Agenda – Constitutional and Legislative Affairs Committee

Meeting Venue:
Committee Room 1 – Senedd
Meeting date: 24 September 2018
Meeting time: 13.30

For further information contact:
Gareth Williams
Committee Clerk
0300 200 6362
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1 Introduction, apologies, substitutions and declarations of interest

2 Renting Homes (Fees etc.) (Wales) Bill: Evidence session

13.30 (Pages 1 – 2)

Rebecca Evans AM, Minister for Housing and Regeneration

Emma Williams, Welsh Government

Helen Kellaway, Welsh Government

CLA(5)-22-18 – Briefing

Renting Homes (Fees Etc.) (Wales) Bill, as introduced

Explanatory Memorandum

Statement of policy intent

3 Instruments that raise no reporting issues under Standing Order 21.2 or 21.3

14.30 (Pages 3 – 6)

CLA(5)-22-18 – Paper 1 – Statutory instruments with clear reports

Negative Resolution Instruments

3.1 **SL(5)254 – The Health Education and Improvement Wales (Transfer of Staff, Property, Liabilities) (Wales) Order 2018**

3.2 SL(5)255 – The Rating Lists (Valuation Date) (Wales) Order 2018

4 Instruments that raise issues to be reported to the Assembly under Standing Order 21.2 or 21.3

Negative Resolution Instruments

4.1 SL(5)253 – The Petroleum Licensing (Charges) (Wales) Regulations 2018

(Pages 7 – 48)

CLA(5)-22-18 – Paper 2 – Report

CLA(5)-22-18 – Paper 3 – Regulations

CLA(5)-22-18 – Paper 4 – Explanatory Memorandum

Composite Negative Resolution Instruments

4.2 SL(5)243 – The CRC Energy Efficiency Scheme (Revocation and Savings)

(Pages 49 – 116)

CLA(5)-22-18 – Paper 5 – Report

CLA(5)-22-18 – Paper 6 – Regulations

CLA(5)-22-18 – Paper 7 – Explanatory Memorandum

Affirmative Resolution Instruments

4.3 SL(5)226 – The Law Derived from the European Union (Wales) Act 2018 (Repeal) Regulations 2018

(Pages 117 – 131)

CLA(5)-22-18 – Paper 8 – Report

CLA(5)-22-18 – Paper 9 – Regulations

CLA(5)-22-18 – Paper 10 – Explanatory Memorandum

5 Instruments that raise no reporting issues under Standing Order 21.2 or 21.3 but have implications as a result of the UK exiting the EU

Negative Resolution Instruments

5.1 **SL(5)252 - The Transmissible Spongiform Encephalopathies (Wales) Regulations 2018**

(Page 132)

CLA(5)-22-18 - Paper 11 - Report

6 Papers to note

14.45

6.1 **Letter from the Minister for Children, Older People and Social Care: Childcare Funding Wales Bill**

(Pages 133 - 139)

CLA(5)-22-18 - Paper 12 - Letter from Minister for Children, Older People and Social Care, 17 September 2018

6.2 **Letter from the Leader of the House: European Union (Withdrawal) Act 2018 - regulations made under Schedule 4**

(Pages 140 - 141)

CLA(5)-22-18 - Paper 13 - Letter from the Leader of the House, 17 September 2018

7 Motion under Standing Order 17.42 to resolve to exclude the public from the meeting for the following business:

14.50

8 Consideration of Evidence: Renting Homes (Fees etc.) (Wales) Bill

9 UK governance post Brexit: Draft Inter-Institutional Agreement

(Pages 142 - 145)

CLA(5)-22-18 - Paper 14 - Draft Agreement

10 Agricultural transition in Scotland

(Pages 146 - 148)

CLA(5)-22-18 - Paper 15 - Research Service Briefing

11 **The Institute for Government's recent work on intergovernmental working**

(Pages 149 – 152)

CLA(5)-22-18 – Paper 16 – Research Service Briefing

Public Session

12 **Autism (Wales) Bill: Evidence session 1**

15.30 (Pages 153 – 161)

Paul Davies AM, Member in Charge of the Bill

Steve Boyce, Assembly Commission

Enrico Carpanini, Assembly Commission

CLA(5)-22-18 – Briefing

Autism (Wales) Bill, as introduced (PDF 93KB)

Explanatory Memorandum (PDF 1MB)

