Need to know

Government enacts new energy and carbon reporting requirements for all large companies (private as well as public) and limited liability partnerships

Contents

The *Companies (Directors' Report) and Limited Liability Partnerships (Energy and Carbon Report) Regulations 2018 (SI 2018/1155)* (the Regulations) were issued by the Government in November 2018. The Regulations set out new requirements for the directors' report of quoted and large unquoted companies, as well as introducing an Energy and Carbon Report for large limited liability partnerships (LLPs).

In a nutshell

- The Regulations broaden the greenhouse gas reporting requirements for quoted companies and extend the reporting requirement to all large companies and LLPs.
- Additional information on energy consumption and any steps taken to increase a company's energy efficiency is required.
- The disclosures required to be made by unquoted companies and LLPs are similar, but not identical to, those for quoted companies.
- There are exemptions in the Regulations for subsidiaries who have been reported on as part of a Group directors' report and for those with low energy consumption.
- The Regulations are effective for financial periods beginning on or after 1 April 2019.

Background

The Intergovernmental Panel on Climate Change (IPCC) issued a report in October 2018 emphasising the urgency of dealing with climate change and concluding that the existing target for global warming to be limited to 2% is insufficient and needs to be changed to 1.5%. The report shows that many land and ocean ecosystems have already changed due to global warming, and the physical risks of climate change, including increased heatwaves and rising sea levels, will have a marked impact on human health, food security, water supply, human security, and economic growth. Government believes mandatory reporting has an important role to play as 'what gets measured gets managed'.

For more information on the *The Companies (Miscellaneous Reporting) Regulations 2018 (SI 2018/860)*, see the Need to Know from June 2018.

In October 2017 the Department for Business, Energy and Industrial Strategy (BEIS) published a consultation which proposed a "streamlined and more effective energy and carbon reporting framework" for the UK. This was followed in July 2018 by a proposed framework for energy and carbon reporting in the UK that has now been enacted into law.

The *Companies (Directors' Report) and Limited Liability Partnerships (Energy and Carbon Report) Regulations 2018 (SI 2018/1155)* introduce new content for quoted companies, large unquoted companies and large LLPs with financial years beginning on or after 1 April 2019.

Scope

The Regulations introduce the requirements for the following UK incorporated entities (for more detailed information on the new requirements see the relevant section below):

Entity Type	Updated Section of Current Legislation	Requirement Overview
Quoted companies	Regulation 10 and Part 7 of Schedule 7 to the *Large and Medium-sized Companies and Groups (Accounts and Reports) Regulations 2008 (SI 2008/410)*	New requirement to make statements in the directors' report concerning the company's energy consumption (in kWh and distinguishing between that consumed in the UK and that offshore) and any measures taken to increase its energy efficiency
Large unquoted companies	New Part 7A of Schedule 7 to the *Large and Medium-sized Companies and Groups (Accounts and Reports) Regulations 2008 (SI 2008/410)*	New requirements to make statements in the directors' report concerning greenhouse gas emissions, energy consumption and action taken to increase its energy efficiency in the UK
Large LLPs	New Regulation 12B of *Limited Liability Partnerships (Accounts and Audit) (Application of Companies Act 2006) Regulations 2008 (SI 2008/1911)*	New requirement to prepare an "energy and carbon report", equivalent to a company's directors' report, which will make statements concerning greenhouse gas emissions, energy consumption and action taken to increase its energy efficiency in the UK

The definition of 'large' for the purpose of these Regulations is driven by the monetary size limits in the 2006 Companies Act (s466).

A company is large if it meets 2 out of 3 of the following qualifying conditions:

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

In a company's first financial year, an entity is large if the qualifying conditions are met. In relation to subsequent years, a company does not qualify as large if the size limits are not met in that year or the year before. If a company is a parent company, the qualifying conditions are in relation to the group it heads.

Consistent criteria apply to LLPs.

The criteria to be 'large' for these Regulations is based on the monetary limits so will not bring in scope those companies treated as large for accounting purposes if they are an ineligible company (e.g. a PLC whether listed or not or a company with permission to perform certain financial services or a company which is a member of an ineligible group).

The scoping in these Regulations is consistent with the scope of the new directors' report disclosures regarding engagement with employees, suppliers, customers and others brought in through The Companies (Miscellaneous Reporting) Regulations 2018 (SI 2018/860), but differs from that of the new s172(1) statement in the strategic report which includes companies not meeting these size thresholds but nonetheless failing to meet the legal definition of a large company through being an ineligible company. Preparers will need to take care that they take note of the similar different scoping criteria of both sets of regulations.

