GREENHOUSE GAS EMISSIONS REPORTING

BURDEN OR OPPORTUNITY?

Ross Fairley and Richard Manning of Burges Salmon LLP examine the current state of compulsory business greenhouse gas emissions reporting in the UK.

Following publication in March 2016 of the government's review of cutting red tape in the energy sector (the review) and the response to its consultation on reforming the business energy efficiency tax landscape (the response and the consultation), the question as to how great a burden climate change regulation places on UK businesses is particularly topical (*https://cutting-red-tape.cabinetoffice.gov.uk/wp-content/uploads/2016/03/Energy-Findings.pdf; www.gov.uk/government/uploads/system/uploads/attachment_data/file/508159/reforming_business_energy_efficiency_tax_response_final.pdf; www.practicallaw.com/1-619-6991*).

The subject is one that prompts strong opinions and it is clear that, although driven by the compelling need to meet various national and international greenhouse gas (GHG) emissions reduction targets, the manner in which regulation has attempted to achieve these goals in the UK has not always been as efficient as it could have been.

Among other things, the review criticised the particularly onerous reporting requirements of the GHG emissions regulatory regime. This article:

- Examines the mandatory reporting regime under the Companies Act 2006 (2006 Act).
- Looks at the key compulsory reporting schemes identified by businesses in the review as placing particularly onerous requirements on businesses: the EU Emissions Trading Scheme (EU ETS); the Carbon Reduction Commitment (CRC) Energy Efficiency Scheme (the CRC scheme); and the Energy Savings Opportunity Scheme (ESOS).
- Considers briefly the perceived problems which gave rise to the consultation and the government's proposals for simplifying the regime contained in the response (*see boxes "Proposals for reform" and "The benefits for businesses"*).

COMPANIES ACT 2006 REPORTING

Mandatory company GHG emissions reporting was introduced through the amendments made by the Companies Act 2006 (Strategic Report and Directors' Report) Regulations 2013 (*SI 2013/1970*) (2013 Regulations) to the Large and Medium-sized Companies and Groups (Accounts and Reports) Regulations 2008 (*SI 2008/410*) (2008 Regulations). The 2013 Regulations impose various accounting and reporting obligations on companies other than those that benefit from the lighter touch regime as a result of falling within the definition of "small companies" under section 382 of the 2006 Act (*www.practicallaw.com/6-534-9327*).

Quoted companies

The provisions introduced by the 2013 Regulations relating to mandatory GHG reporting apply only to quoted companies falling within the ambit of the 2008 Regulations (*see box "Narrative reporting on environmental matters and greenhouse gas emissions"*).

For these purposes, the term "quoted company" has the definition given to it in section 385(2) of the 2006 Act; that is, a company that falls into one of the following categories:

- Has been included in the Official List of the UK Listing Authority in accordance with the provisions of Part VI of the Financial Services and Markets Act 2000, which includes companies listed on the Main Market of the London Stock Exchange.

- Is officially listed in an EEA member state.

- Is admitted to dealing on either the New York Stock Exchange or the Nasdaq.

Emissions reporting

Under the 2008 Regulations, the directors' reports of a relevant quoted company must state:

- The annual quantity of emissions in tonnes of carbon dioxide equivalent from activities for which the company is responsible, including:

- the combustion of fuel; and

- the operation of any facility.

  The term "emissions" includes emissions into the atmosphere of GHGs that are attributable to human activity (*paragraph 20, Schedule 7, 2008 Regulations*). For these purposes, GHGs include carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons and sulphur hexafluoride (*paragraph 20, Schedule 7, 2008 Regulations and section 92, Climate Change Act 2008*) (2008 Act). The term "tonne of carbon dioxide equivalent" means one metric tonne of carbon dioxide or an amount of any GHG with an equivalent global warming potential (*paragraph 20, Schedule 7, 2008 Regulations and section 93(2), 2008 Act*). The methodologies used to calculate the emissions must also be stated.

