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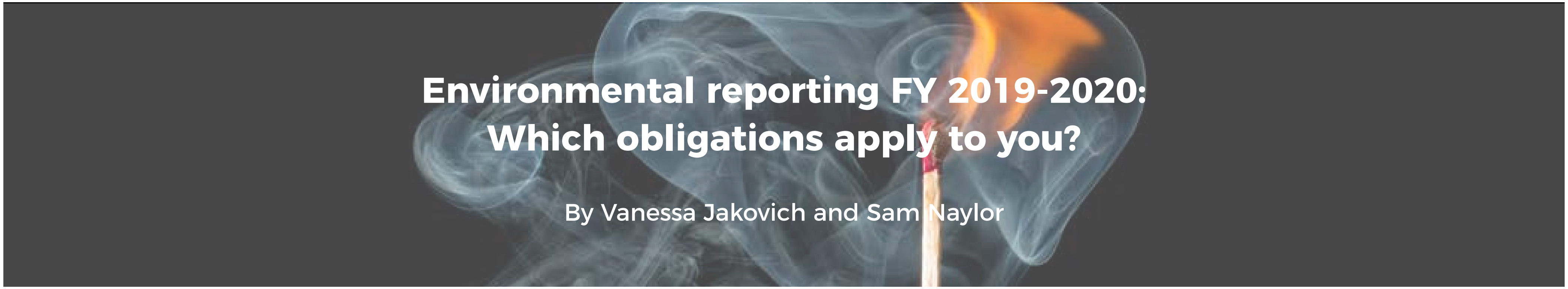


# Environmental reporting FY 2019-2020: Which obligations apply to you?

By Vanessa Jakovich and Sam Naylor

A range of new mandatory environmental reporting obligations apply to UK entities for the first time in the financial year 2019-2020.

Determining whether any part of your business or its corporate group is caught by the reporting regimes is not always straightforward and must be considered carefully.

Whereas businesses were caught by the Carbon Reduction Commitment Energy Efficiency Scheme (CRC) based on electricity consumption, the Energy Savings Opportunity Scheme (ESOS) and Streamlined Energy and Carbon Reporting (SECR) requirements apply based on the type of corporate entity and its size. A range of exemptions and exclusions apply for each regime.

Briefings on how the ESOS and SECR regimes apply to UK entities are available here and here. As a starting point, the table across shows which individual UK entities will be caught by SECR, ESOS and CRC (making them a 'qualifying undertaking'), before considering any exclusions.

**Simplified application of environmental mandatory reporting obligations to individual UK undertakings.***

| Number of employees | Type of undertaking | ESOS | SECR | CRC (closed, residual obligations only) |
|---|---|---|---|---|
| More than 250 (and exactly 250 for the purposes of ESOS) | quoted company | ✓ | ✓ | Determined according to Qualifying Electricity (electricity for which the organisation is responsible, including onward-supplies to tenants and franchisees) supplied to the relevant organisation during a Qualification Year. The relevant threshold was 6,000 MWhs of electricity during the Qualification Year prior to its closure in April 2019. |
| | unquoted company | | | |
| | LLP | | if annual turnover exceeds £36m or balance sheet total exceeds £18m | |
| | **any other undertaking** (body corporate, partnership or unincorporated association carrying on a trade or business) | | X | |
| Fewer than 250 (and exactly 250 for the purposes of SECR) | quoted company | if annual turnover exceeds €50m and balance sheet total exceeds €43m | ✓ | |
| | unquoted company | | if annual turnover exceeds £36m and balance sheet total exceeds £18m | |
| | | | | |
| | **any other undertaking** (body corporate, partnership or unincorporated association carrying on a trade or business) | | X | |

**All thresholds (for employees, turnover and balance sheet totals) are expressed in terms of a given financial year, and are valid as at 13 March 2020. UK undertakings may be required to continue to comply with these regimes for a period after ceasing to qualify, typically for a period until two consecutive financial years pass in which the undertaking did not meet the relevant criteria. A range of exclusions apply for each regime, for example, for certain public bodies.*

The application of the reporting requirements to corporate groups also differs in a number of ways between the regimes.

