



Department  
for Business  
Innovation & Skills

**UK IMPLEMENTATION OF THE EU  
ACCOUNTING DIRECTIVE**

Chapter 10: Extractive industries  
reporting - Government  
response to consultation

AUGUST 2014

# Contents

<b>Contents</b> .....	<b>2</b>
<b>Executive Summary</b> .....	<b>3</b>
<b>Introduction</b> .....	<b>6</b>
<b>Responses to consultation</b> .....	<b>7</b>
<b>Government Response</b> .....	<b>8</b>
<b>1. Timeframe for UK Implementation</b> .....	<b>8</b>
<b>2. Timeframe for Publishing Reports</b> .....	<b>10</b>
<b>3. Alignment with the Transparency Directive</b> .....	<b>11</b>
<b>4. Subsidiaries</b> .....	<b>12</b>
<b>5. Guidance</b> .....	<b>13</b>
<b>6. Filing Reports</b> .....	<b>14</b>
<b>7. Penalty Regime</b> .....	<b>14</b>
<b>8. Draft Regulations</b> .....	<b>18</b>
<b>9. Costs and benefits</b> .....	<b>19</b>
<b>10. Other Comments</b> .....	<b>19</b>
<b>Next steps</b> .....	<b>21</b>

## Executive Summary

1. Between 28th March and 16th May 2014 the government invited views on proposals for new reporting requirements for extractive industries. The consultation document set out the UK government's approach to implementing Chapter 10 of the Accounting Directive (the Directive), 2013/34/EU<sup>1</sup>. We also asked for comments from extractive industry companies that are listed in the UK and would have obligations placed on them as a result of the Transparency Directive.
2. The government is committed to promoting transparency in the extractives sector. In line with the commitments in the 2013 Lough Erne G8 Leaders' Communique, the UK Government continues to highlight the need for common global standards in transparency reporting. Most recently, in an article dated 4 June published in the Wall Street Journal, the Prime Minister noted the significant progress made to date. He also identified the urgent need to do more, demonstrating the UK's continued support for this agenda, which includes committing the UK to becoming compliant with the Extractive Industries Transparency Initiative (EITI).
3. Whilst many of the world's poorest countries have huge reserves of valuable natural resources, their citizens often remain extremely poor. Transparency concerning the payments extractives companies make to governments will provide citizens of resource-rich developing countries with the information they need to help hold their governments to account.
4. Transparency also makes good business sense - those who invest in companies must consider a wide range of issues and many will welcome additional information to enable them to make investment decisions. Project level reports provide greater insight into how the industry operates and the range of economic contributions that can result.
5. The requirement to produce a report, and its content, is fixed by the Directive. Therefore, the consultation asked about proposals in the areas where Member States are able to define requirements. These include: the first reporting period; when the report is delivered to Companies House; the format for filing and the enforcement regime.
6. The responses to the consultation generally focussed on two issues – timetable for the first report (or when the Directive would be implemented in the UK) and the penalty regime. During consultation our attention was also drawn to concerns around how the requirements would apply to subsidiaries in a 2015 reporting year.
7. In broad terms, responses from civil society organisations supported early introduction in the UK supported by a penalty regime consisting of both civil and criminal penalties. Industry was supportive of the benefits of transparency and clearly stated their commitment to the introduction of a reporting regime. However, they were more cautious about the timetable and penalty regime.
8. The main areas commented on are as follows:

---

<sup>1</sup> Link to Directive: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:182:0019:0076:EN:PDF>