- The annual quantity of emissions in tonnes of carbon dioxide equivalent resulting from the purchase of electricity, heat, steam or cooling by the company for its own use, together with the methodologies used to calculate the emissions.

Proposals for reform

Despite attempts to ensure that the various greenhouse gas (GHG) emissions reporting schemes to which UK businesses are subject do not overlap, there is growing concern that the numerous obligations imposed under them create an unnecessary burden. This was highlighted in the consultation in 2015 on reforming the business energy efficiency tax landscape (the consultation), which had a broad scope and covered the Carbon Reduction Commitment Energy Efficiency Scheme (the CRC scheme), the Energy Savings Opportunity Scheme (ESOS), the climate change levy, fuel taxes, climate change agreements, the electricity demand reduction pilot and enhanced capital allowances.

The consultation identified that questions had been raised about whether the current set of policies is best placed to achieve cost-effective energy and carbon saving and productivity potential. It emphasised that the complexity of the tax landscape is among the factors affecting investment in energy efficiency and decarbonisation. A number of business groups have argued that the overlapping nature of policies makes the regulatory landscape complex, burdensome and costly to comply with. Business groups also argue that the current suite of policies sends unclear messages to decision makers, which reduces their effectiveness in delivering the government's policy goals. According to the consultation, it is clear that improvements could be made to the current tax landscape to make it more streamlined and integrated from the point of view of an individual business.

The government set out its proposals to improve matters in its response to the consultation, which was published alongside Budget 2016 (*see "Business energy efficiency tax: reform", Bulletin, Environment, this issue*). The government says that it has observed a clear consensus among respondents in favour of moving to a system where a single business or organisation faces one energy tax and one reporting scheme, in the context of GHG emissions reporting. The government has therefore proposed to:

- Close the CRC scheme, which it termed burdensome and bureaucratic, following the 2018/19 compliance year.

- Launch a consultation later in 2016 regarding the form that a simplified energy and carbon reporting framework might take, with the intention that this new framework will be introduced by April 2019.

The termination of the CRC scheme will remove a key part of the current GHG emissions reporting burden on businesses. It is hoped that the time allowed for the development of the new reporting framework provides sufficient opportunity for its implications to be considered in their entirety.

However, while the CRC scheme is being scrapped, climate change agreements, the EU Emissions Trading Scheme and the ESOS are to remain in place, and the effectiveness of any government attempt to streamline the reporting framework will depend on the government's ability to ensure that any proposed legislation neatly dovetails with the reporting aspects of these existing regimes, rather than duplicates them.

- What information is not included and why it is not included, if it is not practical for the company to obtain the information referred to above; that is, "comply or explain".

- At least one ratio which expresses the quoted company's annual emissions in relation to a quantifiable factor associated with the company's activities.

- Except in the first year of reporting, the above information for the preceding year.

The statutory GHG emission requirements under the 2008 Regulations are supplemented by the Department for Environment, Food and Rural Affairs' environmental reporting guidelines, which include guidance on mandatory GHG emissions reporting (*www.practicallaw.com/8-535-0046*). These guidelines provide useful guidance for quoted companies regarding compliance with their GHG emissions reporting obligations.

It is the responsibility of the Financial Reporting Council (FRC) to ensure compliance with company reporting requirements under the 2006 Act, including those relating to GHG emissions. Although the FRC generally proceeds on a consensual basis where non-compliance has been identified, it has the power to request from the courts a declaration of non-compliance and an order requiring the preparation of a revised report (*section 456, 2006 Act*). Failure by a company to comply with reporting requirements can also have the potentially less tangible, yet no less significant, effect of damaging its reputation and investor confidence in it and its management.

Although broad in the scope of the activities covered, the reporting obligations imposed by the 2006 Act may not seem overly onerous, particularly given that they only apply to medium-sized and large quoted companies, which may be considered more likely to have the resources to ensure effective compliance. However, they form only one part of a much broader array of GHG business reporting requirements, as discussed below.

