BRIEFING

(Somewhat) Streamlined Energy and Carbon Reporting (SECR)

April 2020

BACKGROUND

The Streamlined Energy and Carbon Reporting (SECR) framework is designed to simplify companies' reporting of energy use and carbon emissions. It aims to improve on the various mandatory energy and carbon schemes introduced to date: the recently closed Carbon Reduction Commitment (CRC) was criticised as administratively burdensome and complex; the Energy Savings Opportunity Scheme (ESOS) remains in force and requires "large" undertakings to monitor and report their energy usage, but not in a transparent way.

The Government hopes that SECR will make energy and carbon reporting more widespread and consistent. This should encourage companies, some of which will be measuring their performance in this area for the first time, to engage with the data and drive improvements.

WHO NEEDS TO REPORT?

The scope of SECR is different from both CRC and ESOS in terms of what needs to be reported and who needs to report. The number of companies obliged to report is predicted to be almost 12,000, increased from around 1,200 under the directors' reports legislation prior to unquoted companies being brought into scope; around 4,000 companies reported in the last stage of the CRC and around 6,000 under ESOS. Deciding on the precise boundaries of the reporting requirements can be somewhat complex, particularly for international or multi-layered groups, or private equity/investment structures.

Quoted companies already bound to report their greenhouse gas emissions in accordance with Schedule 7 have expanded requirements.

Unquoted companies which meet two or more of the qualifying conditions must comply with new reporting requirements – again note that these criteria are not the same as those under ESOS. The qualifying conditions are:

QUALIFYING CONDITIONS:

- Turnover of £36 million or more
- Balance sheet total of £18m or more
- 250 employees or more.

Public bodies are not covered (but are already obliged to report emissions), whereas charities and not-for-profit companies who file reports with Companies House must report if they meet the thresholds.

Companies that are not registered in the UK are not obliged to file reports at Companies House and will therefore fall outside the regime except, notably, for the purpose of determining the turnover of the group. If an ultimate parent company is not UK registered but has UK subsidiaries, these companies would need to report (either alone or as a group) if they meet the thresholds.

HOW ARE GROUPS TREATED?

CRC and ESOS both operated a "one in, all in" policy to groups - even small subsidiaries had to be accounted for if the group qualified. Under SECR, companies which are part of a consolidated group for accounting purposes should prepare an energy and carbon report on this same consolidated basis; however, subsidiaries which do not meet the thresholds in their own right do not need to be included in the report.

The parent company of a group which meets the thresholds above must report, even if it, alone, would not meet the thresholds. Again, the energy and carbon performance of companies within the group which do not themselves meet the threshold can be excluded, which may result in a group report reflecting very little actual energy and carbon usage, or the parent taking advantage of the de minimis exemption (see below).

Companies not subject to mandatory reporting may report on a voluntary basis, which may be relevant where emissions or energy from operations are difficult to allocate to one group company. On the other hand, there is no option for a company which is part of a consolidated group to voluntarily disaggregate in order to report separately rather than as a group (though it could do both).

HOW DOES SECR IMPACT ASSET MANAGERS AND PORTFOLIO COMPANIES?

The rules outlined above apply equally to fund structures where asset management companies manage a number of portfolio companies. These portfolio companies will in nearly all cases not be consolidated into the accounts of the parent fund or management entity and would not therefore need to be included within these parent entities' energy and carbon report(s). The portfolio companies would, on the other hand, need to consider their own qualification positions (before for themselves and any group subsidiaries), and report as required.

Asset managers may wish to draw portfolio companies' attention to the SECR regime, but in doing so, should be careful not to cross the line of actively managing, supervising or controlling the portfolio companies' compliance programmes.

WHEN ARE REPORTS DUE?

Reporting is part of the directors' report, therefore the timetable for reporting will vary according to the company's year end. The requirements apply from 1 April 2019, so any company with a year beginning on or after that date must comply with SECR in their next directors' report. The first SECR-compliant reports must be filed shortly after 1 April 2020 for any company with a 1 April year end date (those with a 31 March year end need not comply until after 31 March 2021).

WHAT NEEDS TO BE REPORTED?