The starting point for ESOS is that if your group has one undertaking which is caught then all UK entities in the group (however small) must participate, no matter how far up their common parent is, and regardless of whether that parent is foreign or UK-based. CRC used the same approach.

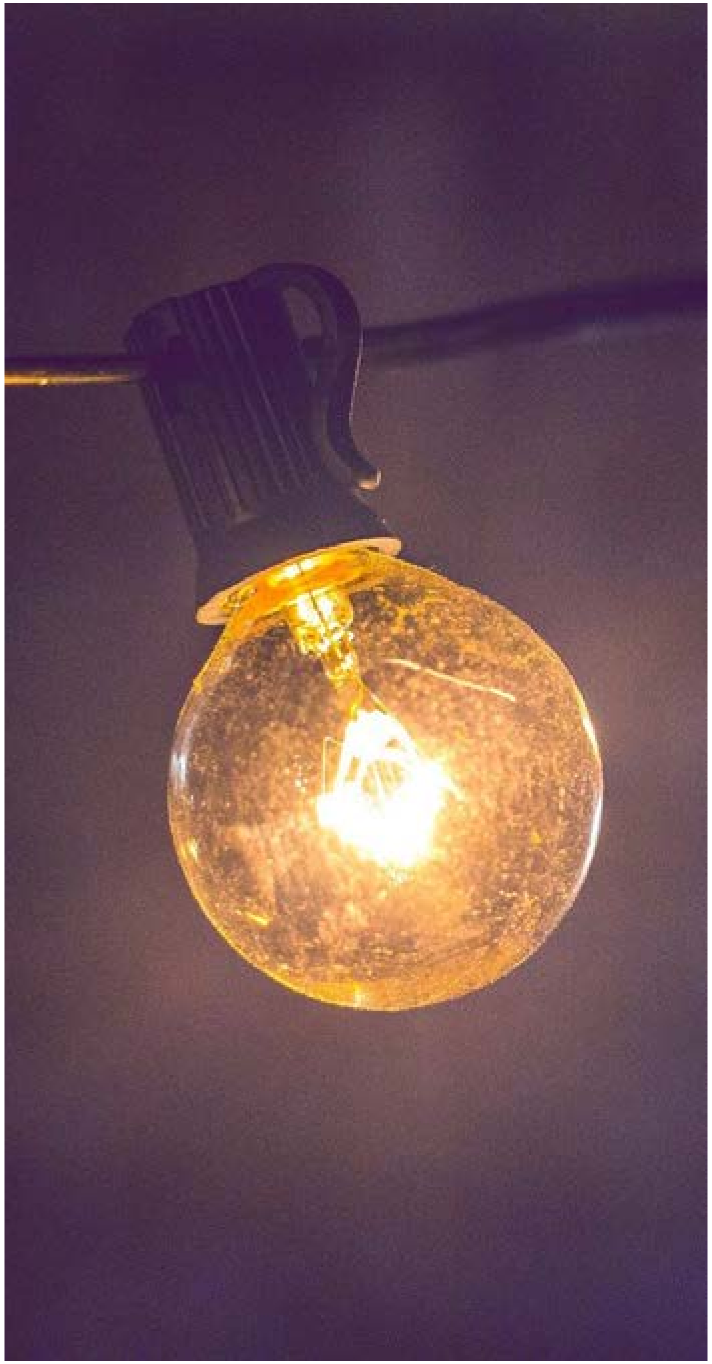
By contrast, SECR does not require reports for subsidiaries or group LLPs that would not be obliged to report on their own account.

However, parent companies must still report where the group they head would qualify on an aggregated basis. The approach to determining how the regimes apply and how to report for corporate groups is summarised in the table below.

