

UK coalition members

ABColumbia
ActionAid
Amnesty International UK
Burma Campaign
CAFOD
Campaign Against Arms Trade
CARE International UK
Christian Aid
Ecumenical Council for
Corporate Responsibility
Engineers Against Poverty
Global Poverty Project
Global Witness
Natural Resource Governance
Institute
ONE
OpenCorporates
Open Knowledge Foundation
Open Society Foundations
Oxfam Great Britain
Progressio
Save the Children UK
Scottish Catholic International
Aid Fund
Tearfund
Transparency International UK
United Nations Association of
the UK
World Vision International

By email:

Chair Mary Jo White
Commissioner Luis Aguilar
Commissioner Daniel Gallagher
Commissioner Michael Piwowar
Commissioner Kara Stein

Securities and Exchange Commission
100 F Street, NE
Washington, DC 20459-1090
USA

9 July 2015

**Re: The United Kingdom's recently enacted regulations
implementing the European Union's Accounting Directive and
Transparency Directive**

Dear Chair and Commissioners:

I am writing on behalf of UK members of the Publish What You Pay coalition to highlight that the resource extraction transparency regulations required by the European Union (EU) Directives have been adopted in the United Kingdom (UK) and are now in effect. This means that companies covered by these rules, including a number of large SEC reporting issuers, are required to report payments they make this year to governments in all countries where they operate.

Please find attached:

1) The Reports on Payments to Governments Regulations 2014, produced by the UK Department for Business, Innovation and Skills (BIS) (henceforth "BIS Regulations").¹

2) The Payments to Governments and Miscellaneous Provisions Regulations 2014 (specifically Regulation 4), produced by the UK Treasury (henceforth "Treasury Regulations").²

3) The UK Financial Conduct Authority (FCA) Disclosure and Transparency Rules (Reports on Payments to Governments) Instrument 2014 (henceforth "FCA Instrument"), which implements the Treasury Regulations.³

¹ The BIS Regulations can be viewed on the UK Government's website at <http://www.legislation.gov.uk/ukxi/2014/3209/contents/made>

² The Treasury Regulations can be viewed on the UK Government's website at <http://www.legislation.gov.uk/ukxi/2014/3293/contents/made>

³ The FCA Instrument can be viewed at http://media.fshandbook.info/Legislation/2014/FCA_2014_63.pdf

These reporting regulations and disclosure rules came into legal force in the UK on 1 December 2014 and 17 December 2014 respectively, and implement into UK domestic law Chapter 10 of the revised 2013 EU Accounting Directive, and article 1(5) of the 2013 EU Transparency Directive Amending Directive (which replaces the former article 6 of the 2004 EU Transparency Directive with a new article 6), respectively.⁴

With transposition of the EU Accounting and Transparency Directives into UK law now complete, an estimated 220 UK-incorporated and UK-listed oil, gas, mining, and logging companies and their subsidiaries are now required to **publicly report** all above-threshold payments they make to governments for relevant extractive and logging activities.⁵ ⁶ The regulations require public, annual **company-by-company** and **project-by-project** reporting **without any country exemptions**. Companies subject to the Accounting and Transparency Directives must issue reports in 2016 (or in some cases early in 2017) on payments they make in financial years starting in 2015.

A number of extractives companies listed on a United States stock exchange are cross-listed on the London Stock Exchange, and therefore currently subject to the Treasury Regulations under the Transparency Directive. Among these are BHP Billiton, BP, Rio Tinto, Royal Dutch Shell, Sinopec, and Total.

The EU Accounting and Transparency Directives were signed into law by the European Parliament and the Council of the European Union (EU Member States) in June 2013 and October 2013 respectively and are modelled on the Securities and Exchange Commission's (SEC) August 2012 rule for Section 1504 of the Dodd-Frank Wall Street Reform and Consumer Protection Act. The European Union's 28 member countries were given until July 2015 to transpose the Accounting Directive into national law, and until November 2015 to transpose the Transparency Directive into national law.

I would like to draw your attention to some of the key components of the regulations that came into force in the United Kingdom in December 2014:

Definition of “project”

Companies are required to report their payments by project. The BIS Regulations define “project” as:

“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”.⁷

⁴ Transposition of the **Accounting Directive** into UK law affects large and/or publicly listed UK-incorporated oil, gas, mining and logging companies and their subsidiaries. Transposition of the **Transparency Directive** into UK law affects all extractive companies listed on the London Stock Exchange as it is an EU-regulated stock exchange.

⁵ BIS, Consultation, Impact assessment, March 2014, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/298603/bis-14-669-impact-assessment-consultation-on-the-uk-implementation-of-the-eu-accounting-directive.pdf, pages 5, 8 and 21. And HM Treasury, Impact Assessment: Implementation of Chapter 6 EU Transparency Directive – Country by Country Reporting, <http://www.legislation.gov.uk/ukxi/2014/3293/impacts>, Evidence Base, paras 63, 64.

⁶ A single payment or series of related payments must be reported if it/they amount(s) to at least GBP £86,000 or EURO €100,000: BIS Regulation 5(3). Payments below this materiality threshold need not be reported.

⁷ BIS Regulation 2(1), page 3 (this regulation groups together various definitional issues over four pages and is organised alphabetically by keyword). The Treasury Regulations simply apply all the detail of the BIS

In addition:

“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”;

and:

“‘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”.⁸

Payments must be disaggregated

The UK BIS Regulations, following the EU Directive, make clear that an annual report (or annual consolidated report by a parent on behalf of a group) must be prepared and delivered to the UK company registrar⁹ by each company or parent, and must disclose payments on a granular, disaggregated basis:

“For each financial year, the report/consolidated 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.”¹⁰

Only “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.”¹¹

Crucially: “Payments, activities and projects may not be artificially split or aggregated to avoid the application of these Regulations”; and “The disclosure of payments must reflect the substance, rather than the form, of each payment, relevant activity or project concerned.”¹²

Public disclosure

The reporting regulations and disclosure rules for UK-incorporated and UK-listed extractive companies (BIS Regulations and FCA Instrument, respectively) make explicit the legal requirement that reports on payments to governments be **publicly disclosed**.

BIS Regulations 20(1) and 20(2) (“Directive disclosure requirements”) state that UK-incorporated extractive company reports and consolidated reports on payments to governments come under

Regulations to UK-listed companies without repeating the detail, mirroring the approach in the two EU Directives.

⁸ BIS Regulations 2(5) and 2(6), page 4.

⁹ BIS Regulations 14(1) and 14(3).

¹⁰ BIS Regulations 5(1) and 9(1).

¹¹ BIS Regulations 5(2) and 9(3).

¹² BIS Regulations 5(4) and 5(5), and 9(5) and 9(6).

Section 1078 of the Companies Act 2006¹³ and consequently under article 3 of the First Company Law Directive (68/151/EEC)¹⁴ regarding information required to be publicly disclosed.

Moreover, the UK Government will make all UK-incorporated company digital data, including data under the BIS Regulations, publicly available free of charge as open data.¹⁵

The BIS Regulations' Explanatory Note highlights that "Chapter 10 [of the EU Directive] requires ... undertakings active in the extractive or primary logging industries to make **and publish** reports on payments made to governments" (emphasis added).¹⁶ The longer Explanatory Memorandum elaborates that such companies must "make public" such reports "to give citizens of resource-rich countries the information they need to hold their governments to account".¹⁷

UK-incorporated companies that are large and/or publicly listed are required to publish their report within 11 months of the end of each financial year starting on or after 1 January 2015.¹⁸

For UK-listed companies reporting under the Treasury Regulations and the implementing FCA Instrument, the amended FCA Disclosure Rules and Transparency Rules (DTR) state: "The report on payments to governments must be **made public** at the latest six months after the end of each financial year" (new DTR 4.3A.5; emphasis added); and "An issuer must ensure that the report on payments to governments remains **publicly available** for at least ten years" (new DTR 4.3A.6; emphasis added).¹⁹

UK-listed companies are required to publish a report within 6 months of the end of each financial year starting on or after 1 January 2015.²⁰

In implementing the above requirements for public disclosure, the UK Government has faithfully followed the EU's 2013 amendments to the Accounting and Transparency Directives, which clearly and unambiguously require reports on payments to governments by relevant EU-incorporated and EU-listed extractive companies to be made publicly available. In choosing this approach, the EU considered submissions and advice from companies, civil society and investors, and evidently concluded that the benefits of public, project-level reporting outweighed any potential costs to extractive companies.

