
STATUTORY INSTRUMENTS

2014 No. 3209

COMPANIES

PARTNERSHIP

The Reports on Payments to Governments Regulations 2014

Made - - - - *28th November 2014*

Coming into force - - *1st December 2014*

The Secretary of State is a Minister designated for the purposes of section 2(2) of the European Communities Act 1972(1) in relation to the creation, operation, regulation or dissolution of companies and other forms of business organisation(2).

The Secretary of State makes the following Regulations in exercise of the powers conferred by section 2(2) of the European Communities Act 1972, sections 15 and 17 of the Limited Liability Partnerships Act 2000(3) and sections 468, 1069 and 1105 of the Companies Act 2006(4).

In accordance with paragraph 2(2)(5) of Schedule 2 to the European Communities Act 1972, section 17(4) of the Limited Liability Partnerships Act 2000 and sections 473(3), 1069(3), 1290 and 1292(4) of the Companies Act 2006, a draft of these Regulations has been laid before Parliament and approved by a resolution of each House of Parliament.

Citation and commencement

1.—(1) These Regulations may be cited as the Reports on Payments to Governments Regulations 2014.

(2) These Regulations come into force on 1st December 2014.

Interpretation

2.—(1) In these Regulations—

“the Act” means the Companies Act 2006;

“affiliated undertakings” means any two or more undertakings within a group;

(1) 1972 c.68. Section 2(2) was amended by section 27(1) of the Legislative and Regulatory Reform Act 2006 (c.51) and by Part 1 of the Schedule to the European Union (Amendment) Act 2008 (c.7). The enabling powers of section 2(2) were extended by virtue of the amendment of section 1(2) by section 1 of the European Economic Area Act 1993 (c.51).

(2) S.I. 2007/193.

(3) 2000 c.12. Section 17 was amended by S.I. 2009/1804.

(4) 2006 c.46.

(5) Paragraph 2(2) was amended by section 27(c) of the Legislative and Regulatory Reform Act 2006 (c.51).

“Companies Act accounts” has the meaning given by sections 395(1)(a) and 403(2)(a) of the Act;

“consolidated report” has the meaning given in regulation 8;

“the Directive” means Directive 2013/34/EU of the European Parliament and of the Council of 26th June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings⁽⁶⁾;

“director” means—

- (a) in relation to a company—
 - (i) a director of the company, and any person occupying in relation to it the position of a director (by whatever name called), and
 - (ii) any person in accordance with whose directions or instructions (not being advice given in a professional capacity) the directors of the company are accustomed to act;
- (b) in relation to a limited liability partnership, a member;
- (c) in relation to a limited partnership, a general partner; and
- (d) in relation to a partnership, a partner;

“electronic means” has the meaning given in section 1168 of the Act;

“equivalent reporting requirements” are reporting requirements in non-member States that are equivalent to the requirements of Chapter 10 of the Directive and which have been assessed by the European Commission as being equivalent in accordance with Article 47 of the Directive;

“general partner” has the same meaning as in the Limited Partnerships Act 1907⁽⁷⁾;

“government” means any national, regional or local authority of a country, and includes a department, agency or undertaking that is a subsidiary undertaking where the authority is the parent undertaking;

“group” means a parent undertaking and all its subsidiary undertakings;

“IAS accounts” has the meaning given in sections 395(1)(b) and 403(1) and (2)(b) of the Act;

“large undertaking” means an undertaking that meets at least two of the three following criteria—

- (a) its balance sheet total on its balance sheet date exceeds £18 million;
- (b) its net turnover on its balance sheet date exceeds £36 million;
- (c) the average number of employees during the financial year to which the balance sheet relates exceeds 250;

“limited partnership” means a partnership formed in accordance with the Limited Partnerships Act 1907;

“logging undertaking” means an undertaking which undertakes in primary forests the activity referred to in Section A, Division 02, Group 02.2 of Annex 1 to Regulation (EC) No 1893/2006 of the European Parliament and of the Council of 20th December 2006 establishing the statistical classification of economic activities NACE Revision 2⁽⁸⁾ as set out in Table 1 in the Schedule to these Regulations;

“mining or quarrying undertaking” means an undertaking which performs any activity involving the exploration, prospection, discovery, development, and extraction of minerals, oil, natural gas deposits or other materials, within the activities listed in Section B, Divisions

⁽⁶⁾ OJ L 182 29.06.2013 p.19.