The benefits for businesses

Greenhouse gas (GHG) emissions reporting requirements can act as a trigger for innovative and genuine GHG emissions reduction and energy efficiency cost savings for businesses. This is important in a political and consumer climate of encouraging and incentivising carbon and environmental responsibility. A company that embraces these objectives has a lot to gain, although the existing regime of GHG reporting requirements in the UK is undoubtedly a complex one. The positive impact of the GHG emissions reporting regime has been reduced by the evolution of the regime so as to make it prone to overlapping requirements with a consequentially increased burden on businesses. Whether the government's proposals for reform can effectively cut this Gordian knot remains to be seen (*see box "Proposals for reform"*).

EU EMISSIONS TRADING SYSTEM

The EU ETS is a pan-EU cap and trade scheme; that is, an overall cap is placed on emissions and participants are allowed to trade allowances (*www.practicallaw.com/3-201-6597*). It is aimed at reducing GHG emissions across EU member states. The EU ETS is aimed at the most energy-intensive sectors, including oil refining, manufacturing, power generation and aviation. It requires participants to surrender an amount of emission allowances (EUAs) equal to the amount of certain GHGs emitted by the relevant participant in any given year of the scheme.

The EU ETS was established by the EU ETS Directive (*2003/87/EC*) (the Directive) and has since been amended in the light of problems observed during the early phases of the EU ETS. The current phase of the EU ETS is Phase III, which started in 2013 and will last until 2020 (*www.practicallaw.com/7-386-6986*). Phase IV is due to run from 2021 to 2030.

As it is not principally intended as a reporting scheme, it may seem strange that the EU ETS is cited in the review for its burdensome data provision requirements. However, in order for the system of surrendering EUAs to work as intended, the EU ETS requires a certain degree of GHG emissions reporting. It is therefore an example of an initiative which is not principally aimed at imposing additional reporting burdens on companies but which, by default, tends to have this effect. The fundamental provisions of the EU ETS have been incorporated into UK law by the Greenhouse Gas Emissions Trading Scheme Regulations 2012 (*SI 2012/3038*) (2012 Regulations).

Permits

Regulated activities can only be carried out at an installation if they are authorised by a permit held by the operator of that installation (*regulation 9, 2012 Regulations*).

All operators of installations caught by the EU ETS will require a GHG emissions permit in order to operate them unless they are covered by an exclusion (*regulation 10(1), 2012 Regulations*). In the UK, an exclusion applies to small operators and hospitals.

Monitoring and reporting

Operators of installations caught by the EU ETS are required, among other things, to:

- Monitor the installation's annual reportable emissions (that is, emissions of carbon dioxide and, in limited circumstances, perfluorocarbons and nitrous oxide) of the installation in accordance with Commission Regulation 601/2012/EU on the monitoring and reporting of GHG emissions (the Monitoring and Reporting Regulation), and have an approved monitoring plan in place in relation to the installation (*www.practicallaw.com/2-521-5042*).

- Prepare, for each scheme year, a verified report of those emissions in accordance with the Monitoring and Reporting Regulation and Commission Regulation 600/2012/EU on the verification of GHG emission reports and tonne-kilometre reports and the accreditation of verifiers (the Verification Regulation), and submit this report to the regulator by 31 March in the following year. The regulator is the Environment Agency in relation to onshore installations in England and Natural Resources Wales in relation to onshore installations in Wales. The regulator for offshore installations is the Department of Energy and Climate Change.

- Fulfil any further conditions that the regulator considers necessary to give proper effect to the Monitoring and Reporting Regulation or the Verification Regulation (*paragraph 2, Schedule 4, 2012 Regulations*).

Reporting requirements set out in the Monitoring and Reporting Regulation include ones relating to, among others, the timing of reports, reporting on improvements to monitoring methodology, access to information, rounding of data and ensuring consistency with other reporting.

Operators of UK installations benefitting from the small operators and hospital exclusions will not require a GHG emissions permit but must instead obtain an excluded installation emissions permit (*regulation 10(2), 2012 Regulations*). This will relieve the operator of the obligation to surrender EUAs, although it must instead meet certain GHG emissions reduction targets. It also means that operators are subject to a less onerous reporting and verification regime. They must, however, still report annual reportable emissions to the regulator (*paragraph 3(8), Schedule 5, 2012 Regulations*).