The Accounting Directive provides that EU Member States shall require relevant extractive companies "to prepare and **make public** a report on payments made to governments on an annual basis" (emphasis added).²¹

¹³ <http://www.legislation.gov.uk/ukpga/2006/46/section/1078>

¹⁴ <http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:31968L0151&from=en>

¹⁵ Department for Business, Innovation and Skills, UK Implementation of the EU Accounting Directive, Chapter 10: Extractive industries reporting - Government response to consultation, August 2014, para 61, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/343599/bis-14-1006-eu-accounting-directive-implementation-extractive-industries-reporting-response.pdf. On the open data commitment, see UK Cabinet Office, Open Government Partnership National Action Plan 2013-15, commitment 21, page 49,

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/255901/ogp_uknationalactionplan.pdf

¹⁶ BIS Regulations, page 14, Explanatory Note, paragraph 2.

¹⁷ Explanatory Memorandum to the Reports on Payments to Governments Regulations 2014, para 7.1, <http://www.legislation.gov.uk/ukxi/2014/3209/memorandum/contents>

¹⁸ BIS Regulation 14(1).

¹⁹ FCA Instrument, new DTR 4.3A.5, 4.3A.6; also at FCA Handbook, <http://fshandbook.info/FS/html/FCA/DTR/4/3A>

²⁰ FCA Instrument, new DTR 4.3A.5.

The Transparency Directive, which applies the disclosure requirements to all relevant companies listed on EU-regulated markets, including companies incorporated outside the EU, provides that “The report shall be **made public** at the latest six months after the end of each financial year and shall remain **publicly available** for at least 10 years” (emphasis added).²²

No country exemptions

The UK Government has stated that its regulations do “not allow any exemptions related to conflict of law or conflicts of contract”.²³ The government is clear that companies have not provided “sufficient evidence that action would be taken in other countries for criminal offences against directors or individual companies for complying with the EU Directive”.²⁴

“The [Accounting] Directive does not allow Member States to waive the requirement for companies to report, even if the company believes that they will be breaking a law in another country.”²⁵ As with other Accounting Directive reporting rules for UK-incorporated companies, this applies equally to UK-listed companies reporting under the Transparency Directive.

Equivalency

The BIS Regulations implementing the Accounting Directive, in seeking to ease the reporting burden on UK-incorporated companies subject to equivalent reporting requirements outside the EU, allow for companies to submit reports made under such equivalent reporting requirements in other jurisdictions.²⁶ The same principle applies to companies listed on UK and other EU-regulated stock exchanges under the Transparency Directive, now transposed into UK and other Member State law.

A significant number of extractives companies are incorporated and/or cross-listed in both the European Union and the United States, including BP, Shell, Total, Statoil, BHP Billiton, Rio Tinto, Vale and ArcelorMittal. We therefore encourage the SEC to release a rule implementing Section 1504 with requirements equivalent to those of the EU Accounting and Transparency Directives, and specifically to the UK regulations. An uneven disclosure mandate would impose burdensome and duplicative reporting requirements on companies required to report in both jurisdictions, and also provide inconsistent information to investors.

While EU Member States have until July 2015 and November 2015 respectively to transpose the EU Accounting and Transparency Directives into national law, the UK, acting well ahead of these

²¹ Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, article 42(1), <http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32013L0034&from=EN>

²² Directive 2013/50/EU of the European Parliament and of the Council of 22 October 2013 amending Directive 2004/109/EC of the European Parliament and of the Council on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market, article 6, <http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32013L0050&from=EN>

²³ Department for Business, Innovation and Skills, UK Implementation of the EU Accounting Directive, op. cit., para 89, www.gov.uk/government/uploads/system/uploads/attachment_data/file/343599/bis-14-1006-eu-accounting-directive-implementation-extractive-industries-reporting-response.pdf

²⁴ Ibid., para 89.

²⁵ Explanatory Memorandum, op. cit., para 8.5, <http://www.legislation.gov.uk/ukxi/2014/3209/memorandum/contents>

²⁶ BIS Regulations 12 and 13. This would apply, for example, to US-listed or Canadian companies reporting under rules that the European Commission had judged to be equivalent: Accounting Directive, articles 46 and 47.

deadlines, has acknowledged the urgent need for greater transparency in the extractives sector and “demonstrate[d] the UK’s commitment to the global company transparency agenda”.²⁷

By promptly transposing into national law the public, company-by-company and project-by-project reporting provisions required of all EU member countries by the EU Directives, the UK has signalled its commitment to what we believe has become the global transparency standard. We urge the SEC to ensure that the forthcoming rule implementing Section 1504 is in line with this standard.

In addition to the UK regulations, I also attach a fact sheet compiled by Publish What You Pay UK summarising the requirements of the regulations and their relationship to the Accounting and Transparency Directives.²⁸

Many thanks for your attention to this matter. I would welcome the opportunity to answer any questions you may have. Please do not hesitate to be in touch.

Yours sincerely



Miles Litvinoff
Coordinator, Publish What You Pay UK

t: [REDACTED]
m: [REDACTED]

Attached:

- UK Reports on Payments to Governments Regulations 2014
- UK Payments to Governments and Miscellaneous Provisions Regulations 2014
- UK Financial Conduct Authority, Disclosure and Transparency Rules (Reports on Payments to Governments) Instrument 2014
- PWYP UK Fact Sheet: UK Implementing Regulations and Rules for Reports on Payments to Governments

²⁷ Explanatory Memorandum, op. cit., para 4.2,
<http://www.legislation.gov.uk/uksi/2014/3209/memorandum/contents>

²⁸ The fact sheet can also be accessed at http://www.publishwhatyoupay.org/wp-content/uploads/2015/04/PWYP-UK-fact-sheet-on-UK-implementing-regulations-rules-for-reports-on-payments-to-governments-EU-Accounting-Transparency-Directives_0.pdf

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(a) in relation to the creation, operation, regulation or dissolution of companies and other forms of business organisation(b).

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(c) and sections 468, 1069 and 1105 of the Companies Act 2006(d).

In accordance with paragraph 2(2)(e) 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;

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

(a) 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).

(b) S.I. 2007/193.

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

(d) 2006 c.46.

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

“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^(a);

“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^(b);

“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^(c) 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 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;

(a) OJ L 182 29.06.2013 p.19.

(b) 1907 c.24.

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

“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^(a);

“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^(b);
- (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^(c), 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^(d);

“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;

(a) 1890 c.39.

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

(c) OJ L 177 30.06.2006 p.1.

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

“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^(a) 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.

^(a) 2012 c.10.

(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(a) 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.”

(2) In regulation 63 of the Limited Liability Partnerships (Application of Companies Act 2006) Regulations 2009(b) (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.”

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.

Jo Swinson

Parliamentary Under Secretary of State for Employment Relations and Consumer Affairs
28th November 2014 Department for Business, Innovation and Skills

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

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

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)
	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^(a). 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.

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

(a) OJ L 182 29.06.2013 p.19.

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.

© Crown copyright 2014

Printed and published in the UK by The Stationery Office Limited under the authority and superintendence of Carol Tullo, Controller of Her Majesty's Stationery Office and Queen's Printer of Acts of Parliament.

£6.00

UK201412043 12/2014 19585

<http://www.legislation.gov.uk/id/uksi/2014/3209>

ISBN 978-0-11-112460-4



9 780111 124604

2014 No. 3293

FINANCIAL SERVICES AND MARKETS

**The Payments to Governments and Miscellaneous Provisions
Regulations 2014**

Made - - - - *12th December 2014*

Laid before Parliament *15th December 2014*

Coming into force in accordance with regulation 1(2)

The Treasury are a government department designated for the purposes of section 2(2) of the European Communities Act 1972(a) in relation to financial services.