⁽⁷⁾ 1907 c.24.

⁽⁸⁾ OJ L 393, 30.12.2006, p.1, as last amended by Regulation (EU) No 70/2012.

05 to 08 of Annex 1 to Regulation (EC) No 1893/2006 of the European Parliament and of the Council of 20th December 2006 establishing the statistical classification of economic activities NACE Revision 2 as set out in Table 2 in the Schedule to these Regulations;

“net turnover” means the amounts derived from the sale of products and the provision of services after deducting sales rebates and value added tax and other taxes directly linked to turnover;

“parent undertaking” has the meaning given in the Act, but is to be read as if “undertaking” has the meaning given in these Regulations;

“partnership” means a partnership within the Partnership Act 1890(9);

“payment” means an amount paid, whether in money or in kind, for relevant activities, where the payment is any of the following types—

- (a) production entitlements;
- (b) taxes levied on the income, production or profits of companies, excluding taxes levied on consumption such as value added taxes, personal income taxes or sales taxes;
- (c) royalties;
- (d) dividends, other than dividends paid by an undertaking to a government as an ordinary shareholder of that undertaking, where—
 - (i) the dividend is paid to the government on the same terms as to other ordinary shareholders, and
 - (ii) the dividend is not paid in lieu of production entitlements or royalties;
- (e) signature, discovery and production bonuses;
- (f) licence fees, rental fees, entry fees and other considerations for licences or concessions; or
- (g) payments for infrastructure improvements;

“primary forest” means a forest of native species, where there is no clearly visible indication of human activities and the ecological processes are not significantly disturbed;

“project” means the operational activities which—

- (a) are governed by a single contract, licence, lease, concession or similar legal agreement, and
- (b) form the basis for payment liabilities with a government;

“public interest entity” means an undertaking—

- (a) whose transferable securities are admitted to trading on a regulated market of any member State within the meaning of point (14) of Article 4(1) of Directive 2004/39/EC of the European Parliament and of the Council of 21st April 2004 on markets in financial instruments(10);
- (b) that is a credit institution as defined in point (1) of Article 4 of Directive 2006/48/EC of the European Parliament and of the Council of 14th June 2006 relating to the taking up and pursuit of the business of credit institutions(11), other than those referred to in Article 2 of that Directive; or
- (c) that is an insurance undertaking within the meaning of Article 2(1) of Council Directive 91/674/EEC of 19th December 1991 on the annual accounts of insurance undertakings(12);

(9) 1890 c.39.

(10) OJ L 145 30.04.2004 p.1, as last amended by Directive 2010/78/EU.

(11) OJ L 177 30.06.2006 p.1.

(12) OJ L 374 31.12.1991, p.7, as last amended by Directive 2006/46/EC.

“the registrar” has the meaning given in section 1060 of the Act;

“relevant activities” means—

- (a) the activity as set out in Table 1 in the Schedule to these Regulations within primary forests; or
- (b) any activity involving the exploration, prospection, discovery, development, and extraction of minerals, oil, natural gas deposits or other materials, within the activities listed in Table 2 in the Schedule to these Regulations;

“report” has the meaning given in regulation 4;

“subsidiary undertaking” has the meaning given in the Act, but is to be read as if “undertaking” has the meaning given in these Regulations;

“undertaking” means—

- (a) a limited company;
- (b) a limited liability partnership;
- (c) a limited partnership, each of whose general partners is—
 - (i) a limited company,
 - (ii) an unlimited company, each of whose members is a limited company,
 - (iii) a Scottish partnership which is not a limited partnership, each of whose members is a limited company, or
 - (iv) a Scottish partnership which is a limited partnership, each of whose general partners is a limited company;
- (d) a partnership, each of whose partners is—
 - (i) a limited company,
 - (ii) an unlimited company each of whose members is a limited company,
 - (iii) a Scottish partnership which is not a limited partnership, each of whose members is a limited company, or
 - (iv) a Scottish partnership which is a limited partnership, each of whose general partners is a limited company;
- (e) an unlimited company, each of whose members is—
 - (i) a limited company,
 - (ii) an unlimited company each of whose members is a limited company,
 - (iii) a Scottish partnership which is not a limited partnership, each of whose members is a limited company, or
 - (iv) a Scottish partnership which is a limited partnership, each of whose general partners is a limited company;

(2) The references in paragraphs (c)(i) to (iv), (d)(i) to (iv) and (e)(i) to (iv) of the definition of “undertaking” to a limited company, an unlimited company, a Scottish partnership which is not a limited partnership or a Scottish partnership which is a limited partnership include a comparable undertaking incorporated in or formed under the law of a country or territory outside the United Kingdom; and in relation to such an undertaking the references in those paragraphs to the members and general partners are to be construed as references to the members of the undertaking comparable to members or general partners.