The relevant regulator may serve an enforcement notice on a contravening person in the event of non-compliance or likely non-compliance with any of:

- The 2012 Regulations.
- The Monitoring and Reporting Regulation.
- A GHG emissions permit or an excluded installation emissions permit.
- An aviation emissions plan (*regulation 43, 2012 Regulations*).

The notice will include details of the nature of the contravention, steps to be taken to remedy or prevent the contravention and the time period within which these steps must be taken (*regulation 43, 2012 Regulations*). A number of activities are punishable by civil penalties, including carrying out a regulated activity without a permit, failing to comply with the condition of a permit and failing to surrender allowances (*regulations 52-54, 2012 Regulations*).

CRC ENERGY EFFICIENCY SCHEME

The CRC scheme, which was conceived at a UK, rather than an EU, level, was introduced to extend the principles of emissions trading to businesses and public sector organisations that are not caught by the provisions of the EU ETS (*see News brief "CRC: new UK carbon trading scheme", www.practicallaw.com/3-502-1227*).

The CRC scheme was intended to help achieve the GHG emissions reductions targets in the 2008 Act by requiring certain businesses and public sector organisations to report on their energy use and carbon dioxide emissions and to surrender an amount of allowances equivalent to their emissions in any given year of the CRC scheme. Government figures suggest that the types of large energy user caught by the CRC scheme are responsible for approximately 10% of the UK's GHG emissions so, at the time of its inception, the scope of the CRC scheme to contribute to GHG emissions reductions in the UK seemed considerable.

The CRC scheme was introduced in 2010 and, although originally intended to run until 2043, the government announced in the response that it will terminate with the last scheme year of the current phase, due to run from 1 April 2018 to 31 March 2019.

The precise extent to which the CRC scheme forms a particular burden on businesses is difficult to quantify. The fact that the reporting deadlines under the CRC scheme are aligned neither with the EU ETS nor the ESOS does not make things any more straightforward for those affected by the CRC scheme. However, one concession to the need to reduce the overall burden on businesses is that the CRC scheme does not apply in relation to supplies of electricity and gas to installations made for the purposes of operating an EU ETS installation or a facility caught by the terms of a climate change agreement (CCA) under the climate change levy (*paragraphs 28 and 29, Schedule 1, CRC Energy Efficiency Scheme Order 2013* (*SI 2013/1119*) (the Order) (*www.practicallaw.com/8-532-4123*).

Undertakings

The CRC scheme requires undertakings and groups of undertakings to apply for registration as a participant in respect of a phase of the CRC scheme where, during the qualification year for that phase, that undertaking or group of undertakings met the qualification criteria (*Articles 24 and 25, the Order*).

The term "undertaking" for the purposes of the Order is defined by reference to the definition of undertaking in section 1161(1) of the 2006 Act; that is, bodies corporate, partnerships and unincorporated associations carrying on a trade or business, with or without view to profit, read as if that definition included reference to unincorporated associations with a charitable purpose (*Article 3, the Order*).

The term "group undertakings" for the purposes of the Order is defined by reference to section 1161(5) of the 2006 Act; that is, in relation to a given undertaking, the parent and subsidiary undertakings of the given undertaking, or subsidiary undertakings of any parent of that given undertaking, with "subsidiary" and "parent undertaking" broadly having their 2006 Act meanings by reference to the various control tests in the 2006 Act.

Group CRC participants must, with limited exceptions and subject to disaggregation rights, participate in the CRC scheme as a single entity under the umbrella of the highest parent undertaking in the group.

In the light of the announcement in the response that the CRC scheme will end, the CRC scheme will, broadly speaking, now only be relevant for those undertakings and groups of undertakings which met the qualification criteria in the qualification year relating to the current phase of the scheme: 1 April 2012 to 31 March 2013.