A quoted company is as defined in section 385 of the Companies Act 2006 as one whose equity share capital:

(a) has been included in the official list in accordance with the provisions of Part 6 of the Financial Services and Markets Act 2000 (c. 8);

(b) is officially listed in an EEA State; or

(c) is admitted to dealing on either the New York Stock Exchange or the exchange known as NASDAQ.

The "official list" has the meaning given by section 103(1) of the Financial Services and Markets Act 2000.

Scope exemptions

There are a number of exemptions, applicable to all entities, which are included within the Regulations:

- If the company consumed less than 40,000kWh of energy during the period then the directors' report (or for LLPs, the carbon and energy report) can state that the information is not disclosed for that reason.
- If the disclosure would be seriously prejudicial to the interests of the company then the directors' report can state that the information is not disclosed for that reason.
- For the directors' report (or for LLPs, the carbon and energy report) of a group the required statements must be made on the basis of the company's information and its subsidiaries that would also be in scope of the Regulations. There is no need to report the information of subsidiaries outside of the scope of Regulations.
- A subsidiary is not required to report the information when they are included within the group reporting of a parent company who has provided the relevant reporting as part of the group accounts.

Observation

The disclosures must be provided by all entities in scope, irrespective of materiality. There is no threshold referencing "to the extent necessary for an understanding of the position and performance of the business" as there is for some of the information to be included in the strategic report.

Companies may wish to include this information in the strategic report rather than the directors' report, for example as part of the disclosure of information about environmental matters and the impact of the company's business on the environment required by sections 414C(7) and 414CB(1) of the Companies Act 2006. If they do this, then they must include a statement in the directors' report explaining that they have done so.

Requirements

In addition to the existing requirements to disclose greenhouse gas emissions, the following additional requirements will apply to quoted companies:

- The report must state a figure, in kWh, which is the aggregate of the annual quantity of energy consumed from activities for which the company is responsible, including the combustion of fuel and the operation of any facility and the annual quantity of energy consumed resulting from the purchase of electricity, heat, steam or cooling by the company for its own use.

- The methodologies used to calculate energy consumption must be given.
- The report must state what proportion of the carbon dioxide emissions and energy consumption figures reported relate to emissions in the United Kingdom and offshore area.
- If the company has taken any measures in the financial year to increase the company's energy efficiency, the report must contain a description of the principal measures taken for that purpose.

The requirements apply only to the extent that it is practical for the company to obtain the information in question. Where it is not practical to obtain some or all of the information the report must say what has not been included, and why.

The following new disclosure requirements will apply to the directors' reports of large unquoted companies and large LLPs:

- The annual quantity of emissions in tonnes of carbon dioxide equivalent resulting from activities for which the company is responsible involving the combustion of gas or the consumption of fuel for the purposes of transport.
- 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.
- A figure, in kWh, which is the aggregate of the annual quantity of energy consumed from activities for which the company is responsible involving the combustion of gas or the consumption of fuel for the purposes of transport and 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.
- The methodologies used to calculate the information disclosed above.
- At least one ratio which expresses the company's annual emissions in relation to a quantifiable factor associated with the company's activities.

Effective date

The changes take effect for annual periods beginning on or after 1 April 2019. Comparative information needs to be provided within the directors' report (or, in the case of LLPs, in the energy and carbon report). Comparative information is not required in the first year of implementation.

Observation

Although these Regulations become effective for periods beginning on or after 1 April 2019, preparers will need to ensure that they have processes in place to collect this data, if they don't already.

Climate change has never been a more topical issue. Investors, regulators and other stakeholders are placing increased importance on how entities are managing their impact on, and exposure to, climate change, and we are seeing a number of mandatory reporting developments reflecting this including the non-financial reporting regulations, the requirement to report on s172 within the miscellaneous reporting regulations and the new Corporate Governance Code. The Task Force on Climate-related Financial Disclosures (TCFD) recommendations provide a useful set of guidelines on how to approach and report on climate change. Preparers can utilise these recommendations to understand what the new requirements mean for them and how to best meet the expectations of users of the report. Additional resources can be found in the 'On the board agenda 2019' and 'TCFD Need to Know' publications.

Further information

The Regulations, along with an explanatory note, are available here.

If you have any questions about the proposals, please speak to your usual Deloitte contact.