The Treasury, in exercise of the powers conferred by section 2(2)(b) of that Act, makes the following Regulations:

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Payments to Governments and Miscellaneous Provisions Regulations 2014.

(2) These Regulations come into force as follows—

- (a) regulations 2, 3(1), 4, 5(1) and (3) and 6 come into force on 17th December 2014;
- (b) regulation 5(2) comes into force—
 - (i) for the purposes of sections 73A(5) and 84(4) of the Act, on 12th March 2015; and
 - (ii) for all remaining purposes, on 1st January 2016;
- (c) regulation 3(2) comes into force on 1st January 2016.

(3) In these Regulations, “the Act” means the Financial Services and Markets Act 2000(c).

Prospectus requirements: exempt offers, approval and FCA powers

2.—(1) In section 86(d) of the Act (exempt offers to the public), in subsections (1A)(c) and (1B)(a), after “the FCA” insert “or the competent authority of another EEA State”.

(a) S.I. 2012/1759.

(b) 1972 c.68. Section 2(2) was amended by section 27 of the Legislative and Regulatory Reform Act 2006 (c. 51) and by section 3 of, and the Schedule to, the European Union (Amendment) Act 2008 (c. 7). By virtue of the amendment of section 1(2) by section 1 of the European Economic Area Act 1993 (c.51), regulations may be made under section 2(2) of the European Communities Act to implement obligations of the United Kingdom created or arising by or under the Agreement on the European Economic Area signed at Oporto on 2nd May 1992 (Cm 2073) and the Protocol adjusting the Agreement signed in Brussels on 17th March 1993 (Cm 2183).

(c) 2000 c.8.

(d) Section 86 was substituted by S.I. 2005/1433, and amended by the Financial Services Act 2012 (c.21) section 16(1) – (3), S.I. 2012/1538 and 2013/1125; there are other amending instruments but none is relevant.

(2) In section 87A(a) of the Act (criteria for approval of prospectus by FCA), omit subsection (7A).

(3) In section 87K(b) of the Act (power to suspend or prohibit offer to the public), in subsection (1) omit “in the United Kingdom”.

(4) In section 87L(c) of the Act (power to suspend or prohibit admission to trading on a regulated market), in subsection (1) omit “situated or operating in the United Kingdom”.

Final terms

3.—(1) After section 87F of the Act insert—

“Final terms

Final terms

87FA. Final terms issued in relation to a prospectus must only contain information that relates to the securities note and must not be used to supplement the prospectus.”

(2) After section 87FA of the Act insert—

“Communication of final terms by FCA

87FB.—(1) Where the FCA in its capacity as the competent authority of the home State receives final terms issued in relation to a prospectus it must communicate those final terms as follows—

- (a) where an offer of transferable securities to the public is to be made in another EEA State, to the competent authority of that EEA State, where possible before that offer begins or as soon as practicable following the making of that offer;
- (b) where transferable securities are to be admitted to trading on a regulated market in another EEA State, to the competent authority of that EEA State, where possible before that admission occurs or as soon as practicable following the admission of those transferable securities to trading on a regulated market.

(2) The FCA must communicate all final terms in relation to a prospectus it receives in its capacity as the competent authority of the home State to ESMA.”.

Provision of information by issuers of transferable securities

4. In section 89C(d) of the Act (provision of information by issuers of transferable securities)—

(a) after subsection (2)(a), insert—

“(aa) information required by Article 6 of that directive; ”; and

(b) in subsection (4), omit paragraph (b).

Interpretation of Part 6: official listing

5.—(1) Section 103(e) of the Act (interpretation of Part 6: official listing) is amended as follows.

(2) In subsection (1), at the end of the definition of “the prospectus directive” insert, “and by Directive 2014/51/EU of the European Parliament and of the Council of 16 April 2014(f).”

-
- (a) Section 87A was substituted by S.I. 2005/1433, and amended by the Financial Services Act 2012, S.I. 2012/1538.
 - (b) Section 87K was substituted by S.I. 2005/1433 and amended by the Financial Services Act 2012 c.21, section 16(1)-(3).
 - (c) Section 87L was substituted by S.I. 2005/1433 and amended by the Financial Services Act 2012 c.21, section 16(1)-(3).
 - (d) Section 89C was inserted by the Companies Act 2006, section 1266(1) and amended by the Financial Services Act 2012, section 16(1)-(3).
 - (e) Section 103 was substituted by S.I. 2005/1433.
 - (f) OJ L 153/1, 22.5.2014 p.1.

(3) After subsection (1) insert—

“(1A) The definition of “the transparency obligations directive” in subsection (1) applies for the purposes of sections 89A(1) and (2) and 89C(2)(aa) as if, at the end of the definition, there were inserted “and by Directive 2013/50/EU of the European Parliament and of the Council of 22 October 2013^(a)”.

Revocation of the Financial Services and Markets Act 2000 (Transparency) Regulations 2014

6. The Financial Services and Markets Act 2000 (Transparency) Regulations 2014^(b) are revoked.

David Evennett
Harriet Baldwin

12th December 2014

Two of the Lords Commissioners of Her Majesty’s Treasury

(a) OJ L 295/13, 6.11.2013 p.15.

(b) S.I. 2014/1261.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations implement in part Directive 2013/50/EU of the European Parliament and of the Council (OJ L 294/13, 6.11.2013 p.15) amending Directive 2004/109/EC on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market, Directive 2003/71/EC on the prospectus to be published when securities are offered to the public or admitted to trading and Commission Directive 2007/14/EC laying down detailed rules for the implementation of certain provisions of Directive 2004/109/EC (“the Transparency Directive Amending Directive”).

Regulation 2 amends sections 86, 87A, 87K(1) and 87L(1) of the Financial Services and Markets Act 2000 (c.8) (“the Act”) to make supplementary minor amendments to the UK’s transposition of Directive 2003/71/EC (OJ No L 345, 31.12.2003 p.4) on the prospectus to be published when securities are offered to the public or admitted to trading (“the Prospectus Directive”) and Directive 2010/73/EU (OJ No L 327, 11.12.2010, p.1) of the European Parliament and of the Council on the prospectus to be published when securities are offered to the public or admitted to trading (“the Amending Directive”).

Regulation 3(1) amends the Act to make supplementary minor amendments to the UK’s transposition of the Amending Directive.

Regulations 3(2) and 5(2) amend the Act to transpose Article 1(1) of Directive 2014/51/EU (OJ L153/1, 22.05.2014, p.1) amending Directives 2003/71/EC and 2009/138/EC and Regulations (EC) No 1060/2009, (EU) No 1094/2010 and (EU) No 1095/2010 in respect of the powers of the European Supervisory Authority (European Insurance and Occupational Pensions Authority) and the European Supervisory Authority (European Securities and Markets Authority) (“the Omnibus II Directive”) which amends Directive 2003/71/EC. The deadline for transposition of the Omnibus II Directive is 31st March 2015 but, in accordance with Article 7(2) of that Directive, regulations 3(2) and 5(2) will apply from 1st January 2016.

Regulation 4 transposes the payments to governments reporting requirements in Article 1(5) of the Transparency Directive Amending Directive which substitutes Article 6 of the Transparency Directive 2004/109/EC (as amended).

Regulation 5 makes consequential amendments necessary for interpretative purposes as a result of the Omnibus II Directive and the Transparency Directive Amending Directive in order to provide rule making powers to the Financial Conduct Authority.

Regulation 6 revokes the Financial Services and Markets Act 2000 (Transparency) Regulations 2014 (“S.I. 2014/1261”) which modify the definition of the Transparency Obligations Directive in section 103(1) of the Act. These Regulations make provisions which supersede the provisions set out in those Regulations.

A full impact assessment of the effect that these Regulations will have on the costs of business and the voluntary sector is available from Her Majesty’s Treasury, 1 Horse Guards Road, London SW1A 2HQ or on www.gov.uk and is published alongside the Regulations on www.legislation.gov.uk.