- Industry are concerned that the UK is moving too quickly and should delay implementation to require reporting for financial years beginning 2016. The main points raised were the lack of certainty around the reporting regime in the USA and the fact that the EU-level process for deciding on whether another reporting regime is equivalent is still under development.
  - Civil society supported the government approach to implement quickly to send a positive message to other countries and lead by example.
  - Industry highlighted that the new requirements might result in a conflict of law and or conflicts with contractual obligations. They explained that in some countries companies were legally bound not to release details of payments made to government. In such cases companies and their staff would be put in the position of having to break the law in one country or the other.
  - Many responses highlighted the desirability of implementing the Transparency Directive (TD) at the same time as Chapter 10. Civil society stated that this was the preferred option, but that any delay to the TD should not delay the UK implementation of Chapter 10.
  - The penalty regime was discussed in detail. On the whole, industry argued that the proposed regime was disproportionate in applying both civil and criminal penalties. Civil society supported the regime and argued for the need for criminal sanctions consistent with existing Companies Act penalties.
  - There was a difference of opinion in relation to the reporting of subsidiaries registered in the UK but with a parent company in another Member State. Under the Directive, subsidiaries of parent companies in EU Member States would be able to report via a consolidated report published in the Member State where the parent is registered. Civil society responses argued that the subsidiary should report in its own right in the UK until such time as it is able to report through the parent company. Many industry responses disagreed and argued for an exemption for such companies. Accountancy professionals felt that, to avoid confusion, subsidiaries should be exempt from reporting until consolidated reports in the parent Member State could be completed.
9. All responses to the consultation are available on the BIS website and can be viewed at <https://www.gov.uk/government/consultations/extractives-industries-reporting-implementing-the-eu-accounting-directive>
10. The government decision is set out below. Having considered the responses to consultation, and bearing in mind published commitments on transparency:
- UK registered companies will be required to complete extractive reports on payments to governments covering financial years beginning on or after 1 January 2015. The government is committed to early introduction of transparency requirements.
  - Companies required to report will be allowed up to a maximum 11 months after the end of the financial year to file an extractive report at Companies House.

- The government recognises the potential benefits of aligning the implementation of the reporting requirements under the Transparency Directive and the requirements under Chapter 10 of the Accounting Directive. Given that the Transparency Directive was agreed later than the Accounting Directive and has a later transposition deadline, there are some challenges to bringing implementation of the reporting requirements under the Transparency Directive forward to the same timeframe as the requirements under Chapter 10 of the Accounting Directive. However, the government will work with regulators to consider options for overcoming these challenges.
- The government will put in place a transitional arrangement for UK registered subsidiaries of parent companies registered in other EU Member States. Such companies will not be required to file payment information in the UK if they would normally report through a parent company registered in the EU. The transitional arrangement will apply only for one year; the directive requires all Member States to implement the Directive by July 2015 and reports required for financial years beginning 1 January 2016.
- UK government continues to encourage industry and civil society to work together to produce guidance for companies. The government is supportive of any additional guidance which is tailored to respective sectors of the extractive industries to ensure that all companies are supported in producing meaningful reports. Industry and civil society representatives are also working with the Registrar of Companies (Companies House) to agree the most appropriate format for filing the information.
- The penalty regime will be based on similar penalties already used within the Companies Act 2006. However, the government does not believe a late filing penalty regime, along the lines of that applied to accounts, is appropriate for extractive reporting. Under the accounts late filing penalty regime a private company is issued with a fine up to a maximum of £1,500 if accounts are over 6 months late. For public companies this is £7,500. We do not believe that this approach would achieve compliance in this case. It is more appropriate to look at penalties that are applied for failure to file other company information on the register. Therefore the penalty regime will include criminal offences, which may be punished by unlimited fines or possible jail terms.
- The government has noted comments in relation to the draft regulations attached to the consultation document. A further draft is published alongside this response and will address a number of the points made.

## Introduction

11. On 28 March 2014 the Government launched a consultation on proposals relating to the implementation of Chapter 10 of the new Accounting Directive 2013/34/EU. This also asked for comments on Article 6 of the Transparency Directive 2004/109/EC by an amending Directive 2013/50/EU.
12. During the consultation period BIS officials gave 4 presentations, setting out the proposals to the sector and intermediaries such as accountants, as well as responding to frequently asked questions on the website.
13. The consultation closed on 16 May 2014. In total, 31 responses were received from a range of stakeholders including:

Large Business	11
Medium Business	2
Civil Society – Publish What You Pay submitted one substantive response which was supported by 8 other civil society organisations.	9
Business Rep/Trade Body	6
Accountants	2
Other (APPG)	1

14. As already noted the responses were predominantly from industry or civil society organisations. All responses to the consultation have been published on the BIS website. Both during the consultation and following its closure the government received a number of letters and discussed stakeholder concerns with interested parties.
15. This document summarises the responses received to the questions in the consultation. It also sets out the Government's response to the comments made and further explains the Government's decision.