The qualification criteria that an undertaking or group of undertakings had to meet in a relevant qualification year in order to be caught were that:

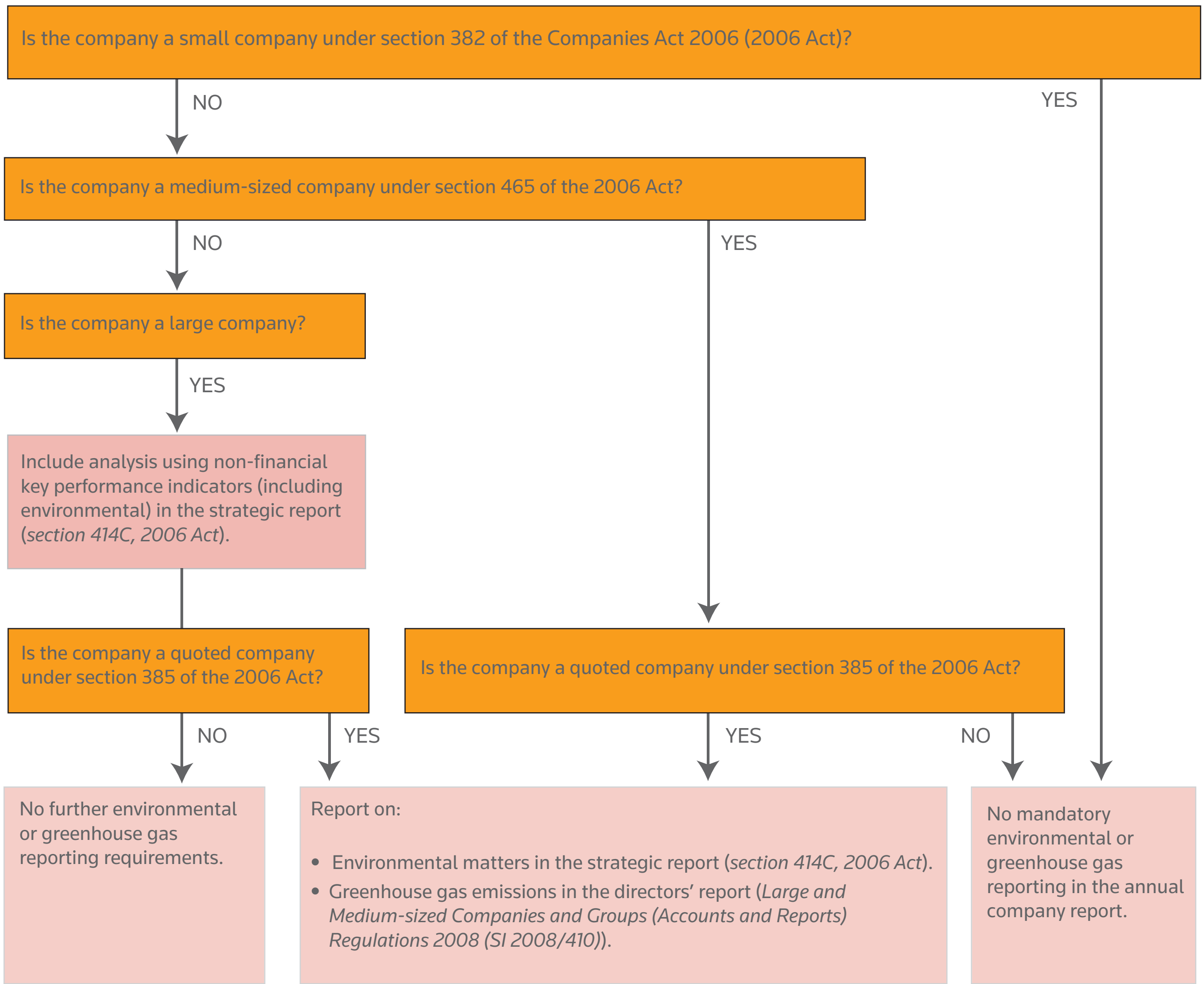
- Qualifying electricity is supplied to an applicant for the purposes of a CRC scheme activity.
- The amount of that qualifying electricity satisfies the qualifying amount (*Article 3, the Order*).