© Crown copyright 2014

Printed and published in the UK by The Stationery Office Limited under the authority and superintendence of Carol Tullo, Controller of Her Majesty’s Stationery Office and Queen’s Printer of Acts of Parliament.

£4.25

UK2014121211 12/2014 19585

<http://www.legislation.gov.uk/id/uksi/2014/3293>

ISBN 978-0-11-112559-5



9 780111 125595

DISCLOSURE AND TRANSPARENCY RULES (REPORTS ON PAYMENTS TO GOVERNMENTS) INSTRUMENT 2014

Powers exercised

- A. The Financial Conduct Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (the “Act”):
- (1) section 73A (Part 6 Rules);
 - (2) section 84 (Prospectus rules);
 - (3) section 89A (Transparency rules);
 - (4) section 89C (Provision of information by issuers of transferable securities);
 - (5) section 137A (General rule-making power);
 - (6) section 137T (General supplementary powers); and
 - (7) section 139A (Guidance).
- B. The rule-making powers listed above are specified for the purpose of section 138G(2) (Rule-making instruments) of the Act.

Commencement

- C. This instrument comes into force on 22 December 2014.

Amendments to the FCA Handbook

- D. The modules of the FCA’s Handbook of rules and guidance listed in column (1) below are amended in accordance with the Annexes to this instrument listed in column (2) below:

(1)	(2)
Glossary of definitions	Annex A
Prospectus Rules sourcebook (PR)	Annex B
Disclosure Rules and Transparency Rules sourcebook (DTR)	Annex C

Notes

- E. In Annex C to this instrument, the “notes” (indicated by “**Note:**”) are included for the convenience of readers but do not form part of the legislative text.

Citation

- F. This instrument may be cited as the Disclosure and Transparency Rules (Reports on Payments to Governments) Instrument 2014.

By order of the Board of the Financial Conduct Authority
22 December 2014

Annex A

Amendments to the Glossary of definitions

In this Annex, underlining indicates new text and striking through indicates deleted text, unless otherwise stated.

Insert the following new definition in the appropriate alphabetical position. The text is not underlined.

<i>Accounting Directive</i>	Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directive 78/660/EEC and 83/349/EEC.
-----------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

Amend the following definition as shown.

<i>Transparency Directive</i>	<p>(1) (except in <u><i>DTR 4.3A</i></u>, <i>DTR 4.4</i> and <i>DTR 6.3.5R(3)(d)</i>) the European Parliament and Council Directive on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market or through a comparable mechanism for the disclosure of information under national requirements of a Member State concerning the dissemination of information (No. 2004/109/EC).</p> <p>(2) (in <u><i>DTR 4.3A</i></u>, <i>DTR 4.4</i> and <i>DTR 6.3.5R(3)(d)</i>) the European Parliament and Council Directive on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market or through a comparable mechanism for the disclosure of information under national requirements of a Member State concerning the dissemination of information (No. 2004/109/EC) as amended by the Directive of the European Parliament and of the Council of 22 October 2013 (No. 2013/50/EU).</p>
-------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

Annex B

Amendments to the Prospectus Rules sourcebook (PR)

In this Annex, underlining indicates new text and striking through indicates deleted text.

2.4 Incorporation by reference

Incorporation by reference

...

- 2.4.2 G Information under the *TD* that may be incorporated by reference includes, for example, annual accounts and annual reports, interim management statements, equivalent information made available to markets in the United Kingdom, ~~and~~ half yearly reports and reports on payments to governments.

Annex C

Amendments to the Disclosure Rules and Transparency Rules sourcebook (DTR)

In this Annex, underlining indicates new text and striking through indicates deleted text, unless otherwise stated.

After DTR 4.3 (deleted) insert the following new section. The text is not underlined.

4.3A Reports on payments to governments

Application

- 4.3A.1 R Subject to the exemptions set out in *DTR* 4.4 (Exemptions) this section applies to an *issuer*:
- (1) active in the extractive or logging of primary forest industries;
 - (2) whose *transferable securities* are *admitted to trading*; and
 - (3) whose *Home State* is the *United Kingdom*.
- 4.3A.2 R In this section references to an “*issuer* active in the extractive or logging of primary forest industries” are to an *issuer*:
- (1) active in the extractive industry as defined in article 41(1) of the *Accounting Directive*; or
 - (2) active in the logging of primary forests as defined in article 41(2) of the *Accounting Directive*.
- 4.3A.3 G An *issuer* is considered to be active in the extractive or logging of primary forest industries if any of its subsidiary undertakings are:
- (1) active in the extractive industry as defined in article 41(1) of the *Accounting Directive*; or
 - (2) active in the logging of primary forests as defined in article 41(2) of the *Accounting Directive*.

In this guidance “subsidiary undertaking” has the meaning given in regulation 2 of the Reports on Payments to Governments Regulations 2014 (SI 2014/3209).

[**Note:** article 44(1) of the *Accounting Directive*]

Preparation and publication of reports on payments to governments

- 4.3A.4 R An *issuer* must prepare a report annually on payments made to governments for each financial year.

[**Note:** article 6 of the *TD*]

- 4.3A.5 R The report on payments to governments must be made public at the latest six months after the end of each financial year.
[**Note:** article 6 of the *TD*]
- 4.3A.6 R An *issuer* must ensure that the report on payments to governments remains publicly available for at least ten years.
[**Note:** article 6 of the *TD*]

Content of reports on payments to governments

- 4.3A.7 R (1) The report on payments to governments must be prepared in accordance with Chapter 10 of the *Accounting Directive*.
(2) Payments to governments must be reported at consolidated level.
[**Note:** article 6 of the *TD*]
- 4.3A.8 G The *FCA* considers a report on payments to governments which is prepared in accordance with the Reports on Payments to Governments Regulations 2014 (SI 2014/3209) to be in compliance with *DTR* 4.3A.7R(1).

Responsibility

- 4.3A.9 R The *issuer* is responsible for all information drawn up and made public in accordance with this section.
[**Note:** article 7 of the *TD*]

Amend the following as shown.

4.4 Exemptions

...

Non-EEA States - Equivalence

- 4.4.8 R An *issuer* whose registered office is in a *non-EEA State* whose relevant laws are considered equivalent by the *FCA* is exempted from the *rules* on:
- (1) annual financial reports in *DTR* 4.1 (other than *DTR* 4.1.7R(4) which continues to apply); ~~and~~
- (2) half-yearly financial reports (*DTR* 4.2); and
- (3) reports on payments to governments (*DTR* 4.3A).
- [**Note:** article 23(1) of the *TD*]

...

6.3 Dissemination of information

Application

...

6.3.5 R ...

- (3) The announcement relating to the publication of the following *regulated information* must include an indication of the website on which the relevant documents are available:
- (a) an annual financial report that is required by *DTR* 4.1 to be made public; ~~and~~
 - (b) a half-yearly financial report that is required by *DTR* 4.2 to be made public; and
 - (c) [deleted]
 - (d) a report on payments to governments that is required by *DTR* 4.3A to be made public.

[**Note:** article 12(3) of the *TD implementing directive*]

...

8 Primary Information Providers

...

8 Annex
2R

Headline codes and categories

Headline code	Headline Category	Description
...		
High priority		
...		
POS	Transaction in Own Shares*	Notification of a transaction involving own shares, including a purchase, sale, redemption, cancellation, transfer or allotment
<u>PGR</u>	<u>Report on payments to governments</u>	<u>Publication of report on payments to governments</u>

	Miscellaneous	Miscellaneous high priority announcements
...		

...