## Responses to consultation

### Industry

BG Group  
 BHP Billiton  
 BP  
 Cairn Energy  
 Chevron North Sea Limited  
 Dong Energy  
 ENI UK  
 ExxonMobil  
 Fairfield Energy Limited  
 LaFarge Tarmac  
 Petrofac  
 Rio Tinto  
 Shell

### Civil Society

ABColumbia  
 CAFOD  
 Christian Aid  
 Global Witness  
 ONE

Publish What You Pay UK (PWYP)  
 Revenue Watch  
 Tearfund  
 Transparency International

### Representative and Professional Bodies

Brindex (The Association of British Independent Oil and Exploration Companies)  
 Institute of Chartered Accountants in England and Wales (ICAEW)  
 ICAS  
 Minerals Products Association (MPA)  
 Oil and Gas Producers (OGP)  
 Oil and Gas UK

### Accounting Firms

Deloitte  
 Pricewaterhouse Coopers (PWC)

### Others

All Party Parliamentary Group

# Government Response

## 1. Timeframe for UK Implementation

### What did the Government Propose?

16. The government confirmed its public position of implementing the Directive early, proposing to introduce legislation in 2014. Working to this timetable companies would be required to prepare their first reports for financial years commencing on or after 1 January 2015.

**Question 1.1 Do you agree that companies should only be required to produce whole year reports and should not be required to provide a partial year report for the period between the regulations coming into force and 31 December 2014?**

**Question 1.2 Do you agree that the first reports should relate to financial years commencing on or after 1 January 2015?**

### What was the response to the questions?

17. All those who responded to the consultation answered these questions, 19 responses agreed that reports should relate to financial years beginning on or after 1 January 2015. Of these, 9 were civil society organisations and 6 were companies. 12 of the responses disagreed and thought the reports should cover payments made in the year beginning on or after 1 January 2016. The following reasons were given for a later start date:
- The implementation date should be in line with the rest of the Accounting Directive.
  - Implementation should not be ahead of the Transparency Directive.
  - Early implementation could put UK registered companies at a competitive disadvantage.
  - Some companies stated that they would struggle to complete the additional compliance burden in the proposed timeframe.
  - Reporting requirements should be aligned with the US SEC rules.

### Partial Reporting

18. There was no support for partial year reporting. Respondents suggested that such an approach could give a distorted or misleading picture. In addition partial reports could require some companies to report who may not ordinarily have met the payment threshold for a full year.
19. Most respondents who commented on partial reports explained that the time between implementation of the regulations and a partial reporting period in 2014 would not allow sufficient time to understand the requirements of the regulations and test the systems companies would need to put in place.

## What is the government going to do?

20. The government has considered all the responses to these questions carefully and looked at the evidence provided by those who responded.
21. Chapter 10 of the Accounting Directive is different to the rest of the Directive, and throughout the negotiations was considered as a stand-alone section. The Chapter is not dependent on other parts of the Directive being transposed to achieve its objective. Equally other parts of the Directive do not directly relate to Chapter 10. For these reasons the UK believes that introducing this section prior to the rest of the Directive will not add burdens to business associated with a later transposition of the remainder of the Directive.
22. The UK, along with the rest of the G8, made transparency commitments in relation to extractive industries a priority. The USA and Canada are already committed to bringing forward rules in this area and the European requirements will cover those who list here but are not based in Europe. Taken together, we believe that this represents a huge step forward in transparency, with many extractives companies reporting the payments they make to government.
23. It is unlikely that all countries will introduce requirements to exactly the same timetable. For example the Securities and Exchange Commission in the USA has published an agenda that suggests they will take forward work to develop proposals in the spring of 2015 whilst the Canadian government aims to have mandatory reporting standards in place by April 2015.
24. The European Union has authority to set its own requirements in this area. The EU has set out what has to be covered in reports prepared by companies registered in the EU, or that list on a regulated stock exchange in the EU. The UK must implement the requirements in the Accounting Directive and the Transparency Directive within the transposition deadlines.
25. The government recognises concerns around the possibility of dual reporting under regimes that are broadly equivalent. The Directive includes an equivalence clause. This allows the Commission to decide that third country reporting regimes are equivalent (i.e. that their requirements are sufficiently similar to the EU regime). Companies reporting under an equivalent regime would not therefore need to produce a separate report to satisfy EU requirements.
26. The Commission will follow a two stage process to establish which third country regimes are equivalent. Consultation is already underway on the first stage, agreeing the criteria that a third country regime must meet in order to be deemed equivalent. The European Commission will then decide which existing third country regimes meet those criteria and are recognised as equivalent across all Member States.
27. We are also aware that some extractives companies are already collecting and making public their payments to governments. They do this for various reasons, including that they believe it may give them a competitive advantage and/or that it forms an important part of their 'license to operate' in host countries.

