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THE UK CLEAN GROWTH STRATEGY – NEW ENERGY AND CARBON REPORTING RULES

The Department for Business, Energy and Industrial Strategy (BEIS) has published proposals for streamlining corporate energy and carbon reporting. These proposals form a part of the renewed focus on energy efficiency contained in the Government's new Clean Growth Strategy. This briefing considers the Government's thinking on corporate reporting. We consider the broad scope of the Clean Growth Strategy and key elements in a separate briefing: The UK Clean Growth Strategy – Drawing The Strands Together

Key issues

- Existing framework for mandatory Greenhouse Gas reporting by quoted companies enhanced to include energy use
- New framework for larger unquoted companies proposed to include mandatory reporting on UK electricity, gas and transport energy use and carbon emissions
- Reporting extended for all obligated companies to include energy efficiency opportunities and action
- "Comply or Explain" approach to give some flexibility
- Reporting within annual reports, and proposals for electronic filing

A POST-CRC WORLD

The proposals are contained in a consultation paper[1] published alongside the Clean Growth Strategy. They follow on from the Government's confirmation that the CRC Energy Efficiency Scheme (CRC) will come to an end in April 2019. Its abolition will leave gaps both in the levies that qualifying companies were required to pay under the scheme, and in corresponding energy use reporting requirements.

As previously announced, the levy element of the CRC will be replaced by increasing the rates of climate change levy that are applied to energy bills. These increases will take effect from April 2019.

The abolition of the CRC gives the Government the opportunity to simplify the broader energy and carbon reporting landscape. This landscape has become complicated over the last few years by a series of complex and overlapping requirements (key elements of the main regimes are set out in the table below).

SCOPE AND APPLICATION OF REPORTING PROPOSALS

The simplification proposals in the consultation paper distinguish between UK quoted companies and UK unquoted companies.

[1] Streamlined energy and carbon reporting: raising awareness, reducing bills, saving carbon - BEIS

Key Overlapping Schemes*

	Obligated Entities	Basic Coverage
CRC Energy Efficiency Scheme	Undertakings (grouped with their parent and subsidiary undertakings) with UK electricity supplies of at least 6,000 MWh through half-hourly meters. (*Around 4000 individual large organisations*)**	CO_2 emissions from UK electricity and gas supplies to the organisation. Reporting to regulator required on an annual basis.
Energy Savings Opportunity Scheme (ESOS)	Large Undertakings (EU definition), grouped with their parent and subsidiary undertakings: i.e. ▪ average 250 or more staff; or ▪ annual turnover of over €50m and balance sheet of over €43m *(Around 9100 individual large organisations)***	Total UK energy supplies to the business, assessed every 4 years. Audit of 90% of supplies accompanied by energy efficiency recommendations.
Mandatory GHG reporting	UK quoted companies. *(1200 companies currently obligated)***	All representative GHG emissions from global energy use (scope 1 and 2 emissions). Intensity metric in relation to its emissions. Reporting annually in company annual reports required.

* Overlaps with industrial reporting schemes such as the EU Emissions Trading System and Climate Change Agreements are not included here.
** Figures as set out in the consultation paper.

(a) UK quoted companies

The requirement for mandatory reporting of global GHG emissions through company annual reports will remain. In addition to GHG emissions, reporting will be extended to include companies' total energy use (from all sources but reported in one aggregated GWh figure). This should not require too much additional work as this information is already needed to determine associated GHG emissions.

(b) UK unquoted companies

BEIS also intends to require certain large unquoted companies to include carbon emissions and energy use information in their annual reports. The requirement would only apply to companies formed and registered in the UK although BEIS is seeking views on whether LLPs should also be included. Various options for the new scope of reporting, and which companies would be obligated, are presented as set out below.

No replacement reporting obligations (Option 1)

Following abolition of the CRC, no new reporting requirements would be introduced under this option. This seems unlikely to be adopted because it would leave a large gap in reporting of energy use.

New Energy Use and Carbon Emission Reporting Obligations (Options 2 and 3)

Under these options, obligated companies would report on UK electricity, gas and transport[2] energy use for which they are responsible[3], and associated carbon emissions[4]. They would also need to include an intensity ratio tying the emissions to quantifiable factors (e.g. turnover or employees). These options would operate broadly as a combination of current CRC reporting and a less onerous version of the GHG reporting requirements applicable to quoted companies.

"if companies qualify, they would comply, broadly-speaking, on a group basis"

BEIS is still considering which thresholds to adopt to determine the companies that would be subject to the new requirements. It is considering adopting existing criteria from other schemes and floats the following options:

- Using the CRC qualification threshold (see table above);
- Using an alternative energy based threshold; and
- Applying the requirement to "large companies" either as defined under ESOS (see table); or as provided for under the Companies Act 2006[5].

In each case, if companies qualify, they would comply, broadly-speaking, on a group basis as determined under each of these mechanisms.