(3) An undertaking which is a large undertaking in a financial year does not cease to be a large undertaking because it no longer meets at least two of the criteria in the definition of “large undertaking” in the following financial year.

(4) But if a large undertaking ceases to meet at least two of the criteria in the definition of “large undertaking” in two consecutive financial years, it ceases to be a large undertaking on the first day of the financial year immediately following the second of those consecutive years.

(5) If agreements of the kind referred to in the definition of “project” are substantially interconnected, those agreements are treated for the purposes of these Regulations as a single project.

(6) For the purpose of paragraph (5), “substantially interconnected” means forming a set of operationally and geographically integrated contracts, licences, leases or concessions or related agreements with substantially similar terms that are signed with a government, giving rise to payment liabilities.

(7) Such agreements may be governed by a single contract, joint venture, production sharing agreement, or other overarching legal agreement.

Application and transitional provision

3.—(1) These Regulations apply in relation to a financial year of an undertaking beginning on or after 1st January 2015 subject to paragraph (2).

(2) These Regulations do not apply in relation to a financial year beginning before 1st January 2016 of an undertaking that is a subsidiary undertaking and whose parent undertaking is required to prepare consolidated group accounts in a member State other than the United Kingdom.

PART 1

REPORT ON PAYMENTS TO GOVERNMENTS

Duty to prepare report on payments to governments

4. The directors of an undertaking must prepare a report annually on payments made to governments for each financial year of the undertaking (the “report”) if that undertaking is—

- (a) a large undertaking or a public interest entity; and
- (b) a mining or quarrying undertaking or a logging undertaking.

Content of report

5.—(1) For each financial year, the report must state the following information in relation to the relevant activities of the undertaking—

- (a) the government to which each payment has been made, including the country of that government;
- (b) the total amount of payments made to each government;
- (c) the total amount per type of payment made to each government; and
- (d) where those payments have been attributed to a specific project, the total amount per type of payment made for each such project and the total amount of payments for each such project.

(2) Where an undertaking makes a payment that is not attributable to a specific project, that payment may be disclosed in the report without splitting or disaggregating the payment to allocate it to a specific project.

- (3) A payment need not be taken into account in the report if—
 - (a) it is a single payment of an amount less than £86,000, or

- (b) it forms part of a series of related payments within a financial year whose total amount is less than £86,000.
- (4) Payments, activities and projects may not be artificially split or aggregated to avoid the application of these Regulations.
- (5) The disclosure of payments must reflect the substance, rather than the form, of each payment, relevant activity or project concerned.
- (6) Where payments in kind are made to a government, the report must state the value of such payments in kind and, where applicable, the volume of those payments in kind, and the directors must provide supporting notes to explain how the value has been determined.

Exemption for subsidiaries or parent undertakings included in consolidated reports

- 6. The directors of an undertaking that is a subsidiary undertaking or a parent undertaking are exempt from preparing a report if the payments to governments made by the undertaking are included in the consolidated report drawn up by the parent undertaking in accordance with regulation 8.
- 7. The directors of an undertaking that is a subsidiary undertaking or a parent undertaking are exempt from preparing a report if—
 - (a) the parent undertaking is subject to the provisions implementing Chapter 10 of the Directive in any member State other than the United Kingdom; and
 - (b) the payments to governments made by the undertaking are included in the consolidated report drawn up by that parent undertaking.

PART 2

CONSOLIDATED REPORT ON PAYMENTS TO GOVERNMENTS

Duty to prepare a consolidated report

- 8.—(1) The directors of a parent undertaking must prepare a consolidated report annually on payments made to governments for each financial year of the parent undertaking (the “consolidated report”) if that undertaking is—
 - (a) a large undertaking or a public interest entity;
 - (b) a mining or quarrying undertaking or a logging undertaking; and
 - (c) obliged to prepare consolidated group accounts.
- (2) A parent undertaking is a mining or quarrying undertaking or a logging undertaking if any of its subsidiary undertakings is a mining or quarrying undertaking or a logging undertaking.