28. The Accounting Directive was agreed in June 2013. Throughout the negotiations the UK worked closely with industry and their representative organisations, both to influence the debate and to keep industry in touch with developments to help them prepare for the introduction of the regulations. We have also been clear that it is industry that is best placed to develop guidance and work with Companies House on how the report will be delivered. This should help to minimise burdens on business.
29. The UK will therefore make its regulations before the end of 2014 and subject to parliamentary approval; companies will be required to report on payments made in financial year commencing on or after 1 January 2015.

## 2. Timeframe for Publishing Reports

### What did the government propose?

30. The government proposed that UK registered companies would be required to publish their extractive report no later than 11 months after the end of the financial year.

**Question 2.1 Do you agree that UK registered companies should be allowed an additional two months beyond the time limit to publish their annual financial statements to in which to prepare and publish their extractive reports, that is a maximum of 11 months after the end of their financial year?**

**Question 2.2 If a shorter period for reporting was imposed, what impact would this have on UK-registered extractives companies?**

**Question 2.3 If this approach would impose costs on business; please provide an estimate of the costs with an explanation of how these are derived. Would such costs be reoccurring costs or transitional costs in the first year only?**

### What was the response to the questions?

31. There were 29 responses agreeing that companies should be allowed 11 months to publish their reports. 1 response was not sure and 1 company felt that there was no need for any additional time beyond the annual report filing deadline. It was also noted in the responses that a number of companies would be caught by the Transparency Directive which will impose a shorter deadline.
32. There were 3 companies who wrote that a period of less than 11 months might result in extra cost. It was also noted that reducing timeframes for reporting could lead to companies producing inaccurate or incomplete data due to there being insufficient time to make appropriate checks.
33. A number of companies provided an assessment of the costs which BIS economists have considered in the production of the revised Impact Assessment. The costs could be broken down into recurring and transitional. It was also noted in responses to this question that some companies have already undertaken some work to support the US Dodd Frank reporting requirements.

### What is the government going to do?

34. The government plans to allow companies the proposed maximum 11 months to prepare and publish extractive reports. The draft regulations published alongside this response reflect that position.

## 3. Alignment with the Transparency Directive

### What did the government propose?

35. The consultation did not make any specific proposals relating to the Transparency Directive but noted that the amendments to the Accounting Directive extend the reporting obligations set out in Chapter 10 to companies active in the extractive industries with securities admitted to trading on a regulated market. The transposition deadlines for the Transparency Directive are different to those for the Accounting Directive and therefore this consultation sought views on the economic impact, legal and practical implications, and competitive impact of implementation of the Transparency Directive.

**Question 3.1 What issues might arise from a later transposition of the Transparency Directive? Please describe any possible impacts and, if appropriate, provide details of any costs or benefits that might result from this.**

36. There were 24 responses to this question. Respondents noted the potential benefits of aligning the timing of the implementation of the reporting requirements in the Transparency Directive and the Accounting Directive. However some industry respondents stated the benefits of this alignment being pushed to a later date in order to properly consider all the issues that need to be resolved to implement this requirement. They particularly noted the need for international consistency.

### What is the government going to do?

37. There are some challenges to bringing implementation of the reporting requirements under the Transparency Directive forward to the same timeframe as the requirements under Chapter 10 of the Accounting Directive. However, the government will work with regulators to consider options for overcoming these challenges.
38. As part of this approach, the Financial Conduct Authority intend to consult at the end of the month on relevant requirements for issuers in the scope of the Transparency Directive.

## 4. Subsidiaries

### What did the government propose?

39. The consultation document explained that UK registered companies who are subsidiaries will be able to take advantage of the exemption not to prepare a report under certain conditions. Due to the UK proposal to implement chapter 10 early, UK registered subsidiaries would not be able to take advantage of reporting through their parent in another Member State.