**Simplified application of environmental mandatory reporting obligation schemes to corporate groups****

| Working out the group obligations | ESOS/CRC | SECR |
|---|---|---|
| Application to group companies | Any UK parent, subsidiary or sister-subsidiary of a qualifying undertaking is also required to comply, regardless of whether it would qualify in its own right.<br><br>For CRC, evidence of corporate group structure and which corporate group members qualified on this basis should be maintained. Group entities maintain joint and several liability for the whole group. | Where a UK parent company does not qualify on its own it will still be required to report where the group of which it is a parent is a larger than a 'medium-sized group'. This means the group must satisfy at least two of the following criteria:<br>• more than 250 employees;<br>• annual turnover exceeds £36m net or £43.2m gross; and<br>• balance sheet total exceeds £18m net or £21.6m gross. |
| Approach to group reporting | Under ESOS, each corporate group reports as a single participant. Undertakings generally report with the highest parent in their group which does not have a UK parent company.<br><br>Any company within a corporate group may comply on a standalone basis by prior agreements with the relevant highest parent company. | AA parent company of a group that is larger than 'medium-sized' reports for that group.<br><br>Corporate groups with multiple qualifying companies or LLPs should be consolidated and prepared by the parent, but do not need to cover any subsidiaries that would not qualify in their own right. |

***All thresholds (for employees, turnover and balance sheet totals) are expressed in terms of a given financial year, and are valid as at 13 March 2020.*



## At a glance: the requirements

### SECR – new requirements

SECR extends the scope of the Strategic Report and Directors' Report Regulations 2013, and (unlike CRC) does not impose obligations to take action, such as by purchasing allowances. The reporting obligations are intended to drive companies to identity the right energy efficiency solutions for their circumstances.

Annual reports must now include data on scope 1 and 2 (direct and indirect) carbon emissions from energy use from electricity, gas and transport (depending on the type of company), along with an 'intensity metric'. A narrative description of action the company or group has taken on energy efficiency that financial year and the requirement to report total annual energy use in the UK have also been extended to unquoted companies and large LLPs.

### CRC – residual obligations

While the CRC scheme was replaced by SECR and closed in April 2019, enforcement of historic compliance continues, and residual obligations therefore continue to apply. Official guidance is available for CRC scheme participants on these obligations (here).

The principal ongoing obligations are:

- retaining evidence packs for past compliance until 31 March 2025; and
- keeping contact details on the CRC registry up-to-date until 31 March 2022.

### ESOS – phase 2

ESOS imposes a four-yearly obligation on large UK businesses to procure an audit of their energy consumption from a registered consultant. It implements the EU Energy Directive 2012 in the UK. The Energy Savings Opportunity Scheme (Amendment) (EU Exit) Regulations 2018 come into force at the end of the Brexit transition period with the aim that ESOS will continue to operate after Brexit.

The deadline for compliance for the first phase passed on 19 December 2019, and non-compliance fines are levied for each day after this date. If you believe you should have reported and have missed the deadline, you should engage a consultant to discuss mitigation strategies and consider notifying the Environment Agency, as fines can also be imposed for failure to notify and greater leniency may be shown where companies are being pro-active with the authority.
The next reporting deadline is in December 2023.

### Voluntary reporting recommendations

While currently voluntary, the UK government indicated in its Green Finance Strategy 2019 that it expects the TCFD recommendations for climate-related financial reporting to become mandatory by 2022.

The TCFD has emphasised that companies should see 2020-2022 as a period to engage pro-actively with the recommendations to ensure effective industry input prior to them becoming mandatory. A consultation on new 'comply or explain' disclosure rules matching the recommendations is also expected in 2020, and signatories to the Principles for Responsible Investment are now required to report against a limited number of the recommendations.
In addition, the Climate Disclosure Standards Board, which provides frameworks to assist investor-facing reporting and encourages standardisation, has just closed a consultation on increasing the use of nature-related financial information. Natural capital and corporate impact on biodiversity are garnering increasing attention.

### Corporate governance and wider reporting obligations

In addition to the mandatory regimes which apply based on size thresholds, all UK companies and many LLPs are subject to wider non-financial reporting obligations under the Companies Act 2006, which include environmental factors.
In our experience, navigating these obligations can be a substantial exercise in its own right. Our technical head of listed companies at Freshfields, Stephanie Maguire, is a leading expert on corporate governance and reporting and can be contacted for more information.

**For more information please contact:**

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