Content of consolidated report

- 9.—(1) For each financial year, the consolidated report must state the following information in relation to the relevant activities—
 - (a) the government to which each payment has been made, including the country of that government;
 - (b) the total amount of payments made to each government;
 - (c) the total amount per type of payment made to each government; and

- (d) where those payments have been attributed to a specific project, the total amount per type of payment made for each such project and the total amount of payments for each such project.
- (2) In this regulation the relevant activities are those of—
 - (a) the parent undertaking; and
 - (b) any subsidiary undertaking included in the consolidated group accounts of the parent undertaking.
- (3) Where an undertaking makes a payment that is not attributable to a specific project, that payment may be disclosed in the consolidated report without splitting or disaggregating the payment to allocate it to a specific project.
- (4) A payment need not be taken into account in the consolidated report if—
 - (a) it is a single payment of an amount less than £86,000, or
 - (b) it forms part of a series of related payments within a financial year whose total amount is less than £86,000.
- (5) Payments, activities and projects may not be artificially split or aggregated to avoid the application of these Regulations.
- (6) The disclosure of payments must reflect the substance, rather than the form, of each payment, relevant activity or project concerned.
- (7) Where payments in kind are made to a government, the consolidated report must state the value of such payments in kind and, where applicable, the volume of those payments in kind, and the directors must provide supporting notes to explain how the value has been determined.

Exemption from duty to prepare a consolidated report

- 10.**—(1) The obligation to draw up the consolidated report under regulation 8 does not apply to directors of—
- (a) a parent undertaking of a small group, except where any affiliated undertaking is a public interest entity;
 - (b) a parent undertaking of a medium-sized group, except where any affiliated undertaking is a public interest entity;
 - (c) a parent undertaking which is also a subsidiary undertaking, if its own parent undertaking is governed by the law of a member State other than the United Kingdom.
- (2) A group is a “small group” if it consists of parent and subsidiary undertakings to be included in a consolidated report and which, on a consolidated basis, meets at least two of the three following criteria on the balance sheet date of the parent undertaking—
- (a) its balance sheet total does not exceed £5.1 million net (or £6.1 million gross);
 - (b) its net turnover does not exceed £10.2 million net (or £12.2 million gross);
 - (c) its average number of employees during the financial year to which the balance sheet date relates does not exceed 50.
- (3) A group is a “medium-sized group” if it is not a small group and consists of parent and subsidiary undertakings to be included in a consolidated report and which, on a consolidated basis, meets at least two of the three following criteria on the balance sheet date of the parent undertaking—
- (a) its balance sheet total does not exceed £18 million net (or £21.6 million gross);
 - (b) its net turnover does not exceed £36 million net (or £43.2 million gross);
 - (c) its average number of employees during the financial year to which the balance sheet date relates does not exceed 250.

- (4) In relation to the aggregate figures for turnover and balance sheet total—
“net” means after any set-offs and other adjustments made to eliminate group transactions—
- (a) in the case of Companies Act accounts, in accordance with regulations under section 404 of the Act,
 - (b) in the case of IAS accounts, in accordance with international accounting standards;
- “gross” means without those set-offs and other adjustments.
- (5) A company may satisfy the criteria contained in paragraph (2) or (3) using either the net or the gross figure.

Exemption from consolidated report

11.—(1) Payments made by a subsidiary undertaking may be excluded from the consolidated report where—

- (a) severe long-term restrictions substantially hinder the exercise of the rights of the parent undertaking over the assets or management of that subsidiary undertaking;
- (b) the information necessary for the preparation of the consolidated report cannot be obtained without disproportionate expense or undue delay; or
- (c) the shares of that undertaking are held exclusively with a view to subsequent resale.

(2) The parent undertaking may only exclude payments by a subsidiary undertaking under paragraph (1)(a) to (c) where the subsidiary undertaking is excluded from the consolidated group accounts on the same basis.

PART 3

EQUIVALENT REPORTING REQUIREMENTS

Exemption from duty to prepare report

12. The directors of an undertaking are exempt from preparing a report if—

- (a) the undertaking is subject to equivalent reporting requirements; and
- (b) the payments to governments made by the undertaking are included in a report prepared in accordance with equivalent reporting requirements.