**Question 4 Subsidiaries of overseas registered companies will be unable to take advantage of the exemption until their parent company fulfils the obligation to report in either the UK or another Member State. Comments are invited on any issues that may arise from this approach**

### What was the response to the questions?

40. We received 18 responses to this question. Those companies that were subsidiaries suggested that subsidiaries should be allowed the exemption offered within the Directive regardless of whether the country of the parent company has adopted the Directive.
41. Companies felt that there would be some one-off costs to file a report in the UK for one year. Some said that the information would have to be collected anyway and, therefore, the additional costs would be in relation to the step of filing with Companies House.
42. Three responses from accounting organisations suggested that filing a report in the UK for one year as a subsidiary could result in confusion or misunderstanding for citizens searching filed reports. The searcher may look for a similar return the following year but not be able to find one. This could result in a challenge to the company requesting why the information had not been filed.
43. It was also noted that on the whole citizens are more interested in seeing the full picture and this is something that would be achieved from a group report.

### What is the government going to do?

44. The government has considered all the responses and recognises that all companies will need to begin to collect information on payments as soon as possible, and considers that the cost of reporting for one year in the UK would not be significant.
45. However, the information must be of use to those searching the register and it is not the government's intention to require companies to publish information which may cause confusion or be misleading.
46. Therefore the government intends to include transitional arrangements in the UK regulations. This will allow UK registered companies whose parent is registered in another EU Member State an exemption from reporting in the UK for one year. We believe that this approach strikes the right balance and meets the intent of the Directive, which is clear that subsidiaries should have the option to report as part of a group.

## 5. Guidance

### What did government propose?

47. The consultation proposed that extractive reports should be filed with Companies House electronically in compliance with industry guidance (to be determined as part of the systems development).

**Question 5.1 Do you agree that it is appropriate that industry should be encouraged to lead in the production of best practice guidance to support the production of extractive reports and encourage consistency?**

### What was the response to the questions?

48. There were 29 responses to this question, 27 respondents agreed and 2 disagreed with an industry led approach to the production of guidance. A number of responses commented that the guidance needs to be available as soon as possible to support companies making proper provisions to collect information and prepare a report.
49. Points made included ensuring that any guidance should be simple and avoid over complicating requirements which could ultimately add burdens to business. It was also noted that such guidance will help companies who deal with a broad range of scenarios and ensure that the report is able to focus on the most meaningful information.
50. Accountancy professionals noted that guidance will offer a consistent approach whilst also enabling companies the flexibility to report meaningful information.
51. One organisation noted that their industry body, the Mineral Products Association, was not involved in producing guidance, and questioned how any guidance might be appropriate to their specific needs.
52. One response specifically sought an answer as to how joint ventures would be treated.

### What is the government going to do?

53. Government will continue to encourage an industry led approach to the production of guidance. We acknowledge that it is for industry, working with civil society, to develop guidance that will work in their respective industries. We are also clear that if sub sectors of the extractive industry wish to write their own guidance they are free to do so. Guidance is currently being drafted and we would encourage the industry bodies to have a draft available for comment as soon as possible.
54. The government has raised the issue of joint venture reporting with the Commission. We are waiting for their final decision on this issue, and once we have this we will clarify the position. This is the kind of question that we hope the guidance will cover when finalised.

## 6. Filing Reports

**Question 5.2 Do you agree that reports should be published (filed) electronically with Companies House only i.e. the submission of paper reports is not required or permitted?**

### What was the response to the questions?

55. There were 29 responses to this question, 23 agreed that reports should be filed electronically at Companies House, 4 were not sure and 2 disagreed with this approach.
56. There is still limited support for paper filing, but the majority of responses explained that the agreed format should be widely available, to ensure that the costs to companies did not increase.
57. One company explained that it was important that appropriate software was available in good time so that the reports would not be delayed.

### What is the government going to do?

58. The Directive is clear that extractive reports should be filed in accordance with other company filing requirements set out in EU directive 2009/101/EC. In the UK this is Companies House.
59. The Directive gives Member States the flexibility to determine the format of the report. The government wants to ensure that the format is one that puts minimum burdens on business whilst ensuring that those searching for the information can access it quickly and easily.
60. In order to achieve this, the government has asked industry to work with civil society and Companies House to develop a suitable format. Discussions are on-going and final decisions on format are yet to be made. The views expressed in the consultation document have been made available to those working on this element of the proposal.
61. As noted in the consultation document, Companies House is a Trading Fund and has to ensure that it covers any administrative costs associated with collection or dissemination of company information. A fee will be charged to all companies filing an extractive report. Companies House will make all of its digital data free of charge from quarter 2 of 2015 following the introduction of a new digital service and therefore will make digital copies of the report filed available free of charge.