"Qualifying electricity" is defined by the Order as electricity supplied to an undertaking or public body in accordance with sections 1 to 5 of Schedule 1 to the Order by a settled half-hourly meter. Broadly speaking, this means electricity supplied, other than excluded supplies (for example, for consumption outside the UK or in domestic accommodation; or for the operation of EU ETS installations and CCA facilities), for which that given undertaking or group is responsible.

The concept of "supply" under the Order can encompass both supplies by separate entities and self-supply. The Order lays down a number of provisions setting out when an organisation will, or will not, be deemed to have been "supplied" in specific circumstances. For example, for the purposes of calculating the qualifying amount, supplies to franchisees will be considered the responsibility of the franchisor.

The qualifying amount which the Order states must have been supplied in a qualification year in order for the undertaking or group of undertakings to be caught by the provisions of the CRC scheme is 6,000 megawatt hours or more. As a rough indicator and depending on energy prices, this has been estimated to equate to an annual electricity

Narrative reporting on environmental matters and greenhouse gas emissions



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bill of around £500,000. A variety of private sector organisations therefore find themselves subject to the provisions of the CRC scheme, including large retailers, hotel chains, private equity funds, franchises and utility companies.

Data provision and reporting

Those organisations that are caught by the provisions of the CRC scheme were required to register as a CRC participant no later than two months before the beginning of the relevant phase (*Article 12, the Order*). For the current, and apparently last, phase of the CRC scheme, this meant the two months prior to 1 April 2014. In addition to the obligation to surrender allowances equivalent to an organisation's CRC emissions for each year of a phase, there are a number of data provision and reporting requirements on participants.

Those organisations registered as CRC participants are subject to an ongoing obligation to report on their CRC supplies for each year (that is, 1 April to 31 March) of the phase, by no later than the last working day of July following the end of that year, with the last reports under the scheme, for the scheme year 2018/19, falling due in July 2019.

Unless otherwise agreed, the reports must be submitted using the online CRC Registry run by the Environment Agency and must state:

- The amount of CRC supplies to the organisation. CRC supplies for these purposes will include 100% of electricity supplied, and must also include gas supplied to the extent that the gas was used for the purposes of heating and where the amount of gas supplied is equal to, or greater than, 2% of the amount of electricity supplied to the CRC participant in the first annual reporting year of a phase.
- The amount of supplies to each participant equivalent member of the group. Participant equivalents are undertakings that are members of participating groups but which would, even if taken by themselves, still qualify for participation in the CRC.
- Whether any estimation adjustment needs to be made, or if there has been any renewables generation (*Article 32, the Order*).

Unlike the situation under the EU ETS, where emissions figures in reports must be externally verified before submission, the CRC scheme is less burdensome, relying on self-certification, which is supplemented by spot audits. In order to assist with these spot audits, CRC participants are required to maintain records for at least six years after the end of the scheme year to which they relate (*Article 39(2), the Order*). These records must be:

- Adequate to show to the satisfaction of the administrator that the participant has complied with its obligations under the Order.
- Up-to-date and, so far as possible, kept together.
- Available for inspection by the administrator at any time (*Article 39(3), the Order*).

In relation to each annual reporting year of the CRC scheme, the administrator will publish information about the CRC participants' energy efficiency performance, based on the information that they have submitted (*Article 58, the Order*).

The Environment Agency is the administrator across the UK for a number of centralised functions, such as operating the CRC Registry, although several functions, such as enforcement, are the responsibility of different administrators in the different constituent parts of the UK. In relation to England, these latter roles will normally be carried out by the Environment Agency and, in relation to Wales, by Natural Resources Wales (*Article 3, the Order*).

The various bodies acting as administrator have a number of enforcement powers that they can exercise to ensure compliance with the Order, and these remain relevant despite the fact that, as announced in the response, the CRC scheme is being terminated. Civil and criminal penalties may apply for non-compliance.