Exemption from duty to prepare report or consolidated report

13. The directors of an undertaking that is a subsidiary undertaking or a parent undertaking are exempt from preparing a report or a consolidated report if—

- (a) the parent undertaking is subject to equivalent reporting requirements; and
- (b) the payments to governments made by the undertaking are included in a consolidated report drawn up to the same date, or to an earlier date, in the same financial year, by that parent undertaking prepared in accordance with equivalent reporting requirements.

PART 4

DUTY TO DELIVER REPORTS AND INFORMATION

Duty to deliver reports

14.—(1) Directors who are required to prepare—

- (a) a report in accordance with regulations 4 and 5; or
- (b) a consolidated report prepared in accordance with regulations 8 and 9

must deliver that report or consolidated report to the registrar within 11 months of the end of the financial year of the undertaking.

(2) For an undertaking that is a partnership or a limited partnership, the “financial year” is deemed to be the 12 calendar months ending on 5th April.

(3) A report or consolidated report delivered under this regulation must be delivered to the registrar by electronic means.

Duty to deliver equivalent reporting requirements information

15.—(1) The directors of an undertaking that is exempt under regulation 12 or 13 from preparing a report or consolidated report must deliver to the registrar information contained in any report or consolidated report prepared in accordance with equivalent reporting requirements within 28 days after such report is made publicly available under the equivalent reporting requirements.

(2) Any document delivered under this regulation is specified for the purposes of section 1105(2)(d) of the Act as a document that may be drawn up and delivered to the registrar in a language other than English, but which must, when delivered to the registrar, be accompanied by a certified translation into English.

(3) Information delivered under this regulation must be delivered to the registrar by electronic means.

False statement offence

16.—(1) It is an offence for a person knowingly or recklessly—

- (a) to deliver or cause to be delivered to the registrar, for the purposes of these Regulations, a document, or
- (b) to make to the registrar, for any such purpose, a statement,

that is misleading, false or deceptive in a material particular.

(2) Paragraph (3) applies if section 85(2) of the Legal Aid, Sentencing and Punishment of Offenders Act 2012(13) is in force on the day these Regulations are made.

(3) A person guilty of an offence under this regulation is liable—

- (a) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine (or both);
- (b) on summary conviction—
 - (i) in England and Wales, to imprisonment for a term not exceeding three months or to a fine (or both);
 - (ii) in Scotland and Northern Ireland, to imprisonment for a term not exceeding three months or to a fine not exceeding the statutory maximum (or both).

(4) Paragraph (5) applies if section 85(2) of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 is not in force on the day these Regulations are made.

(5) A person guilty of an offence under this regulation is liable—

- (a) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine (or both);
- (b) on summary conviction, to imprisonment for a term not exceeding three months or to a fine not exceeding the statutory maximum (or both).

(6) No proceedings are to be brought under this regulation—

- (a) in England and Wales except by or with the consent of the Secretary of State or the Director of Public Prosecutions;
- (b) in Northern Ireland except by or with the consent of the Secretary of State or the Director of Public Prosecutions for Northern Ireland.

Enforcement of undertaking's delivery obligations

17.—(1) This regulation applies where the registrar has reason to believe that an undertaking has failed to deliver a report or consolidated report in accordance with regulation 14.

(2) The registrar must serve notice on the undertaking requiring it to—

- (a) deliver to the registrar—
 - (i) a report or consolidated report in accordance with regulation 14(1); and
 - (ii) a statement to the registrar confirming that the undertaking is required to prepare a report or consolidated report in accordance with these Regulations;
- (b) deliver to the registrar a statement that the period for delivery of the report or consolidated report under regulation 14(1) has not expired; or
- (c) deliver to the registrar a statement that the undertaking is not required to prepare a report or consolidated report in accordance with these Regulations.

(3) Any statement made under paragraph (2) must state—

- (a) the name of the undertaking; and
- (b) the financial year to which the statement relates.

(4) A statement made under paragraph (2)(a)(ii) must state whether the undertaking is required to prepare a report under regulation 4 or a consolidated report under regulation 8.

(5) A statement made under paragraph (2)(b) must state when the period for delivery of the report or consolidated report to the registrar under regulation 14(1) is to expire.

(6) A statement made under paragraph (2)(c) must state on which of the grounds under paragraph (7) the undertaking is not required to prepare a report or consolidated report and any further detail required by that paragraph.