Statement of Policy Intent

13 **Motion under Standing Order 17.42 to resolve to exclude the public from the meeting for the following business:**

16.30

14 **Consideration of Evidence: Autism (Wales) Bill**

15 **Draft Protocol with Welsh Government – Scrutiny of regulations made under the European Union (Withdrawal) Act 2018**

CLA(5)-22-18 – Paper 17 – Draft Protocol with Welsh Government

Agenda Item 2

Document is Restricted

Statutory Instruments with Clear Reports

24 September 2018

SL(5)254 – The Health Education and Improvement Wales (Transfer of Staff, Property, Liabilities) (Wales) Order 2018

Procedure: Negative

A Special Health Authority, Health Education and Improvement Wales ("HEIW") has been established under section 22 of the National Health Service (Wales) Act 2006. HEIW's principal functions relate to the planning, commissioning and delivery of education and training for persons who are employed, or are considering becoming employed, in an activity relating to the health service in Wales will commence on 1 October 2018. A number of these functions are currently carried out by the Workforce, Education and Development Service in Velindre NHS Trust.

This Order makes provision for the transfer of staff (article 3) and property, rights and liabilities (article 4) from Velindre NHS Trust to HEIW.

Article 5 makes provision for the transfer of data, records and information.

Article 6 makes provision for the continuity of things done by, or in relation to, Velindre NHS Trust.

Parent Act: National Health Service (Wales) Act 2006

Date Made: 06 September 2018

Date Laid: 07 September 2018

Coming into force date: 01 October 2018

SL(5)255 – The Rating Lists (Valuation Date) (Wales) Order 2018

Procedure: Negative

By virtue of sections 41(2) and 52(2) of the Local Government Finance Act 1988 ("the 1988 Act"), read in conjunction with the Rating Lists (Postponement of Compilation) (Wales) Order 2014 (S.I. 2014/1370 (W. 139)) made under section 54A of the 1988 Act, nondomestic rating lists for Wales are to be compiled on 1 April 2017 and every fifth year afterwards.

Paragraph 2(3)(b) of Schedule 6 to the 1988 Act provides that for the purposes of compiling such lists, the rateable value of a non-domestic hereditament is to be determined by reference to the day on which the lists must be compiled or on such day preceding that day as may be specified by order.

Article 2 of this Order specifies 1 April 2019 as that day for the purposes of the next local and central nondomestic rating lists to be compiled once this Order has come into force.

Article 3 revokes the Rating Lists (Valuation Date) (Wales) Order 2014 (S.I. 2014/2917 (W. 297)), which specified the day by reference to which properties were to be valued for the purposes of the lists compiled on 1 April 2017.

Parent Act: Local Government Finance Act 1988

Date Made: 12 September 2018

Date Laid: 17 September 2018

Coming into force date: 10 October 2018

SL(5)253 – The Petroleum Licensing (Charges) (Wales) Regulations 2018

Background and Purpose

These Regulations make provision for the Welsh Ministers to charge fees in respect of an application to them for a petroleum licence under the Petroleum Act 1998 and for consents required under those licences for various listed activities and matters.

Section 23 of the Wales Act 2017 transfers licensing functions under Part 1 of the Petroleum Act 1998 to the Welsh Ministers, in relation to the Welsh onshore area. Those provisions are due to come into force on 1 October 2018 and these Regulations are therefore made on an anticipatory exercise of powers basis.

Procedure

Negative.

Technical Scrutiny

No points are identified for reporting under Standing Order 21.2 in respect of this instrument.

Merits Scrutiny

Three points are identified under Standing Order 21.3 in respect of this instrument.

1. **SO 21.3(i) – the instrument contains provisions requirement payments to be made to the Welsh Consolidated Fund or any part of the government in consideration of any licence or consent or of any services to be rendered, or prescribes the amount of any such charge or payment.**

   These Regulations contain provision prescribing the fees payable to Welsh Ministers in connection with applications to them for a petroleum licence and for various consents in connection with petroleum licensing. Such payments will be required to be paid into the Welsh Consolidated Fund pursuant to section 188(13) of the Energy Act 2004.

2. **SO 21.3(ii) – the instrument contains provisions which gives rise to issues of public policy likely to be of interest to the Assembly.**

   Regulation 4 sets out a formula for determining the fee payable upon application for the Welsh Ministers' consent to a development and production programme. The fee payable is a fixed sum (of £595) multiplied by the number of days of officer time required to determine the application.