TP 1 Disclosure and transparency rules

Transitional Provisions

(1)	(2) Material to which the Transitional provision applies	(3)	(4) Transitional provision	(5) Transitional Provision: dates in force	(6) Handbook Provision: coming into force
1	All of <i>DTR</i> chapter 4 (except <i>DTR 4.3A</i>)	R	<i>DTR 4</i> (except <i>DTR 4.3A</i>) shall have effect as follows:	From 20 January 2007	
			(a) an issuer whose financial year begins on or after 20 January 2007 must comply with <i>DTR 4</i> (except <i>DTR 4.3A</i>) as of 20 January 2007; and		
			(b) an issuer whose financial year starts before 20 January 2007 must comply with <i>DTR 4</i> (except <i>DTR 4.3A</i>) as of the beginning of its next financial year		
...					
23	<u><i>DTR 4.3A</i></u>	R	<u><i>DTR 4.3A</i> applies in relation to a financial year of an issuer beginning on or after 1 January 2015.</u>	From <u>22 December 2014</u>	<u>22 December 2014</u>

FACT SHEET¹

UK implementing regulations and rules for reports on payments to governments (EU Accounting and Transparency Directives)

Two sets of UK regulations became law in December 2014 in the form of Statutory Instruments (secondary legislation), implementing Chapter 10 of the revised 2013 Accounting Directive and article 1(5) of the 2013 Transparency Directive Amending Directive of the European Union respectively.

The **Reports on Payments to Governments Regulations 2014** were signed into law by Business Minister Jo Swinson MP on 28 November 2014 and came into force on 1 December 2014.² The responsible government ministry is the Department for Business, Innovation and Skills (“BIS”). The regulations transpose into UK law Chapter 10 “Report on payments to governments” of the revised 2013 EU Accounting Directive.³ They require large and publicly listed oil, gas, mining and logging companies registered (i.e. incorporated) in the UK to annually disclose the payments they make to governments on a country-by-country and project-by-project basis.

The **Payments to Governments and Miscellaneous Provisions Regulations 2014** were laid before Parliament on 15 December 2014, and regulation 4 (“Provision of information by issuers of transferable securities”) came into force on 17 December 2014.⁴ Regulation 4 transposes into UK law article 1(5) of the 2013 EU Transparency Directive Amending Directive, which replaces the former article 6 of the 2004 EU Transparency Directive with a new article 6 (“Report on payments to governments”).⁵ The Financial Conduct Authority (“FCA”), as the UK listings authority, subsequently enacted, via its Disclosure and Transparency Rules (Reports on Payments to Governments) Instrument 2014,⁶ rules requiring oil, gas, mining and logging companies whose securities are listed on UK-regulated markets to annually disclose the payments they make to governments on a country-by-

¹ This fact sheet is available at

http://publishwhatyoupay.org/sites/publishwhatyoupay.org/files/PWYPUK_fact_sheet_UK_regulations&rules.pdf

² Statutory Instrument No. 3209, <http://www.legislation.gov.uk/uksi/2014/3209/contents/made>; Explanatory Memorandum, <http://www.legislation.gov.uk/uksi/2014/3209/memorandum/contents>. The regulations were made under powers conferred by the European Communities Act 1972, the Limited Liability Partnerships Act 2000 and the Companies Act 2006. House of Commons motion, 26 November 2014: <http://bit.ly/1w5ADOn>; House of Lords motion, 27 November 2014: <http://bit.ly/1ubPkdp>

³ Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32013L0034>

⁴ Statutory Instrument No. 3293, <http://www.legislation.gov.uk/uksi/2014/3293/contents/made>; Explanatory Memorandum, <http://www.legislation.gov.uk/uksi/2014/3293/memorandum/contents>. Regulation 4 was made under powers conferred by the European Communities Act 1972.

⁵ Directive 2013/50/EU of the European Parliament and of the Council of 22 October 2013 amending Directive 2004/109/EC of the European Parliament and of the Council on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market, Directive 2003/71/EC of the European Parliament and of the Council on the prospectus to be published when securities are offered to the public or admitted to trading and Commission Directive 2007/14/EC laying down detailed rules for the implementation of certain provisions of Directive 2004/109/EC, <http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1415872329209&uri=CELEX:32013L0050>

⁶ The Disclosure and Transparency Rules (Reports on Payments to Governments) Instrument 2014, http://media.fshandbook.info/Legislation/2014/FCA_2014_63.pdf

country and project-by-project basis.⁷ The responsible government ministry is Her Majesty's Treasury ("HMT").

The UK has transposed these provisions ahead of the transposition deadlines (Accounting Directive: 20 July 2015; Transparency Directive Amending Directive: 26 November 2015) to meet its commitment during the UK's G8 Presidency in 2013 to implement both Directives early and "demonstrate ... commitment to the global company transparency agenda".⁸

The EU Accounting Directive ("AD") and the Transparency Directive Amending Directive ("TDAD") and amended Transparency Directive ("TD") apply the same disclosure requirements to EU-registered and publicly listed extractives and logging companies respectively, with minor differences noted below. The AD contains the full detailed reporting requirements, while the TDAD and TD cross-refer to the AD without the detail. Similarly in the UK, the Reports on Payments to Governments Regulations ("BIS regulations") contain the full detailed requirements, while the FCA's Disclosure and Transparency Rules (Reports on Payments to Governments) Instrument 2014 and amended Disclosure Rules and Transparency Rules (DTRs)⁹ ("FCA rules") cross-refer to the BIS regulations and to the AD without the detail.

The following is a summary of the BIS regulations' and the FCA rules' key requirements and their relation to provisions in the AD and the TDAD/TD.

1. Who must disclose?

- **BIS regulations:** All **UK-registered** extractive limited or unlimited companies, partnerships or limited liability partnerships must disclose if they are
 - either a **large undertaking**¹⁰ or a **public interest entity**,¹¹
 - and a "**mining or quarrying undertaking or a logging undertaking**".¹²
- **FCA rules:** **UK-listed** extractive issuers – i.e. extractive companies whose securities are publicly listed on a UK-regulated stock market, chiefly the **London Stock Exchange's Main Market** – and whose "**home state**" is the UK are required to disclose.¹³
- **Number of companies affected:** BIS has estimated that "177 large [UK-registered] extractive companies [are] in scope of the [AD], which are not subsidiaries, EU owned or listed";¹⁴ and HMT states that "80 extractive companies are listed on the London Stock Exchange" of which 37 are also UK registered.¹⁵
- **Definitions:**
 - A **UK-registered company** is a company incorporated in the UK and registered with the registrar of companies in England & Wales, Scotland or Northern Ireland.
 - A **large undertaking** is one that meets at least two of the three following criteria: (a) balance sheet total on its balance sheet date exceeds GBP £18 million; (b) net turnover on its balance sheet date

⁷ DTR 4.3A Reports on payments to governments, <http://fshandbook.info/FS/html/FCA/DTR/4/3A>

⁸ Explanatory Memorandum, para 4.2, <http://www.legislation.gov.uk/uksi/2014/3209/memorandum/contents>

⁹ <http://fshandbook.info/FS/html/handbook/DTR>

¹⁰ In this fact sheet, "undertaking" means the same as "company".

¹¹ BIS regulation 4(a).

¹² BIS regulation 4(b).

¹³ FCA rule 4.3A.1.

¹⁴ BIS, Impact assessment, March 2014,

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/298603/bis-14-669-impact-assessment-consultation-on-the-uk-implementation-of-the-eu-accounting-directive.pdf, p.6.

¹⁵ HM Treasury, Impact Assessment: Implementation of Chapter 6 EU Transparency Directive – Country by Country Reporting, <http://www.legislation.gov.uk/uksi/2014/3293/impacts>, Evidence Base, paras 63, 64.