Civil penalties under the Order may be imposed for breaches including registration failures, reporting failures and failures to provide information or notifications (*Articles 73-75, the Order*).

Criminal penalties may be imposed for offences including: knowingly or recklessly making statements which are false or misleading in a material particular; failing to comply with an enforcement notice issued by the administrator; and refusing the administrator access to premises for the purposes of an inspection, when reasonably required to do so (*Article 82, the Order*).

Penalties for these offences include, on summary conviction, a term of imprisonment not exceeding three months or a fine not exceeding £50,000 for offences committed before 12 March 2015, but unlimited thereafter, or both. For conviction on indictment, the penalty may be a term of imprisonment not exceeding two years or an unlimited fine, or both (*Article 83, the Order 2013*).

Significantly, where an offence is committed with the consent or connivance or as a result of the neglect of a company officer, that officer will also be guilty of the offence (*Article 84, the Order*).

ESOS assessments

Subject to the provisions relating to alternative routes to compliance set out in Part 6 of the Energy Savings Opportunity Scheme Regulations 2014 (*SI 2014/1643*) (2014 Regulations), an Energy Savings Opportunity Scheme (ESOS) assessment will include:

- Calculating the participant's total energy consumption over a 12-month reference period, which must include the qualification date for that compliance period. For the purposes of the 2014 Regulations, a participant's energy consumption will consist of energy supplied to the participant and consumed by assets held, or activities carried on, by that participant, excluding any energy which is supplied by the participant to another person. Unlike under the CRC scheme, energy consumption for the purposes of transport will be included for the purposes of this calculation under the ESOS (*regulations 22-24, 2014 Regulations*).
- Carrying out an energy audit. This must either relate to the participant's areas of significant energy consumption (that is, those areas which account for at least 90% of the participant's energy consumption measured either in energy measurement units or energy spend) or, if the participant has not identified these areas, its total energy consumption (*regulation 26, 2014 Regulations*).
- As far as reasonably practicable: analysing the participant's energy consumption and energy efficiency; identifying any ways in which the participant can improve its energy efficiency; recommending energy-saving opportunities; and identifying the estimated costs and benefits of any energy-saving opportunities (*regulation 27, 2014 Regulations*).

ENERGY SAVINGS OPPORTUNITY SCHEME

Although the primary requirement of the ESOS is couched more in terms of audit rather than reporting, and is arguably too irregular to constitute "reporting" in a strict sense, it forms a key part of the current GHG emissions data provision regime in the UK and plays an important role in the government's ongoing review of the regulatory burden on businesses.

The ESOS is the newest of the schemes discussed in this article. It came into force on 17 July 2014 to implement the Energy Efficiency Directive (*2012/27/EU*) (*www.practicallaw.com/6-578-8369*).

The introduction of the ESOS has been subject to a considerable amount of press attention as a result of the large number of affected businesses that failed to meet the 5 December 2015 compliance deadline for Phase 1 of the scheme. The Environment Agency indicated in October 2015 that it would be unlikely to take enforcement action against a qualifying organisation as long as it complied by 29 January 2016.

Affected businesses

Under the Energy Savings Opportunity Scheme Regulations 2014 (*SI 2014/1643*) (2014 Regulations), which underpin the operation of the ESOS, obligations under the ESOS will apply to relevant undertakings, which will be either:

- A large undertaking; that is, one that either employs at least 250 people, or has an annual turnover in excess of €50 million and an annual balance sheet total in excess of €43 million.

- A small or medium undertaking which is a group undertaking in respect of a relevant large undertaking.

In common with the CRC scheme, "undertaking" and "group undertaking" are defined by reference to section 1161 of the 2006 Act, although without specific reference to the definition being read as if it included unincorporated associations that have a charitable purpose (*regulation 2, 2014 Regulations*). Whether any given undertaking falls within the obligation to comply with the ESOS is determined on the qualification date for a given compliance phase, using the undertaking's most recent accounts ending on or before the qualification date.