## 7. Penalty Regime

### What did government propose?

62. The government set out its proposed penalty regime in relation to preparing and filing extractive reports as part of the draft regulations. Essentially the penalty regime took the following approach –
  - Failure to prepare a report or consolidated report: criminal offence for directors

- Failure to deliver report or consolidated report: criminal offence for directors, court may order rectification, civil penalty for company.

Details of the proposed wording of the penalty were also included within the draft regulations supplied with the consultation document.

**Question 6.1 Do you agree that it is appropriate for the penalty regime here to reflect that in place for failure to prepare and file statutory annual reports?**

**Question 6.2 Do you consider that the proposed penalty regime is effective, proportionate and dissuasive?**

**Question 6.3 Are there any other issues that the Government should consider in developing the penalty regime?**

### What was the response to the questions?

63. There were 28 responses to the first question, of these 8 responses felt the proposed regime was acceptable, 12 were not sure and 8 disagreed.
64. There were 6 responses from industry that stated that there were clear differences between filing an extractive report and preparing and filing annual reports and accounting disclosures. For example they explained that accounts and annual reports are designed to protect creditors and investors.
65. A number noted that there was no requirement to have extractive reports audited and the use of civil and criminal penalties related to audited financial reports may add burdens to business as they may decide that auditing the reports is necessary to provide comfort that they have met legislative requirements.
66. The issue of a possible conflict of law was raised in relation to penalties. It was proposed that there should be some limited relief from sanctions when a company and its officials were faced with breaching other countries' laws on disclosure.
67. Others felt that the approach was sufficient and supported the proposal of both civil and criminal penalties.

### Effective, proportionate and dissuasive penalties

68. Responding to the question related to whether the penalty regime was effective, proportionate and dissuasive; 4 responses supported the approach, 10 said no and 14 responses were unsure.
69. Some responses noted that the reputational damage to a company for not filing on time or at all would be a greater driver to ensure compliance than the introduction of a new complex penalty regime.
70. Responses from industry again raised the issue of conflicts of law and also that companies would have to report commercially sensitive information. Companies suggested that any penalty regime should take account of these two issues.

71. Responses felt that the proposed regime was more onerous than that applied to the annual report.

#### **Additional comments on the penalty regime:**

72. The final question asked for any additional comments. Responses expanded on points already made around conflicts of law, adding comments on commercially sensitive information. To avoid duplication these have only been set out here.
73. Many responses from industry took the opportunity to explain that they felt that conflicts of law should be taken into account within the reporting regime and the associated penalties. Some felt that the regime should also take commercial confidentiality into account and accept that some information would not be provided.
74. Industry responses raised concerns that in some circumstances a company could be faced with a choice between breaching UK reporting requirements or breaching the law in the country where a payment was made. Civil society responses said that there was no evidence that other countries do at present, or would in the future, prohibit a disclosure that would lead to a company being left unable to fulfil its obligations in the country where it is registered.
75. One response referred to the SEC rules in the USA and suggested that the UK should wait to take account of that regime when devising penalties.
76. Some responses sought further clarity on what would be considered as taking 'all reasonable steps' – this text was in the draft regulations.

#### **What is the government going to do?**

77. The government has carefully considered the issue of penalties. The aim of any penalty regime is to achieve compliance with legal requirements. The government does not want to put in place new regulations that are unnecessary. The aim of the Directive is to ensure that citizens can clearly see any payments that companies have made to governments. Extractive reports should therefore be delivered within an appropriate timeframe and contain all the necessary information. The Directive does not make provision for exemptions from reporting.
78. When devising a penalty regime which is a requirement of the Directive, the starting point has to be how other documents are filed under the Companies Act 2006 and what penalties are applied.
79. To encourage compliance with regulations in relation to filing of company accounts the UK introduced Late Filing Penalties. These are civil penalties which were aimed at increasing compliance. Companies were generally filing late or in some cases not filing at all. The introduction of a procedure which set a fixed penalty increased filing compliance and now rates are around 95%.
80. The government has considered whether such a scheme should be applied to extractive reports. These reports are considerably different to filing accounts. For example all companies are required to file accounts and therefore Companies House can quickly ascertain when a document is late and issue the appropriate penalty. In contrast

Companies House does not hold information to determine which companies are required to prepare extractive reports each year.