(7) The grounds under this paragraph are that—

- (a) the undertaking is not a large undertaking or a public interest entity;
- (b) it is not a mining or quarrying undertaking or a logging undertaking;
- (c) it has not made any payments to a government that meet the threshold for inclusion in regulation 9(4);
- (d) it is exempt under regulation 6 (inclusion in a consolidated report), and if so state the name of the undertaking that is delivering the consolidated report;
- (e) it is exempt under regulation 7 (inclusion in a consolidated report of a parent undertaking in a member State other than the United Kingdom), and if so state the name of the undertaking

that is delivering the consolidated report and the member State in which the consolidated report is filed;

- (f) it is exempt under regulation 10(1)(a) (being a parent undertaking of a small group);
- (g) it is exempt under regulation 10(1)(b) (being a parent undertaking of a medium-sized group);
- (h) it is exempt under regulation 10(1)(c) (being a parent undertaking which is also a subsidiary undertaking, if its own parent undertaking is governed by the law of a member State other than the United Kingdom), and if so state the name of the undertaking that is delivering the consolidated report and the member State in which the consolidated report is filed;
- (i) it is excluded from a consolidated report because one of the conditions set out in regulation 11 applies, and if so state which condition and confirm that it has been excluded from the consolidated group accounts;
- (j) it is exempt under regulation 12 (preparing a report in accordance with equivalent reporting requirements), and if so state which equivalent reporting requirements apply;
- (k) it is exempt under regulation 13 (inclusion in a consolidated report prepared in accordance with equivalent reporting requirements), and if so state which equivalent reporting requirements apply and the name of the parent undertaking delivering the report.

(8) If the undertaking fails to comply with a notice served under paragraph (2) within 28 days after the service of such notice, an offence is committed by the undertaking and every person who is a director of the undertaking.

(9) It is a defence to prove that a director took all reasonable steps for securing compliance with a notice served under paragraph (2).

(10) Paragraph (11) applies if section 85(2) of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 is in force on the day these Regulations are made.

(11) A person guilty of an offence under this regulation is liable on summary conviction to a fine.

(12) Paragraph (13) applies if section 85(2) of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 is not in force on the day these Regulations are made.

(13) A person guilty of an offence under this regulation is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(14) No proceedings are to be brought under this regulation—

- (a) in England and Wales except by or with the consent of the Secretary of State or the Director of Public Prosecutions;
- (b) in Northern Ireland except by or with the consent of the Secretary of State or the Director of Public Prosecutions for Northern Ireland.

18.—(1) This regulation applies where the registrar has reason to believe that an undertaking has failed to deliver equivalent reporting requirements information in accordance with regulation 15.

(2) The registrar must serve notice on the undertaking requiring it to—

- (a) deliver to the registrar—
 - (i) information contained in any report or consolidated report prepared in accordance with equivalent reporting requirements; and
 - (ii) a statement to the registrar confirming that the undertaking is required to deliver such information;
- (b) deliver to the registrar a statement that the period for delivery of the equivalent reporting requirements information under regulation 15(1) has not expired; or

- (c) deliver to the registrar a statement that the undertaking is not required to deliver to the registrar any document under regulation 15.
- (3) A statement made under paragraph (2) must state—
- (a) the name of the undertaking; and
 - (b) the financial year to which the statement relates.
- (4) A statement made under sub-paragraph (2)(b) must state when the period for delivery of the equivalent reporting requirements information to the registrar under regulation 15(1) is to expire.
- (5) If the undertaking fails to comply with a notice served under paragraph (2) within 28 days after the service of such notice, an offence is committed by the undertaking and every person who is a director of the undertaking.
- (6) It is a defence to prove that a director took all reasonable steps for securing compliance with a notice served under paragraph (2).
- (7) Paragraph (8) applies if section 85(2) of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 is in force on the day these Regulations are made.
- (8) A person guilty of an offence under this regulation is liable on summary conviction to a fine.
- (9) Paragraph (10) applies if section 85(2) of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 is not in force on the day these Regulations are made.
- (10) A person guilty of an offence under this regulation is liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (11) No proceedings are to be brought under this regulation—
- (a) in England and Wales except by or with the consent of the Secretary of State or the Director of Public Prosecutions;
 - (b) in Northern Ireland except by or with the consent of the Secretary of State or the Director of Public Prosecutions for Northern Ireland.