While the consultation paper does not state a preferred option, it suggests the best option is likely to be to use the "large companies" concept under the Companies Act 2006. This would mean a relatively straightforward qualification mechanism since companies should already know if they would qualify on this basis. It seems unlikely the CRC qualification test will be adopted because of the complexity and administrative burden that this test posed in practice – indeed reducing the bureaucracy involved was one of the reasons for abolishing the CRC in the first place. It should be noted that many LLPs are currently participants in the CRC alongside companies treated as their subsidiary undertakings (or groups of undertakings) for CRC purposes. If LLPs are excluded, there will need to be clarity as to how such subsidiary undertakings (or groups) would be treated for qualification purposes under the new framework.

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An alternative energy threshold seems likely to be discounted again for reasons of complexity.

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[2] Including road, rail, air and shipping.

[3] Similarly to the mandatory GHG reporting obligations, companies will need to choose whether to adopt a financial control, operational control or equity share (or other) approach to determining their responsibility for energy use and emissions.

[4] Reporting on GHG emissions would include Scope 1 emissions (direct emissions) and scope 2 emissions (energy indirect emissions, e.g. purchased electricity). Reporting on Scope 3 emissions (supply chain emissions) would remain voluntary.

[5] i.e. in basic terms: groups or individual companies satisfying 2 or more of the following conditions: (i) more than 250 employees, (ii) turnover of more than £36m, (iii) balance sheet total of more than £18m.

(c) All obligated companies - Reporting on Energy Efficiency Opportunities and Progress (Option 4)

BEIS is also considering whether to impose (in an Option 4) an obligation upon all obligated companies (whether quoted or unquoted) to report on opportunities to improve energy efficiency within the business and on progress in implementing those opportunities. This information already has to be prepared when carrying an ESOS audit (see table above) although there is no current obligation to report on, or publish, this information. For those companies already covered by the ESOS, this should not add a considerable additional burden although it should be noted that the ESOS assessments / audits apply only every 4 years, while reporting under this new proposal would be on an annual basis.

(d) Extending the scope of reporting

In addition to the main options described above, the consultation paper seeks views on extending the scope of reporting further. In particular, BEIS is considering whether carbon offsetting information should be included.

BEIS endorses the recommendations of the industry-led Task Force on Climate-related Financial Disclosures (TCFD) published in June 2017 which seek to encourage companies to include climate-related information within their financial disclosures. These recommendations go far beyond the reporting requirements mentioned above and, among other things, suggest that larger companies report on their governance structures, strategy, and risk management approach for dealing with climate change impacts. The recommendations place a heavy emphasis on forward-looking analysis using different climate change scenarios[6]. BEIS seeks views on the extent to which elements of these recommendations should be incorporated into the mandatory reporting requirements set out above.

“BEIS endorses the recommendations of the industry-led Task Force on Climate-related Financial Disclosures"

'COMPLY OR EXPLAIN' APPROACH

Similarly to the current mandatory GHG reporting obligations, all carbon and energy reporting obligations under the proposals would be on a "comply or explain" approach: Companies would not have to report information where it would be impractical to do so. This is a move away from the strict approach to reporting under the CRC scheme.

The question of what is "impractical" will require judgement in individual cases and require a balancing exercise, especially in relation to cost. This approach will not give companies justification for excluding assessment of significant elements of their energy use. If applied similarly to mandatory GHG reporting, it will give obligated companies a certain amount of flexibility on reporting e.g. while monitoring and reporting structures are being developed, or where corporate restructuring makes timely compliance difficult. Where this flexibility is adopted, companies will have to explain why and ideally what they are doing to obtain the relevant information.

“Companies would not have to report information where it would be impractical to do so"

[6] For more information on the TCFD recommendations, see our recent briefing: Report urges Companies to Disclose Climate Change Impacts in Financial Filings – July 2017

REPORTING FORMAT

BEIS proposes that the new reporting information should be contained in companies' annual reports. It is still considering whether it would be included with the Directors' report, the Strategic report or in a "new bespoke" report that would form part of the annual accounts. BEIS is keen for reporting to be submitted electronically to Companies House. Since this is not currently required for annual accounts, this would either favour the bespoke report option, or mean that the obligation to file electronically would only apply to the section of the accounts dealing with carbon and energy reporting.

FINAL COMMENTS

Few companies will mourn the demise of the CRC and its over-complicated and bureaucratic mechanisms. In considering the various options it is hoped that BEIS will move towards a simpler approach in designing its new reporting framework, in particular when considering which companies will need to comply. A balance will also need to be drawn between the understandable desire to incorporate a whole shopping list of new items to be reported, and imposing potentially costly additional burdens on companies. In that respect, if adopted, the incorporation of significant elements of the TCFD recommendations into mandatory corporate reporting would certainly represent a big leap forward in UK corporate climate change disclosure.

Organisations wishing to comment on the proposals should send their response to BEIS by 4 January 2018.

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