- exceeds GBP £36 million; (c) the average number of employees during the financial year to which the balance sheet relates exceeds 250.¹⁶
- A **public interest entity** is one (a) whose transferable securities are admitted to trading on a regulated market of any EU Member State; or (b) a credit institution as defined in Directive 2006/48/EC; or (c) an insurance undertaking within the meaning of Directive 91/674/EEC of 1991.¹⁷
 - A **mining or quarrying undertaking** or a **logging undertaking** is one that “perform[s] any activity involving the exploration, prospection, discovery, development, and extraction of minerals, oil, natural gas deposits or other materials” or that undertakes logging in primary forests.¹⁸
 - The EU defines a **regulated stock market** in its **Markets in Financial Instruments Directive (MIFID)**.¹⁹ All **Euronext** securities markets (Amsterdam, Brussels, Lisbon, London and Paris) are regulated markets within the meaning of this Directive.²⁰
 - UK-listed extractive companies **exclude** companies listed on the **AIM** market, which is regulated by the London Stock Exchange and not by the UK government.²¹
 - “**Home state**” in the FCA rules: the EU defines the “home state” of an issuer as the EU member state where the issuer is registered, or, for issuers registered outside the EU, where its shares were first offered to the public or where it made its first application for admission to trading on a regulated market.²²
- **Parent undertakings and subsidiaries:** subject to the exclusions below, a **parent undertaking** that is large or a public interest entity and obliged to prepare consolidated group accounts must prepare a **consolidated report** on relevant payments to governments by (or in relation to the activities of) itself and any subsidiary undertakings included in its consolidated group accounts.²³
 - **Exclusions:**
 - An **undertaking** (subsidiary or parent) is exempt from preparing a report if its payments to governments are included in a consolidated report drawn up by its parent undertaking.²⁴
 - **Parent undertakings of small and medium-sized groups** are not required to prepare a consolidated report unless any member of the group qualifies as a **public interest entity**.²⁵
 - **Parent undertakings** are not required to prepare a consolidated report if they are a subsidiary undertaking of a parent undertaking governed by the law of an EU Member State other than the UK.²⁶
 - **Subsidiary undertakings** need not be included in a parent undertaking’s consolidated report on payments to governments under certain limited conditions: “(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**”.²⁷

¹⁶ BIS regulation 2(1).

¹⁷ BIS regulation 2(1).

¹⁸ BIS regulation 2(1).

¹⁹ EU Directive 2010/78/EU consolidated version (as amended and corrected):

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CONSLEG:2004L0039:20110104:EN:PDF>

²⁰ <https://europeanequities.nyx.com/regulation/nyse-euronext-regulations>

²¹ <http://www.londonstockexchange.com/companies-and-advisors/aim/faq/faq.htm>

²² Directive 2003/71/EC of the European Parliament and of the Council of 4 November 2003 on the prospectus to be published when securities are offered to the public or admitted to trading and amending Directive 2001/34/EC, Art. 2.1(m)(i-iii), http://www.esma.europa.eu/system/files/ProspectusDir_2003_71.pdf

²³ BIS regulations 8, 9.

²⁴ BIS regulation 6.

²⁵ BIS regulation 10(1)(a, b). Small and medium-sized groups are defined in BIS regulation 10(2-5).

²⁶ BIS regulation 10(1)(c).

²⁷ BIS regulation 11(1).

- The exclusions for **subsidiary undertakings** on grounds (a) to (c) above will apply only “**where the subsidiary undertaking is excluded from the consolidated group accounts on the same basis**”.²⁸ That is, if a parent company includes a subsidiary in its audited annual accounts, it must disclose that subsidiary’s payments to governments.
- **Transitional provision for certain subsidiaries:** the BIS regulations do not apply in relation to a financial year beginning before 1 January 2016 of a subsidiary undertaking whose parent undertaking is required to prepare consolidated group accounts in a Member State other than the UK.²⁹

EU AD and TDAD/TD

- *The BIS regulations provisions transpose into UK law AD articles 41(1, 2) and 42.1 and, regarding parent and subsidiary undertakings, articles 42.2 and 44.*
- *The FCA rules provisions for listed companies transpose into UK law TDAD article 1(5) and TD article 6.*
- *The AD defines large undertakings in article 3.4 according to EURO thresholds. The UK definition converts these thresholds to GBP.*
- *The AD does not provide for “transitional provision for certain subsidiaries” – this is a UK-specific measure.*

2. What payment information must be disclosed?

Companies must disclose, in an annual report, their payments made to governments in relation to their relevant activities for each financial year, in the following form:³⁰

- (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**;³¹ and
- (d) where those payments have been attributed to a specific project, the **total amount per type of payment made for each project** and the **total amount of payments for each project**.³²

Payments in kind must be reported in value and, where applicable, in volume, with notes provided explaining how the value has been determined.³³

Where any payment is **not attributable to a specific project**, that payment may be disclosed in the report **without splitting or disaggregating the payment** and **without allocating it to a specific project**.³⁴

EU AD

These provisions transpose into UK law AD article 43.2-3, with one notable difference in wording:

- *AD: “Payments made by the undertaking in respect of obligations imposed at entity level may be disclosed at the entity level rather than at project level” (article 43.2).*
- *BIS regulations: “Where an undertaking makes a payment that is not attributable to a specific project, that payment may be disclosed ... without splitting or disaggregating the payment to allocate it to a specific project” (regs 5(2), 9(3)).*

²⁸ BIS regulation 11(2).

²⁹ BIS regulation 3(2).

³⁰ BIS regulations 4, 5(1).

³¹ For payment types, see section 3 below.

³² BIS regulation 5(1)(a-d).

³³ BIS regulations 5(6), 9(7).

³⁴ BIS regulation 5(2).

We have been told informally that UK legislators considered that there was insufficient explanation of the meaning of the term “entity” in the AD and they therefore adopted alternative wording.

3. What is the threshold of payments to be disclosed?

- A **single payment** must be disclosed if it amounts to at least GBP £86,000.³⁵
- A **series of related payments within a financial year** must be disclosed if the series of payments amounts to at least GBP £86,000.³⁶

EU AD

These provisions transpose into UK law AD article 43.1. GBP £86,000 has been established as the equivalent of EURO €100,000, the threshold set in the AD.

4. Which categories of payments must be disclosed?

The following payment categories or types must be disclosed:³⁷

- (a) **Production entitlements:** for example, “profit oil” (oil production shared between a company and government once investment and operating costs are recovered through cost oil - the physical oil or revenue used to cover the operator's costs).
- (b) **Taxes** levied on the income, production or profits of companies. Excluded: consumption taxes such as value added taxes, personal income taxes or sales taxes.
- (c) **Royalties.**
- (d) **Dividends.** Included: dividends paid to a government in lieu of production entitlements or royalties. Excluded: dividends paid to a government as an ordinary shareholder on the same terms as to other ordinary shareholders and not paid in lieu of production entitlements or royalties.
- (e) Signature, discovery and production **bonuses.**
- (f) **Fees** including licence fees, rental fees and entry fees, and other payments for licences and/or concessions.
- (g) **Payments for infrastructure improvements.**

EU AD

These provisions transpose into UK law AD article 41(5).

5. For which activities must payments be disclosed?

Disclosure is required for payments arising from any activity involving

- **exploration**
- **prospection**
- **discovery**
- **development**
- **and extraction**

³⁵ BIS regulations 5(3)(a), 9(4)(a).

³⁶ BIS regulations 5(3)(b), 9(4)(b).

³⁷ BIS regulation 2(1), which groups together various definitional issues and is organised on an alphabetical basis by keyword.

of minerals, oil, natural gas deposits or other materials; and

- any payments arising from the **logging of primary forests**.³⁸

EU AD

These provisions transpose into UK law AD articles 41(1,2) and 43.2.

6. Payments to which government entities?

Payments must be disclosed if they are made to “**any national, regional or local authority of a country**” including a “**department, agency or undertaking that is a subsidiary undertaking where the authority is the parent undertaking**”;³⁹ the latter would include **state-owned companies**.

EU AD

These provisions transpose into UK law AD article 41(3).

7. How is a project defined?

- “Project” is defined as “**the operational activities which are (a) governed by a single contract, licence, lease, concession or similar legal agreement and (b) form the basis for payment liabilities with a government**”.⁴⁰
- **Two or more “agreements of the kind referred to in the definition of ‘project’”** (above) that are “**substantially interconnected**” are treated for the purposes of the BIS regulations as a single project.⁴¹
 - “**Substantially interconnected**” agreements mean “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**”.⁴²
 - Two or more such agreements “may be governed by a single contract, joint venture, production sharing agreement, or other overarching legal agreement”.⁴³

EU AD

These provisions transpose into UK law AD article 41(4). The AD clarifies the meaning of “substantially interconnected” in Recital 45.