   The cost to an applicant will not therefore be known at the point that an application is submitted. However, the applicant will nevertheless be committing to incur that application cost by submitting the application.

The Explanatory Memorandum to these Regulations notes that the "*rationale for this approach is this type of application varies greatly from one case to another. If a standard fee was applied it would result in more straightforward applications subsidising the cost of more complex applications which take longer to determine*".

3. **SO 21.3(ii) – the instrument contains provisions which gives rise to issues of public policy likely to be of interest to the Assembly.**

   Regulation 8(3) provides that any fees due under these Regulations are recoverable as a civil debt. The Welsh Ministers will therefore be able to recover overdue sums of money from applicants summarily through magistrates' courts in accordance with the Magistrates' Courts Act 1980.

   The Explanatory Memorandum to these Regulations notes that "*without this provision, the Welsh Ministers would first have to litigate to prove the debt and obtain a court judgement before it could then seek to enforce the judgment and recover the sums due. This would involve unnecessary expense to the public purse*".

Implications arising from exiting the European Union

No points are identified for reporting under Standing Order 21.3 in respect of this instrument.

Government Response

No government response is required.

Legal Advisers
Constitutional and Legislative Affairs Committee
14 September 2018

WELSH STATUTORY INSTRUMENTS

2018 No. 969 (W. 196)

ENERGY, WALES

The Petroleum Licensing (Charges) (Wales) Regulations 2018

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision for the Welsh Ministers to charge fees in respect of an application to them for a petroleum licence under the Petroleum Act 1998 and for consents required under those licences for various listed activities and matters.

Regulations 1 and 2 contain general provisions.

Regulation 3 sets out the fee payable upon application for a licence under section 4 of the Petroleum Act 1998.

Regulation 4 sets out a formula for determining the fee payable upon application for the Welsh Ministers' consent to a development and production programme. Regulation 5 sets the fee payable upon application for the Welsh Ministers' consent to a retention or development area proposal. Regulation 6 sets out fixed fees payable upon application for the Welsh Ministers' consent to a number of listed activities. Regulation 7 sets out the fee payable upon application to the Welsh Ministers for an oil field determination.

The Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. As a result, it was not considered necessary to carry out a regulatory impact assessment as to the likely costs and benefits of complying with these Regulations.

WELSH STATUTORY INSTRUMENTS

2018 No. 969 (W. 196)

ENERGY, WALES

The Petroleum Licensing (Charges) (Wales) Regulations 2018

Made *4 September 2018*

Laid before the National Assembly for Wales *7 September 2018*

Coming into force *1 October 2018*

The Welsh Ministers make the following Regulations in exercise of the powers conferred by section 4 of the Petroleum Act 1998(**1**) and sections 188 and 192 of the Energy Act 2004(**2**) and now vested in them:

Title, commencement and application

1.—(1) The title of these Regulations is the Petroleum Licensing (Charges) (Wales) Regulations 2018 and they come into force on 1 October 2018.

(2) These Regulations apply in relation to Wales.

Interpretation

2. In these Regulations—

"the 2015 Regulations" ("*Rheoliadau 2015*") means the Petroleum Licensing (Applications) Regulations 2015(**3**);

"development and production programme" ("*rhaglen ddatblygu a chynhyrchu*") means a programme submitted pursuant to a petroleum licence setting out the measures proposed to be taken in connection with the development and production of a petroleum field;

(**1**) 1998 c. 17. Section 4 was amended by paragraph 15 of Schedule 6 to the Wales Act 2017 (c. 4). There are other amendments to section 4 which are not relevant to these Regulations.

(**2**) 2004 c. 20. Section 188 was amended by paragraph 24 of Schedule 6 to the Wales Act 2017. Section 192 was amended by paragraph 60 of that Schedule. There are other amendments to sections 188 and 192 which are not relevant to these Regulations.

(**3**) S.I. 2015/766, amended by S.I. 2016/912 and S.I. 2018/56; there are other amending instruments but none is relevant.