Default in delivering report: court order

19. The court may, on the application of any member of the undertaking or the registrar, make an order directing the directors (or any of them) within such time as may be specified in the order to make good a default if—

- (a) the requirements of regulation 14 or 15 have not been met; and
- (b) the directors of the undertaking fail to make good the default within 28 days after the service of a notice on them requiring compliance.

Directive disclosure requirements

20.—(1) After subsection (4) of section 1078(14) of the Act (documents subject to certain EU disclosure requirements), insert—

“(4A) Where a company is required by regulation 14 of the Reports on Payments to Governments Regulations 2014 to deliver to the registrar a report or consolidated report on payments to governments, that report or consolidated report.

(4B) Where a company is required by regulation 15 of the Reports on Payments to Governments Regulations 2014 to deliver to the registrar information on payments to governments which is contained in a report or consolidated report prepared in accordance with equivalent reporting requirements (within the meaning of those Regulations), that information.”

(14) Section 1078 was amended by S.I. 2012/2301.

(2) In regulation 63 of the Limited Liability Partnerships (Application of Companies Act 2006) Regulations 2009⁽¹⁵⁾ (public notice of receipt of certain documents), before the heading “Registered office” insert—

“Reports

1. Any report or consolidated report on payments to governments required to be delivered to the registrar by regulation 14 of the Reports on Payments to Governments Regulations 2014.
 2. Any information on payments to governments which is contained in a report or consolidated report prepared in accordance with equivalent reporting requirements (within the meaning of the Reports on Payments to Governments Regulations 2014) and is required to be delivered to the registrar by regulation 15 of those Regulations.
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Review of Regulations

21.—(1) The Secretary of State must from time to time—

- (a) carry out a review of these Regulations;
- (b) set out the conclusions of the review in a report; and
- (c) publish the report.

(2) In carrying out the review the Secretary of State must, so far as is reasonable, have regard to how the Directive (which is implemented by means of these Regulations) is implemented in other member States.

(3) The report must in particular—

- (a) set out the objectives intended to be achieved by the regulatory system established by these Regulations;
- (b) assess the extent to which those objectives are achieved; and
- (c) assess whether those objectives remain appropriate and, if so, the extent to which they could be achieved with a system that imposes less regulation.

(4) The first report under this regulation must be published before the end of the period of three years beginning with the day on which these Regulations come into force.

(5) Reports under this regulation are afterwards to be published at intervals not exceeding five years.

28th November 2014

Jo Swinson
Parliamentary Under Secretary of State for
Employment Relations and Consumer Affairs
Department for Business, Innovation and Skills

⁽¹⁵⁾ S.I. 2009/1804, amended by S.I. 2012/2301, there are other amending instruments but none are relevant.

Status: This is the original version (as it was originally made).

SCHEDULE

Regulation 2(1)

Table of activities relevant to the definitions of “logging undertaking” and “mining or quarrying undertaking”

Annex 1 to Regulation (EC) No 1893/2006

Table 1

Section A - Agriculture, forestry and fishing

<i>Division</i>	<i>Group</i>	<i>Class</i>	<i>Description</i>	<i>International Standard Industrial Classification Revision 4</i>
02	02.2	02.20	Logging	0220

Table 2

Section B – Mining and quarrying

<i>Division</i>	<i>Group</i>	<i>Class</i>	<i>Description</i>	<i>International Standard Industrial Classification Revision 4</i>
05			Mining of coal and lignite	
	05.1	05.10	Mining of hard coal	0510
	05.2	05.20	Mining of lignite	0520
06			Extraction of crude petroleum and natural gas	
	06.1	06.10	Extraction of crude petroleum	0610
	06.2	06.20	Extraction of natural gas	0620
07			Mining of metal ores	
	07.1	07.10	Mining of iron ores	0710
	07.2		Mining of non-ferrous metal ores	
		07.21	Mining of uranium and thorium ores	0721
		07.29	Mining of other non-ferrous metal ores	0729
08			Other mining and quarrying	
	08.1		Quarrying of stone, sand and clay	
		08.11	Quarrying of ornamental and building stone, limestone, gypsum, chalk and slate	0810 (part of)
		08.12	Operation of gravel and sand pits; mining of clays and kaolin	0810 (part of)

<i>Division</i>	<i>Group</i>	<i>Class</i>	<i>Description</i>	<i>International Standard Industrial Classification Revision 4</i>
	08.9		Mining and quarrying not elsewhere classified	
		08.91	Mining of chemical and fertiliser minerals	0891
		08.92	Extraction of peat	0892
		08.93	Extraction of salt	0893
		08.99	Other mining and quarrying not elsewhere classified	0899

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations come into force on 1st December 2014 and extend to the whole of the United Kingdom, reflecting the extent of the Companies Act 2006 (c.46) (“the Act”).