8. When will the information be disclosed?

- The BIS regulations apply “in relation to a financial year of an undertaking **beginning on or after 1st January 2015**”,⁴⁴ except for those subsidiary undertakings to which the **transitional provision** noted in section 4 above applies.
- Under the BIS regulations, UK-registered undertakings are required to prepare and deliver required reports

³⁸ BIS regulation 2(1).

³⁹ BIS regulation 2(1).

⁴⁰ BIS regulation 2(1).

⁴¹ BIS regulation 2(5).

⁴² BIS regulation 2(6).

⁴³ BIS regulation 2(7).

⁴⁴ BIS regulation 3.

or consolidated reports **annually**⁴⁵ and **within 11 months of the end of their financial year**.⁴⁶

- The first reports under the BIS regulations will therefore be available from **November 2016**.
- Under the FCA rules, UK-listed issuers must prepare a report **annually** on payments to governments for each financial year, at the latest **six months after the end of each financial year**, and must ensure that the report on payments to governments remains **publicly available for at least ten years**.⁴⁷
- The first reports under the FCA rules will therefore be available from **June 2016**.

EU AD and TDAD/TD

- *The AD does not prescribe specific reporting deadlines for EU registered companies, only that the reports be published “on an annual basis” and “as laid down by the laws of each Member State in accordance with Chapter 2 of Directive 2009/101/EC” (articles 42.1, 45.1).*
- *The TDAD/TD specify an annual report, published “at the latest six months after the end of each financial year and [to] remain publicly available for at least 10 years” (article 1(5)/6).*
- *The UK government committed in its Open Government Partnership National Action Plan to require UK-registered and -listed extractive companies to report in 2016.*⁴⁸

9. How will the information be published?

- The BIS regulations require undertakings required to deliver their report or consolidated report each year **“to the registrar”**⁴⁹ and **“by electronic means”**.⁵⁰
- The Companies Act 2006 requires there to be “a registrar of companies for England and Wales ... a registrar of companies for Scotland, and ... a registrar of companies for Northern Ireland”.⁵¹ The registrar of Companies for England and Wales is based at **Companies House** in Cardiff.⁵² (The Northern Ireland administration has agreed that the 2006 Companies Act and associated legislation “should apply to the whole of the United Kingdom”).⁵³
- Chapter 10 of the AD requires reports and consolidated reports to be **“published** as laid down by the laws of each Member State”,⁵⁴ and the UK government has committed in its Open Government Partnership National Action Plan to **“principles of open data through the G8 Open Data Charter, which will be applied to extractives’ data”**.⁵⁵
- The registrar of Companies for England and Wales at Companies House has committed to **“make digital copies of the [reports on payments to governments] filed available free of charge”**.⁵⁶

⁴⁵ BIS regulation 4.

⁴⁶ BIS regulation 14(1).

⁴⁷ FCA rules 4.3A.5-6.

⁴⁸ <https://www.gov.uk/government/consultations/open-government-partnership-uk-national-action-plan-2013/open-government-partnership-uk-national-action-plan-2013-to-2015#natural-resource-transparency-ensuring-natural-resources-and-extractive-revenues-are-used-for-public-benefit>

⁴⁹ BIS regulation 14(1).

⁵⁰ BIS regulation 14(3).

⁵¹ <http://www.legislation.gov.uk/ukpga/2006/46/section/1060>

⁵² <http://www.companieshouse.gov.uk/about/functionsHistory.shtml>

⁵³ Explanatory Memorandum to the Reports on Payments to Governments Regulations 2014, para 5.2,

<http://www.legislation.gov.uk/uksi/2014/3209/memorandum/contents>

⁵⁴ Article 45.1.

⁵⁵ <https://www.gov.uk/government/consultations/open-government-partnership-uk-national-action-plan-2013/open-government-partnership-uk-national-action-plan-2013-to-2015#natural-resource-transparency-ensuring-natural-resources-and-extractive-revenues-are-used-for-public-benefit>

⁵⁶ BIS, UK Implementation of the EU Accounting Directive, Chapter 10: Extractive industries reporting - Government response to consultation, August 2014, para 61,

- **Discussions** are ongoing between Companies House, industry and the Publish What You Pay UK coalition regarding the precise format in which digital copies of UK-registered company reports will be made publicly available.
- The **FCA policy statement** issued in January 2015 does not prescribe a template for reporting on the basis this is not required under the TD.⁵⁷ PWYP UK is engaging with UK officials on this issue.

EU AD and TDAD/TD

- *The BIS regulations transpose into UK law AD articles 42.1 (“prepare and make public a report” and 45.1 (“published as laid down by the laws of each Member State”).*
- *The FCA rules transpose into UK law TDAD/TD article 1(5)/6.*
- *Neither the AD nor the TDAD/TD prescribes specific reporting or publishing requirements or formats.*
- *The UK has committed to apply open data principles to extractives data, and has chosen to provide free public access to the UK-registered company reports, as noted above.*

10. Do the BIS regulations and FCA rules grant any exemptions on grounds of alleged prohibitions in foreign law, confidentiality or commercial sensitivity?

- The BIS regulations “**do not allow any exemptions related to conflict of law or conflict of contract**”;⁵⁸ the UK government has not seen “sufficient evidence that action would be taken in other countries for criminal offences against directors or individual companies for complying with the EU Directive”.⁵⁹
- By cross-reference, the FCA rules also allow no such exemptions, and the FCA policy statement rejects such a possibility.⁶⁰
- “The [Accounting] Directive does not allow Member States to waive the requirement for companies to report, even if the company believes that they will be breaking a law in another country.”⁶¹

EU AD and TDAD/TD

- *The AD does not refer to, or provide for any exemptions in, cases of alleged disclosure prohibitions in foreign law or on confidentiality or commercial sensitivity grounds.*
- *The amended TD’s Recital 8 states that “no exemptions, for instance for issuers active in certain countries, should be made which have a distortive impact [on country-by-country reporting] and allow issuers to exploit lax transparency requirements”.*

11. How do the BIS regulations and FCA rules address attempts to evade disclosure?

- In the BIS regulations, and by cross-reference applied similarly by the FCA rules, payments, activities and projects “**may not be artificially split or aggregated**” to avoid disclosure.⁶²

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/343599/bis-14-1006-eu-accounting-directive-implementation-extractive-industries-reporting-response.pdf

⁵⁷ FCA, Early implementation of the Transparency Directive’s requirements for reports on payments to governments: Including feedback on CP14/17 and final rules, policy statement PS15/1, January 2015, <http://www.fca.org.uk/your-fca/documents/policy-statements/ps15-01>, pages 7-8.

⁵⁸ *Ibid.*, para 89.

⁵⁹ *Ibid.*, para 89.

⁶⁰ FCA, policy statement PS15/1, <http://www.fca.org.uk/your-fca/documents/policy-statements/ps15-01>, page 11.

⁶¹ Explanatory Memorandum to the Reports on Payments to Governments Regulations 2014, para 8.5, <http://www.legislation.gov.uk/uksi/2014/3209/memorandum/contents>

⁶² BIS regulations 5(4), 9(5).

- Disclosure must reflect “the **substance, rather than the form, of each payment, relevant activity or project**”.⁶³

EU AD

These provisions transpose into UK law AD article 43.4.

12. Do the BIS regulations and FCA rules allow for any reporting regimes beyond the EU to be considered equivalent?

- The BIS regulations will recognise as “**equivalent reporting requirements**” those reporting requirements in non-EU countries that have been assessed by the European Commission as being equivalent in accordance with AD article 47.⁶⁴
- Undertakings subject to such equivalent reporting requirements must deliver “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”, either **in English** or accompanied by a certified translation into English, and **by electronic means**.⁶⁵
- The FCA rules allow an issuer “whose registered office is in a non-EEA State whose relevant laws are considered equivalent by the FCA” to be exempted from reporting.⁶⁶
- However, the FCA policy statement adds that “At this stage, we cannot assume that an Accounting Directive equivalence decision will follow across into the Transparency Directive. Therefore, the current position is that decisions on equivalence within the Accounting Directive framework remain outside the scope of the Transparency Directive.”⁶⁷ PWYP UK is engaging with UK officials on this issue.