See the table below for information which must be reported by quoted and unquoted companies; there are minor differences. LLPs must report largely the same information as limited companies though they do this via a standalone Energy and Carbon Report. Second and subsequent year energy and carbon reports must include the previous year's information, which will spotlight those companies whose environmental impact is remaining static or worsening over time.

EXCEPTIONS

There is a de minimis exception for companies consuming less than 40MW of energy per year in the UK. This could be useful for UK branches where the group qualifies due to the size of overseas subsidiaries but the company itself has no material operations. The directors' report should note that the company or group has low energy usage and has not therefore included an energy and carbon report.

A company need not report where, in the opinion of the directors, disclosure of the required information would be "seriously prejudicial" to the company's interests. The Government's guidance on SECR makes it clear that this provision will apply in exceptional circumstances which may be questioned by the Financial Reporting Council. Examples given are where specific sensitivities arising from restructuring or acquisitions by an organisation in the run up to producing the relevant report, or when there are exceptional commercial sensitivity considerations. Reports must state that this exception has been relied on.

There is also an exception from reporting where it is impractical for the company to obtain some or all of the information. In this case the report must state what information is excluded on this basis and why, and the guidance further suggests that an indication should be given of the materiality of the missing information.

ENFORCEMENT

Enforcement of SECR falls to the Conduct Committee of the Financial Reporting Council (FRC), rather than the Environment Agency which was the regulator for both CRC and ESOS. The Committee has powers of investigation and may also apply to the courts for an order requiring the company to prepare a revised report. FRC enforcement activities, however, tend to be cooperative in nature; formal investigations are low volume and focussed on serious accounting breaches rather than administrative matters. Directors commit an offence if they knowingly or recklessly file a non-compliant report. It is more likely that shareholders and investors will hold companies to account for their failure to report.

LEGISLATION

The Companies (Directors' Report) and Limited Liability Partnerships (Energy and Carbon Report) Regulations 2018 SI 2018/1155 amended the Large and Medium Sized Companies and Group (Accounts and Reports) Regulations 2008 SI 2008/410.

Schedule 7, which already required the disclosure of greenhouse gas emissions by quoted companies as part of the directors' report, is expanded to cover energy consumption and energy efficiency action.

A new Schedule 7A details the new requirements on medium and large unquoted companies to disclose greenhouse gas emissions, energy consumption and energy efficiency improvement activities.

Similar changes are made to the Limited Liability Partnerships (Accounts and Audit) (Application of Companies Act 2006) Regulations 2008 SI 2008/1911, with the insertion of a new Part 5A requiring the production of an energy and carbon report.

INFORMATION TO BE REPORTED UNDER SECR BY QUOTED AND UNQUOTED COMPANIES

INFORMATION	QUOTED COMPANIES	UNQUOTED COMPANIES
Greenhouse gas emissions	As previously, global GHG Protocol scope 1 and 2 emissions	UK scope 1 and 2 emissions
Energy consumption in kWh	- energy consumed from activities for which the company is responsible globally including* combustion of fuel and the operation of any facility; and - energy consumed resulting from the purchase of electricity, heat, steam or cooling by the company for its own use	UK energy use, as a minimum: - the combustion of gas, or the combustion of fuel for the purposes of transport; and - the purchase of electricity by the company for its own use, including for transport**.
Proportion of emissions and energy relating to the UK and offshore area	✓	X
Methodology used	✓	✓
At least one emissions intensity ratio	✓	✓
Principle measures taken to increase the company's energy efficiency	✓	✓

* Note: not limited to

** Transport is only included in the emissions figures where the company itself is responsible for purchasing fuel for transport, and not where fuel costs are incorporated in the cost of a transport service, eg. air travel (except private jets owned or operated by the company). UK travel is included, as well as travel which either begins or ends in the UK. This definition naturally works against companies reliant on large numbers of company or fleet cars, rather than those more reliant on air travel where emissions may well be greater than those from road transport. Reporting of these "Scope 3" emissions is currently not mandated but companies are strongly encouraged to report them separately, particularly where they form a material source of the company's emissions.

FOR FURTHER INFORMATION, PLEASE CONTACT

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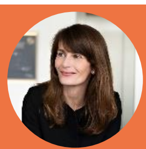

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