81. One option would be to write to all companies considered to be working in that sector and ask them if they needed to file. This would be a complex operation with no guarantee that all companies would be captured, putting burdens on both companies and Companies House. An alternative approach would be to contact all companies who complied in year one. However a company may not report every year as there is a payment threshold – so this approach would not guarantee that the right companies had been contacted.
82. The government is persuaded that the majority of companies will be more concerned about reputational damage that could result from publicity around a failure to file an extractive report. This is likely to have more effect than the payment of a fine associated with late filing of the report. However, the government does believe that there should be a public procedure to determine whether a company should have filed a report and if they have failed to do so, or if the information is inaccurate, penalties should be enforced.
83. We therefore propose an obligation on companies to prepare and publish extractive reports. Failure to do so will result in a penalty, as will supplying false information.
84. These requirements are consistent with other Companies Act requirements for example failure to notify of a new director or failure to update a statement of capital. Such information on the register is there so that third parties can make an informed decision about the company. We expect the procedure to work along the following lines.
85. Once Companies House (CH) become aware that a company may be in default of its filing requirements it will be required to contact the company and seek confirmation along the following lines (detail set out in regulations) –
  - a. A report return is not necessary as no reportable payments were made
  - b. A report is necessary and will be filed within 28 days
  - c. A report has been filed in another Member State by the parent company.
  - d. An equivalent report has been filed (prepared under an EU recognised equivalent reporting requirement).
86. Regulations will require a response to the above within a set period and the reply to the request from Companies House will be published on the CH website. This will discourage further questions if the company has filed elsewhere. It will also make it plain if a report is necessary and has not been provided.
87. If the Company identifies that the report is necessary but then fails to submit one an offence will be committed by every person who was a director of the company. If found guilty they will be subject to an unlimited fine. In addition the court may make an order directing the directors to make good the default. If the company has stated that no return is necessary but then evidence is found that the company should have filed a return, or if the company did file its report on time but did not include all appropriate information a case can be brought under the current section 1112 of the Companies Act 2006. If found guilty of delivering false, misleading or deceptive information, the person guilty of the offence could be liable to a term of imprisonment or a fine.
88. The draft regulations set out the penalty regime.

89. The approach set out above does not allow any exemptions related to conflict of law or conflicts of contract. The government has considered these two issues carefully, and discussed them with representatives in other countries. Although a number of companies raised these issues, they did not present sufficient evidence that action would be taken in other countries for criminal offences against directors or individual companies for complying with the EU Directive.
90. The UK government has highlighted the transparency agenda internationally and continues to do so, and our aim is to encourage all countries to be open and transparent in relation to these types of payments. Taking forward this agenda ensures that we are building towards global standards in extractive reporting.

### **Review Period**

91. We recognise that operating a penalty regime in relation to the new legal requirements is complex. As already noted the UK government is taking a lead and other Member States may introduce more novel approaches to implementation of the directive and the penalty regime. The EU Commission is committed to completing a review of the directive by 21 July 2018. The UK believes that it will be important to inform that review and therefore the government will include a three year review clause in the regulations. This review will allow the government to consider whether the regulations and associated penalties have been effective and suggest appropriate amendments to the Commission.

## **8. Draft Regulations**

92. A set of draft regulations were attached to the consultation document. These regulations reflected the thinking of government at the time the consultation was issued. There were lots of comments from all respondents in relation to the definitions, in particular undertaking, payment and project. Legal drafters have where possible used 'copy out' from the Directive but on occasion deviated from this approach to improve reading and clarity of the UK regulations. They are considering the views expressed in the responses to consultation. We agree that it is extremely important that the regulations give as much clarity as possible but, as already mentioned, we expect to supplement the regulations with guidance and this is likely to support interpretation of the definitions as set out in the regulations.
93. The draft regulations which were attached to the consultation document provided the sterling values of various thresholds; these were put in square brackets to reflect their preliminary nature. These values have been updated in the latest draft to the regulations to reflect two issues: (i) the use of the precise conversion rate specified in the Accounting Directive; and (ii) the inclusion of 'gross' figures for the thresholds of groups (which had only provided 'net' figures in the draft regulations).
94. Along with comments in relation to definitions we received a number of other suggestions for improvement to the regulations – a further draft is published alongside this Government response.