The compliance phases and qualification dates for the ESOS are:

- Phase 1: 17 July 2014 to 5 December 2015. The qualification date was 31 December 2014.

- Phase 2: 6 December 2015 to 5 December 2019. The qualification date will be 31 December 2018.

- Phase 3: 6 December 2019 to 5 December 2023. The qualification date will be 31 December 2022.

Individual undertakings that are not part of a group will participate in the ESOS individually. Group ESOS participants must, with limited exceptions and subject to disaggregation rights, participate in the ESOS as a single entity under the umbrella of the highest parent undertaking in the group. Where there are two or more highest parent groups in a corporate group, these may aggregate for the purposes of ESOS compliance (*Schedule 2, 2014 Regulations*). The relevant undertaking that is responsible for a participant's (that is, an individual undertaking or a group of undertakings, as relevant) compliance with the ESOS is known as the responsible undertaking (*regulation 18, 2014 Regulations*).

Unlike the CRC scheme, public bodies are specifically excluded from the obligations under the ESOS (*regulation 16(1)(a), 2014 Regulations*).

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Audit and reporting

Responsible undertakings are required to carry out ESOS assessments (*regulation 20, 2014 Regulations*) (*see box "ESOS assessments"*).

Responsible undertakings must appoint at least one registered lead assessor for the purposes of the ESOS assessment, and must ensure that the assessment is reviewed by a lead assessor (*regulation 21, 2014 Regulations*). Compliance will generally be achieved in the form of a bespoke ESOS assessment, however, in an attempt to reduce the burden on businesses, certain alternative routes to compliance are also acceptable, for example, compliance with ISO 50001 in relation to a participant's energy management system (*regulation 33, 2014 Regulations*).

Responsible undertakings must notify the Environment Agency that they have complied with the ESOS requirements by the compliance date for the relevant compliance period. These are:

- Phase 1: 5 December 2015.

- Phase 2: 5 December 2019.

- Phase 3: 5 December 2023.

The notification to the Environment Agency must contain certain information, including:

- Confirmation by a responsible officer (a director or equivalent senior manager) that, to the best of his knowledge: the participant is within the scope of the

ESOS; the responsible undertaking has complied with the ESOS; the information provided to the Environment Agency is correct; and the responsible officer has seen and considered any recommendations arising out of the ESOS audit or equivalent.

- Where the undertaking has a parent undertaking not subject to the 2014 Regulations (a global parent), the name of the global parent and of the group of undertakings of which that global parent is the parent.
- The details of the relevant responsible officer and of the lead assessor.
- Any alternative compliance methods.
- If any estimates have been used instead of verifiable data (*regulation 29 and Schedule 3, 2014 Regulations*).

Responsible undertakings must maintain a written record in relation to each ESOS assessment, which must be retained for at least two subsequent compliance periods following the compliance period to which it relates (*regulation 28, 2014 Regulations*).

From its statements so far, the Environment Agency seems inclined to take a pragmatic and light-touch approach to enforcing compliance with the ESOS, as evidenced by its guidance on enforcement and sanctions (*www.gov.uk/government/uploads/system/uploads/attachment_data/file/468315/LIT_5551.pdf*). Affected organisations would be wise, however, not to rely on this being the case, as a number of potentially significant civil penalties are available under the 2014 Regulations.

In the case of a failure to undertake an energy audit, for example, an initial financial penalty may be levied of up to £50,000, with an additional £500 for each working day, up to a maximum of 80 working days, that the responsible undertaking remains in breach following the service on it of a compliance notice (*regulation 45(2)(a), 2014 Regulations*).

Non-compliance may also be punished by means of the so-called "publication penalty", where details of breaches giving rise to the issuance of a penalty notice are published on the administrator's website, or that of another compliance body, along with the responsible undertaking's name or the participant's name if different, and the details of any financial penalty issued (*regulation 41(1), 2014 Regulations*).

For many businesses trying to emphasise their environmental credentials, the damage done by a penalty of this kind may be considerable.

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