"development area proposal" ("*cynnig ardal ddatblygu*") means a proposal submitted pursuant to a petroleum exploration and development licence defining the geographic locations within a petroleum field where the licensee proposes to undertake development and production including, where relevant, a plan setting out the activities to be carried out;

"landward petroleum exploration licence" ("*trwydded fforio petrolewm tua'r tir*") has the meaning given in regulation 2 of the 2015 Regulations;

"licensee" ("*trwyddedai*") means the holder of a petroleum licence;

"methane drainage licence" ("*trwydded draenio methan*") has the meaning given in regulation 2 of the 2015 Regulations;

"notify" ("*hysbysu*") means notify in writing;

"operator" ("*gweithredwr*") means a person who has been appointed as an installation operator, as a well operator or as both;

"petroleum exploration and development licence" ("*trwydded datblygu a fforio petrolewm*") has the meaning given in regulation 2 of the 2015 Regulations;

"petroleum licence" ("*trwydded petrolewm*") means a licence granted under section 3 of the Petroleum Act 1998 (searching for, boring and getting petroleum) or under section 2 of the Petroleum (Production) Act 1934 (licences to search for and get petroleum)(**1**);

"retention area proposal" ("*cynnig ardal gadw*") means a proposal submitted pursuant to a petroleum exploration and development licence defining the geographic locations where the licensee proposes to undertake exploration and appraisal activities;

"well" ("*ffynnon*") includes a borehole;

"well suspension" ("*atal ffynnon dros dro*") means the suspension of the use of a well such that it may be re-used for the purpose of drilling or other works; and

"work programme" ("*rhaglen waith*") means a programme set out in a schedule to a petroleum licence which sets out the prospecting to be undertaken during the initial term, including any geological survey by any physical or chemical means and any test drilling.

(**1**) 1934 c. 36. This Act was repealed by the Petroleum Act 1998 but without prejudice to any right conferred by a licence in force immediately before commencement of that Act, see paragraph 4 of Schedule 3 to that Act.

Fees payable for an application for a petroleum licence

3. A person who makes an application to the Welsh Ministers for a petroleum licence listed in the first column of Table 1 must pay the corresponding fee in the second column of that table.

Table 1

Type of licence	*Fee payable*
Landward petroleum exploration licence	£500
Methane drainage licence	£50
Petroleum exploration and development licence	£1,400

Fee for a consent to a development and production programme

4.—(1) A licensee who applies to the Welsh Ministers for consent to a development and production programme must pay a fee.

(2) The amount of the fee payable under paragraph (1) is determined by the formula—

£595 × A × B

where—

A is the number of days; and

B is the number of officers

required to determine the application.

(3) The fee payable under paragraph (1) must be paid within 30 days of the Welsh Ministers notifying the licensee of the determination of the application unless the Welsh Ministers notify the licensee that the fee may be paid at a later date.

(4) In paragraph (2), "officer" ("*swyddog*") means a person engaged by or on behalf of the Welsh Ministers to carry out the function in respect of which the relevant fee is payable.

Fee payable for a consent to a retention area proposal or a development area proposal

5.—(1) A licensee who applies to the Welsh Ministers for consent to a retention area proposal or a development area proposal must pay a fee of £1068 if the Welsh Ministers grant consent.

(2) The fee payable under paragraph (1) must be paid within 30 days of the Welsh Ministers notifying the licensee of the determination of the application unless the Welsh Ministers notify the licensee that the fee may be paid at a later date.

Fixed fees payable for other consents

6.—(1) A licensee who applies to the Welsh Ministers for consent to an activity or matter listed in the first column of Table 2 must pay the corresponding fee in the second column of that table.

(2) Subject to paragraph (3), the fee payable under paragraph (1) must be paid at the time of making the application, unless the Welsh Ministers notify the licensee that the fee may be paid at a later date.

(3) In relation to the activities listed in paragraph (4), the fee payable under paragraph (1) must be paid within 30 days of the Welsh Ministers notifying the licensee of the determination of the application unless the Welsh Ministers notify the licensee that the fee may be paid at a later date.

(4) The activities are—

(a) an application for consent to extend the initial, second or final term of a petroleum licence;

(b) an application for consent to amend a work programme.