<https://www.gov.uk/government/consultations/extractives-industries-reporting-implementing-the-eu-accounting-directive>

## 9. Costs and benefits

95. The Consultation Impact Assessment was based on estimates of the cost to business in the EU Impact Assessment. The Government consultation sought additional information and evidence from stakeholders regarding the costs and benefits of the Directive and of complying with the requirements. We received a number of responses, but only four responses from companies who will be required to report provided monetised estimates as to the costs of complying with the requirements. None of the responses to the consultation included estimates of the benefits of the regulations. The response from civil society did explain the wider benefits including, social and environmental but were unable to quantify them. They also felt that some costs that had been suggested by industry had been over-stated.
96. The responses to the consultation regarding the estimated cost of compliance provided a more detailed breakdown of expected costs compared to the EU Impact Assessment, and based on this information we are in the process of updating our analysis to provide a more accurate estimate of the costs of reporting.
97. Stakeholders also provided information and views regarding the wider costs and the benefits of the Directive. Whilst there is not sufficient evidence to quantify these elements, information provided in response to the consultation has supplemented our consideration of these unquantified costs and benefits within the Impact Assessment. A further draft is published alongside this Government response.

<https://www.gov.uk/government/consultations/extractives-industries-reporting-implementing-the-eu-accounting-directive>

## 10. Other Comments

98. The final question in the consultation document enabled companies to make any further comments in relation to implementing Chapter 10 of the Accounting Directive.
99. A number of points were raised, some of which have already been commented on including:
- Clarity on joint ventures and whether an audit of the report is required.
  - One response agreed that it would be up to the FCA to consult on implementing the Transparency Directive.
  - One organisation felt that consultation with wider industry could have been better.
  - The linkages with the US regime were highlighted by a number of companies.
  - One response felt that the Directive itself was unlawful. In particular the Directive fails to respect fundamental rights of the company.
  - Comments were made on guidance, noting that it should be useful for all sectors and support the legislation.

- One response called for widening the scope of the Directive when it is under review.

### **What is the government going to do?**

100. The government has noted the comments made, and in some cases discussed with the organisations making the points. As already mentioned, there has been continued discussion with stakeholders following the closing of the consultation. The UK is also in contact with the EU Commission, other Member States and the US authorities.
101. Those working on guidance will consider the points made to inform drafting.

## Next steps

102. In line with public commitments already made by both the Prime Minister and BIS Ministers the government intends to move quickly on this agenda. We will lay regulations in autumn 2014 which will apply to financial reporting years beginning on or after 1 January 2015.
103. Increasing public information about revenues and payments from the extractive industries allows citizens to hold governments to account and ensure revenues are properly reinvested. UK companies which report under the EU Accounting Directive will make an important contribution to this process. In some cases, reports will provide more information than usually made public by the government in whose jurisdiction a company is operating. The British Government is committed to extending transparency in this way and will support UK industry in understanding and carrying out their reporting obligations.
104. The response to the consultation notes companies' concerns about potential conflict between their reporting obligations under Chapter 10 and local law, in some countries. Companies in this position may consult BIS and the British Embassy or High Commission in the relevant country, in the course of assessing this risk.
105. The UK regulations anticipate that the equivalency process will exist and may recognise other regimes. It will allow for reports to be filed if they are produced under regimes that are recognised by the Commission as equivalent.
106. We continue to work with all parties to facilitate the development of industry guidance and to support companies subject to the new requirements.
107. The government will also continue to discuss implementation with the Commission and other Member States to consider whether the regulations are meeting their intended objectives. Findings by the UK will be made available to the Commission to assist their statutory review.
108. A draft Impact Assessment has been published alongside this document. A final Impact Assessment will be published when we lay the regulations.

© Crown copyright 2014

You may re-use this information (not including logos) free of charge in any format or medium, under the terms of the Open Government Licence. Visit [www.nationalarchives.gov.uk/doc/open-government-licence](http://www.nationalarchives.gov.uk/doc/open-government-licence), write to the Information Policy Team, The National Archives, Kew, London TW9 4DU, or email [psi@nationalarchives.gsi.gov.uk](mailto:psi@nationalarchives.gsi.gov.uk).

This publication is available from [www.gov.uk/bis](http://www.gov.uk/bis)

Any enquiries regarding this publication should be sent to:

Department for Business, Innovation and Skills  
1 Victoria Street  
London SW1H 0ET  
Tel: 020 7215 5000

If you require this publication in an alternative format, email [enquiries@bis.gsi.gov.uk](mailto:enquiries@bis.gsi.gov.uk), or call 020 7215 5000.

**BIS/14/1006**