- (b) such other matters as the court thinks fit.”;
- (e) in subsection (4) and (5)—
- (i) after “accounts”, on each occasion it appears except where it appears at the end of subsection (4)(b), insert “or report”;
- (ii) after “accounts” where it appears at the end of subsection (4)(b), insert “or a revised report”;
- (f) in subsection (7)—
- (i) after “accounts”, where it first appears, insert “and revised energy and carbon reports”;
- (ii) after “accounts”, in the second and third places in which it appears, insert “or reports”.

Amendment of regulation 24 (disclosure of information)

22. In regulation 24, in the modified version of section 459 of the 2006 Act, in subsection (1), after “accounts”, insert “or energy and carbon report”.

Amendment of Part 9 (accounts: supplementary provisions)

23. In Part 9, in the heading, after “accounts”, insert “and reports”.

Amendment of regulation 24A

- 24.** In regulation 24A, in the modified version of section 463 of the 2006 Act—
- (a) in the heading, after “report”, insert “or energy and carbon report”;
- (b) in subsection (1), after “report”, in both places in which it appears, insert “or energy and carbon report”.

Amendment of regulation 59 (review)

- 25.**—(1) Regulation 59 is amended as follows.
- (2) In paragraph (1), for sub-paragraph (a), substitute —
- “(a) carry out a review, respectively, of the regulatory provision contained in these Regulations to which amendments have been made by—
- (i) Part 2 of the Limited Liability Partnerships, Partnerships and Groups (Accounts and Audit) Regulations 2016^(a) (“the 2016 Regulations”),
- (ii) Schedule 3 to the Statutory Auditors Regulations 2017^(b), and
- (iii) Part 3 of the Companies (Directors’ Report) and Limited Liability Partnerships (Energy and Carbon Report) Regulations 2018 (“the 2018 Regulations”).”.
- (3) In paragraph (1)(b)—

(a) S.I. 2016/575.
(b) S.I. 2017/1164.

- (a) for “the review”, substitute “each review”;
 - (b) before “report”, insert “separate”.
- (4) For paragraph (3), substitute—
- “(3) The first report under—
- (a) paragraph (1)(a)(i) and (ii) must be published before the end of the period of 5 years beginning with the date on which the 2016 Regulations come into force;
 - (b) paragraph (1)(a)(iii) must be published before the end of the period of 5 years beginning with the date on which the 2018 Regulations come into force.”.

Claire Perry

Minister of State for Energy and Clean Growth

Department for Business, Energy and Industrial Strategy

6th November 2018

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make changes to the reporting requirements in the Large and Medium-sized Companies and Groups (Accounts and Reports) Regulations 2008 (the “2008 Regulations”). These Regulations also make changes to the requirements in the Limited Liability Partnerships (Accounts and Audit) (Application of Companies Act 2006) Regulations 2008 (the “LLP Regulations”). These Regulations extend to the whole of the United Kingdom, reflecting the extent of the Companies Act 2006 (the “2006 Act”) and the extent of the Limited Liability Partnerships Act 2000.

Part 2 amends regulation 10 and Part 7 of Schedule 7 to the 2008 Regulations to provide new requirements on quoted companies to make statements in the directors’ report concerning the company’s energy use from activities for which the company is responsible and from purchases for its own use, and action taken to increase its energy efficiency.

Part 2 also inserts a new Part 7A into Schedule 7 to the 2008 Regulations to provide for new requirements on large unquoted companies to make statements in the directors’ report concerning the company’s greenhouse gas emissions, energy use and action taken to increase energy efficiency within the UK. Where large unquoted companies’ activities consist wholly or mainly of offshore activities, the company must also include certain activities in the offshore area.

Regulation 5 amends regulation 14 of the 2008 Regulations to provide that these new provisions will be subject to a review by the Secretary of State every 5 years.

Regulations 6 and 7 provide that these statements are not required where making the statement would be seriously prejudicial to the interests of the company or if the company has used a small amount of energy in the financial year to which the directors’ report relates.

Regulations 6 and 7 also provide that, if a company’s directors’ report is a group directors’ report, the company must make the required statements on the basis of the company’s information and its subsidiaries’ that are quoted companies, unquoted companies or limited liability partnerships, 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.

Part 3 amends the LLP Regulations which apply to limited liability partnerships (“LLPs”) certain provisions of the 2006 Act relating to accounts and auditor’s reports.

Regulation 10 inserts a new regulation 12B into the LLP Regulations to provide for large LLPs to prepare an equivalent report to the directors’ report (the “energy and carbon report”) for each financial year. The inserted regulation 12B makes provision for the content of the energy and carbon report, which must identify the members during the financial year and the name of the

member signing the report. The energy and carbon report must include statements concerning the LLP's greenhouse gas emissions, energy use and action to be taken to increase its energy efficiency in the same manner as is required of unquoted companies in Part 2 to these Regulations. In particular, the inserted regulation 12B applies sections 415 and 419 of the 2006 Act, with modifications, which includes provision that it is a criminal offence to either fail to comply with a duty to prepare an energy and carbon report where the member failed to take all reasonable steps or to approve an energy and carbon report that does not comply with the statutory requirements where the member acted knowingly or recklessly and failed to take reasonable steps.

The inserted regulation 12B also provides that, if an LLP's report is a group energy and carbon report, the LLP must make the required statements on the basis of the LLP's information and its subsidiaries' that are quoted companies, unquoted companies or limited liability partnerships, 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 who would themselves be required to report is not so required where a parent LLP prepares such a group report, subject to a number of conditions.

Regulations 11 to 24 amend the application of the requirements of Part 15 of the 2006 Act to LLPs concerning the publication and filing with the registrar of companies of accounts and auditor's reports on them, to provide that many of those requirements extend to the energy and carbon report where the LLP is under a duty to prepare an energy and carbon report. Section 453 of the 2006 Act as it applies to LLPs is amended to provide that the civil penalties to which an LLP is liable under the Companies (Late Filing Penalties) and Limited Liability Partnerships (Filing Periods and Late Filing Penalties) Regulations 2008 (S.I. 2008/497) if it fails to comply with the filing requirements in section 441 of the 2006 Act apply where the failure concerns, not only the LLP's accounts and auditor's report, but also an energy and carbon report. Regulation 21 amends the application of the provisions on defective accounts in the 2006 Act and the Companies (Revision of Defective Accounts and Reports) Regulations 2008 (S.I. 2008/373) to include provision for a defective energy and carbon report. Regulation 22 amends the application of section 459 of the 2006 Act so that the Financial Reporting Council can require the provision of information in relation to the energy and carbon report. Regulation 24 amends the application of section 463 of the 2006 Act so that members are liable to compensate the LLP for any loss suffered, not only for false or misleading statements in a strategic report, but also in an energy and carbon report.

Regulation 25 amends the review provisions in the LLP Regulations 2008 so that these provisions will be subject to a review every 5 years.

A full impact assessment of the effect that this instrument will have on the costs of business, the voluntary sector and the public sector is available from the Department for Business, Energy and Industrial Strategy, 1 Victoria Street, London SW1H 0ET.

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