Table 2

Activity or matter requiring consent	*Fee payable*
Drilling a primary well	£729
Drilling a sidetrack well branching off from the principal well to a target location different from that of the principal well	£596
Fitting or refitting equipment in a well for the purpose of enabling hydrocarbon production or injection	£566
Getting petroleum from a licensed area	£1,052
Varying a consent to get petroleum from a licensed area	£1,052
Flaring or venting petroleum from a well	£765
Varying a consent to flare or vent petroleum from a well	£765
Well suspension	£596
Putting back into use any well subject to a well suspension	£566
Abandoning a well permanently	£566
Changing the licensee of a petroleum licence	£401
Changing the beneficiary of rights granted by a petroleum licence	£401
Appointing an operator under a petroleum licence	£1,201
Extending the initial, second or final term of a petroleum licence	£1,000
Amending a work programme	£1,000

Fee payable for a determination of an oil field

7.—(1) A licensee who requests from the Welsh Ministers a determination under Schedule 1 to the Oil Taxation Act 1975(**1**) (determination of oil fields) must pay a fee of £1,124.

(2) The fee payable under paragraph (1) must be paid within 30 days of the Welsh Ministers notifying the licensee of the determination of the application unless the Welsh Ministers notify the licensee that the fee may be paid at a later date.

Payment of fees

8.—(1) A fee payable under these Regulations must be paid in such manner as the Welsh Ministers determine.

(2) A fee is not paid under these Regulations until the Welsh Ministers have received the full amount of the fee in cleared funds.

(3) A fee due under these Regulations is recoverable as a civil debt.

Lesley Griffiths
Cabinet Secretary for Energy, Planning and Rural Affairs, one of the Welsh Ministers
4 September 2018

(**1**) 1975 c. 22. Schedule 1 was amended by paragraph 20 of Part 2 of Schedule 6 to the Wales Act 2017. There are other amendments to Schedule 1 which are not relevant to these Regulations.

Explanatory Memorandum to The Petroleum Licensing (Charges) (Wales) Regulations 2018

This Explanatory Memorandum has been prepared by the Welsh Government and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1

Cabinet Secretary/Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of The Petroleum Licensing (Charges) (Wales) Regulations 2018.

Lesley Griffiths
CABINET SECRETARY FOR ENERGY, PLANNING AND RURAL AFFAIRS
7 September 2018

PART 1

1. Description

On 1st October 2018 petroleum licensing functions under the Petroleum Act 1998 will be transferred from the Oil and Gas Authority (OGA) to Welsh Ministers in relation to the Welsh onshore area.

Part 1 of the Petroleum Act 1998 defines petroleum (oil and gas hydrocarbons) and vests all rights to it in the Crown. A petroleum licence confers on the licence holder the exclusive right to search and bore for and get petroleum within the licensed area. It also gives the developer the right to own the product extracted from the ground so as to be able to sell it to third parties.

From 1 October 2018 the Welsh Ministers will acquire responsibility for all existing Welsh onshore licences and for any regulatory consents licence holders are required to obtain under the terms of those licences.
There are 14 existing licences within the Welsh onshore area and licence holders have ongoing licence rights to exploit petroleum within a given geographic area for a period of up to 30 years.

The terms of all petroleum licences require licence holders to obtain the Welsh Ministers' prior consent before carrying out listed activities such as work programming, drilling and decommissioning. To enable the Welsh Ministers to recover the costs of discharging those licensing functions it is necessary to make regulations to enable the Welsh Ministers to charge fees to licence holders.

The regulations prescribe fixed fees for the majority of activities listed. However, in relation to an application for one consent, a development and production programme, the regulations provide Welsh Ministers must apply a formula to each individual application to determine the fee on a case by case basis. The rationale for this approach is this type of application varies greatly from one case to another. If a standard fee was applied it would result in more straightforward applications subsidising the cost of more complex applications which take longer to determine.

The regulations provide if a fee due under the Regulations remains unpaid it is recoverable by the Welsh Ministers as a civil debt. The effect of this provision is to enable the Welsh Ministers to apply to the court for an order requiring payment from the licence holder. Without this provision, the Welsh Ministers would first have to litigate to prove the debt and obtain a court judgement before it could then seek to enforce the judgment and recover the sums due. This would involve unnecessary expense to the public purse.

The current UK charges regulations reference the OGA as the licensing authority and will therefore only apply to English licenses post 1 October 2018. Regulations have been prepared to make provision for the Welsh Ministers to charge fees in respect of an application to them for a petroleum licence under the Petroleum Act 1998 and for consents required under those licences for various listed activities and matters.