EU AD

These provisions transpose into UK law AD articles 46 and 47.

13. How will the BIS regulations and FCA rules be enforced, and what penalties do companies face for failing to comply?

Enforcement – BIS regulations

- Where the registrar believes that a company has **failed to deliver a required report or consolidated report** by the required date, **the registrar will require a report or an adequate explanation** for the company’s failure to deliver a report by that date.⁶⁸
- Where the registrar believes that a company has failed to deliver **equivalent reporting requirements information** by the required date, the registrar will **require equivalent reporting requirements information or an adequate explanation** for the company’s failure to deliver this by that date.⁶⁹
- The registrar or a member of the company (i.e. a shareholder) can **apply to the courts for a court order** requiring the company’s directors to deliver to the registrar a required report or equivalent reporting requirements information within 28 days.⁷⁰

⁶³ BIS regulations 5(5), 9(6).

⁶⁴ BIS regulation 2(1).

⁶⁵ BIS regulation 15(1-3).

⁶⁶ FCA rule 4.4.8.

⁶⁷ FCA, policy statement PS15/1, <http://www.fca.org.uk/your-fca/documents/policy-statements/ps15-01>, page 10.

⁶⁸ BIS regulation 17(1-7).

⁶⁹ BIS regulation 18(1-4).

⁷⁰ BIS regulation 19.

Penalties – BIS regulations

- The UK “penalty regime is ... based on those penalty regimes already existing in company law, i.e. based on a system of **criminal enforcement**”.⁷¹

Delivery of a **misleading, false or deceptive** report:

- The regulations establish it as an **offence** on the part of the company and its directors to deliver to the registrar a report that is known, or should have been known, to be “**misleading, false or deceptive**”, for which penalties available are **imprisonment or a fine or both**.⁷²
- Prosecutions for this offence must be “by or with the consent of” the Secretary of State or the Director of Public Prosecutions.⁷³

Failure to deliver a required report or equivalent reporting requirements information :

- The regulations establish it as an **offence** on the part of the company and its directors to fail to comply within 28 days with a notice from the registrar to deliver a report or an or an adequate explanation, for which the penalty available is a fine.⁷⁴
- The regulations also establish it as an **offence** on the part of the company and its directors to fail to comply within 28 days with a notice from the registrar to deliver equivalent reporting requirements information or an adequate explanation, for which the penalty available is a fine.⁷⁵
- Prosecutions for either offence must be “by or with the consent of” the Secretary of State or the Director of Public Prosecutions.⁷⁶
- Breach of the **court order provision** in regulation 19 would be **contempt of court**, which is a criminal/imprisonment matter.

Enforcement and penalties – FCA rules

- Payment reports are “**regulated information**”, so false reporting attracts the **full sanctioning regime** available to the FCA under its Decision Procedure and Penalties Manual (DEPP) for misleading the market.⁷⁷
- The FCA has the power to set fines at a level that nullifies the financial gain occasioned by deceit and to consider the circumstances and seriousness of any breach, which in this case should include the consequences for the host country where the concealed payment took place and whether the company’s senior management was aware of the breach or the breach facilitated any form of dishonest dealings or financial crime. The FCA seeks to set fines on the basis of their deterrence value.⁷⁸

EU AD

- *The BIS regulations transpose into UK law AD article 51, which states simply that “Member States shall provide for penalties applicable to infringements of the national provisions adopted in accordance with this Directive and shall take all the measures necessary to ensure that those penalties are enforced. The penalties provided for shall be effective, proportionate and dissuasive.”*
- *Under the BIS regulations, the UK has adopted a stringent penalty regime for misleading, false or deceptive*

⁷¹ Explanatory Memorandum to the Reports on Payments to Governments Regulations 2014, para 4.4, <http://www.legislation.gov.uk/ukxi/2014/3209/memorandum/contents>

⁷² BIS regulation 16(1-5).

⁷³ BIS regulation 16(6).

⁷⁴ BIS regulation 17(8-13).

⁷⁵ BIS regulation 18(5-10).

⁷⁶ BIS regulations 17(14), 18(11).

⁷⁷ FCA, DEPP, <http://fshandbook.info/FS/html/FCA/DEPP>

⁷⁸ The FCA may levy fines based on a percentage of the company’s revenue from the relevant business in order that such fines are “relevant in terms of the size of the financial penalty necessary to act as a credible deterrent” and fines can be adjusted for full deterrent effect, DEPP 6.5A.2G, 6.5A.4G, <http://fshandbook.info/FS/html/FCA/DEPP>

reporting, and breach of the court order provision in regulation 19 would be a serious offence.

- The FCA's DEPP's sanctioning regime is equally "effective, proportionate and dissuasive".

14. When will the regulations and FCA rules be reviewed and on what basis?

BIS regulations

- The Secretary of State "must from time to time" **review the regulations, set out conclusions and publish a report.**⁷⁹
- The review should have regard to how Chapter 10 of the AD is implemented in other EU Member States.⁸⁰
- The report must consider the regulations' **objectives**, the extent to which those objectives are achieved, whether those objectives remain appropriate and the extent to which they could be achieved with less regulation.⁸¹
- The **first report** must be published within three years of when the regulations come into force (i.e. by 1 December 2017), with **subsequent reports** published at least every five years.⁸²

FCA rules

- The FCA does not refer to a review of its country-by-country reporting rules.

EU AD

- AD article 48 requires the European Commission to review and report on the implementation and effectiveness of Chapter 10 by 21 July 2018 but does not require Member States to undertake a review.
- The UK has decided to undertake its own review of the regulations at an earlier date "to inform [the Commission's] review ... [to] allow the government to consider whether the regulations and associated penalties have been effective and suggest appropriate amendments to the Commission".⁸³
- Whereas the Commission review will have in scope "the extension of the reporting requirements to additional industry sectors", "whether the report on payments to governments should be audited", "the disclosure of additional information on the average number of employees, the use of subcontractors and any pecuniary penalties administered by a country" and "the feasibility of the introduction of an obligation for all Union issuers to carry out due diligence when sourcing minerals to ensure that supply chains have no connection to conflict parties and respect the EITI and OECD recommendations on responsible supply chain management"; the UK review will be more limited but will explicitly consider the regulations' objectives.

15. What is the connection between the BIS regulations/FCA rules and the EITI?

The **Extractive Industries Transparency Initiative (EITI)** is a "global coalition of governments, companies and civil society working together to improve openness and accountable management of revenues from natural resources".⁸⁴ Each participating country publishes an annual report that reconciles the payments to governments that companies are required to disclose with governments' data on receipts and revenues,

⁷⁹ BIS regulation 21(1).

⁸⁰ BIS regulation 21(2).

⁸¹ BIS regulation 21(3).

⁸² BIS regulation 21(4-5).

⁸³ BIS, UK Implementation of the EU Accounting Directive, Chapter 10: Extractive industries reporting - Government response to consultation, August 2014, para 91,

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/343599/bis-14-1006-eu-accounting-directive-implementation-extractive-industries-reporting-response.pdf

⁸⁴ <https://eiti.org/eiti>

highlighting any discrepancies. Forty-eight countries are now implementing the EITI, including the UK, which was accepted as a candidate country in October 2014.⁸⁵

Unlike the mandatory reporting requirements in the BIS regulations and FCA rules, the payments covered by the **UK EITI** are limited to those that extractive companies make to the UK government alone. Also unlike the regulations, the UK EITI is overseen by a **multi-stakeholder group** of government, industry and civil society representatives.⁸⁶ Besides payment data, each participating country's EITI report provides contextual information about the country's extractive industries. The first UK EITI report is due to be published in April 2016.

More information:

- For further information, please contact: Miles Litvinoff, Coordinator, Publish What You Pay UK, mlitvinoff@pwypuk.org
- For information on the Publish What You Pay campaign, please visit: www.publishwhatyoupay.org

⁸⁵ <https://www.gov.uk/government/news/new-standard-boosts-mining-and-energy-transparency>

⁸⁶ <https://www.gov.uk/government/groups/uk-extractive-industries-transparency-initiative-multi-stakeholder-group>