These Regulations implement chapter 10 of Directive 2013/34/EU on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings⁽¹⁶⁾. Chapter 10 requires certain undertakings active in the extractive or primary logging industries to make and publish reports on payments made to governments.

Regulation 3 sets out the application of these Regulations. These Regulations will apply to all undertakings in relation to a financial year starting on or after 1st January 2015, apart from those undertakings which are subsidiaries of parent undertakings who are obliged to prepare consolidated groups accounts in member States other than the United Kingdom. These Regulations will apply in relation to financial years for these undertakings beginning on or after 1st January 2016.

Regulation 4 contains the obligation on directors of undertakings which are both large or classified as public interest entities and active in the extractive or primary logging industries to produce a report on payments made to governments.

Regulation 5 sets out the required content of the report. It allows undertakings to disclose payments at the entity level rather than a project level where payments are made in respect of obligations imposed at the entity level instead of at project level. For instance, if an undertaking has more than one project in a host country, and that country’s government levies corporate income taxes on the undertaking with respect to the undertaking’s income in the country as a whole, and not with respect to a particular project or operation within the country, the undertaking would be permitted to disclose the resulting income tax payment or payments without specifying a particular project associated with the payment.

⁽¹⁶⁾ OJ L 182 29.06.2013 p.19.

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Regulations 6 and 7 contain exemptions from the requirement to prepare a report. These exemptions are for undertakings whose payments are included in a consolidated report of a parent undertaking in any member State.

Regulation 8 requires directors of parent undertakings that have subsidiaries that are mining or quarrying undertakings or logging undertakings to prepare a consolidated report on payments made to governments if obliged to prepare consolidated group accounts under the Act.

Regulation 9 sets out the required content of the consolidated report and regulation 10 contains exemptions from the obligation to prepare a consolidated report.

Regulation 11 provides that payments made by a subsidiary undertaking may be excluded from a consolidated report in certain situations, provided that those subsidiary undertakings are also excluded on the same ground from the consolidated group accounts.

Regulations 12 and 13 make provision for a further exemption for undertakings from the duty to prepare a report or consolidated report under these Regulations where an undertaking has already reported its payments made to governments under equivalent reporting requirements in a third-country.

Regulation 14 obliges directors of undertakings who are required to prepare a report or consolidated report to deliver such reports to the registrar of companies within 11 months after the end of the financial year of the undertaking.

Regulation 15 requires directors of undertakings that produce reports in accordance with equivalent reporting requirements to deliver the information contained in such reports to the registrar within 28 days of the report being made publicly available under the third-country reporting regime. It allows for the delivery of such information to be in a language other than English if accompanied by a certified translation.

Reports delivered under regulations 14 or 15 must be delivered by electronic means.

Regulation 16 makes it an offence to deliver to the registrar a false, misleading or deceptive document or statement under these Regulations.

Regulations 17 and 18 create an enforcement regime to secure compliance with these Regulations.

Regulation 19 gives the court the power to order the directors of an undertaking in default of an obligation to deliver a report under regulation 14 or information under regulation 15 to make good such default.

Regulation 20 makes necessary consequential amendments to the Act and the Limited Liability Partnerships (Application of Companies Act 2006) Regulations 2009 (S.I. 2009/1804) to ensure that documents delivered to the registrar under these Regulations are subject to the Directive disclosure requirements.

Regulation 21 requires the Secretary of State to review the operation and effect of these Regulations and publish a report within three years after they come into force and within every five years after that. Following a review it will fall to the Secretary of State to consider whether these Regulations should remain as they are, or be revoked or be amended. A further instrument would be needed to revoke these Regulations or to amend them.

A transposition note is available and is available on www.gov.uk/bis.

A full regulatory impact assessment of the effect that this instrument will have on the costs of business and the voluntary sector is available from the Business Environment Directorate, Department for Business, Innovation and Skills, 1 Victoria Street, London SW1H 0ET or from www.gov.uk/bis and is annexed to the Explanatory Memorandum which is available alongside the instrument at www.legislation.gov.uk.