
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.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

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.