2. Matters of special interest to the Constitutional and Legislative Affairs Committee

None

3. Legislative background

Sections 23 to 25 of the Wales Act 2017 transfers petroleum licensing functions under Part 1 of the Petroleum Act 1998 to the to the Welsh Ministers in relation to the Welsh onshore area. These provisions will commence on 1st October 2018 by virtue of the Wales Act 2017 (Commencement Number 4) Order 2017 (S.I. 2017/1179).

In order that the Welsh Ministers may charge for the functions they will be required to exercise in respect of the transferred licences, regulations setting charges must be made under section 4 of the Petroleum Act 1998 and sections 188 and 192 of the Energy Act 2004. These Regulations must be brought into force on 1 October 2018.

In accordance with subsections (11) and (13) of section 188 sums received under these regulations must be paid into the Welsh Consolidated Fund. In accordance with section 124 of the Government of Wales Act 2006 any payment out of the fund will need to be authorised by a Budget resolution of the Assembly.

The Regulations are subject to the National Assembly's negative resolution procedure.

4. Purpose and intended effect of the legislation

This instrument applies to Wales. The objective of the Regulations is to provide the Welsh Ministers with the power to recover the costs of discharging their duties as licence authority through fees.

Welsh Ministers will be responsible for the granting, administration and regulation of three distinct types of petroleum licence:

- **Petroleum Exploration and Development Licences (PEDL)** which grant exclusive rights to search and bore for, and get, petroleum within a specified area (a PEDL block).
- **Landward Petroleum Exploration Licences (XL)** for companies wanting to explore but do not need exclusive rights to drill or produce petroleum.
- **Methane Drainage Licences (MDL)** required if the operator or owner of a coalmine must capture natural gas to make the mine safe.

The terms and conditions of every licence are prescribed in a series of "Model Clauses" which are set out in secondary legislation made under the Petroleum Act 1998.

From October 1st 2018 the terms of every licence will require the licensees to obtain the Welsh Ministers' consent to certain activities listed. These consents can be categorised broadly as:

- Approval of work programmes and plans.
- Consent to drill, suspend or abandon a well.
- Consent to produce petroleum or flare or vent waste gas.
- Approval of the competency of the well installation operator.
- Approval of the sale of existing licences or change of beneficiaries.
- Approval of time extensions to the initial, second or production term of a PEDL.

For Welsh Ministers to appropriately discharge their new responsibilities it is necessary to make regulations to enable them to charge fees for these functions. The fees replicate those currently charged by the OGA in England and Wales.

Failure to commence the regulations on 1 October would prevent Welsh Ministers from being able to appropriately discharge their new responsibilities as licensees would not be able to apply for the consents required to utilise existing licences, including suspension and abandonment activities.

5. Consultation

The Petroleum Licensing (Charges) (Wales) Regulations 2018 are wholly consistent with the OGA's current charging structure already in place for Welsh Licence holders, in terms of what activities require consent, how fees are determined, and the amount of the fee.

The only impact upon licence holders is fees now be payable to the Welsh Ministers rather than the OGA. On this basis it was felt a public consultation exercise would not be beneficial. Officials have however liaised with licence holders, who will receive communication confirming the transfer of functions and the application of the new Regulations.

6. Regulatory Impact Assessment (RIA)

The Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. There is no impact on business since there has been no change to the range of applications for which fees are charged and the way those fees are determined. The amount of each fee has not increased. These Regulations merely ensure Welsh Ministers can charge fees under the new power as a result of the relevant functions having been transferred from the Oil and Gas Authority to the Welsh Ministers. There is no impact on charities or voluntary bodies. As a result, it was not considered necessary to carry out a regulatory impact assessment as to the likely costs and benefits of complying with these Regulations.

The provisions within this instrument have been the subject of previous impact assessments which are available from DBEIS at the above address. An impact assessment was prepared for the Energy Bill 2015-16, to which this instrument relates. A copy of the impact assessment is available from DBEIS, 3 Whitehall Place, London, SW1A 2AW and is available at www.legislation.gov.uk.

SL(5)243 – The CRC Energy Efficiency Scheme (Revocation and Savings) Order 2018

Background and Purpose

This Order revokes in the United Kingdom the CRC Energy Efficiency Scheme Order 2013 (the 2013 Order) with savings. It also makes amendments to the 2013 Order to the extent that it continues to operate by virtue of those savings. It also amends the CRC Energy Efficiency Scheme Order 2010 (the 2010 Order) to the extent that it continues to operate following its revocation, with savings, by the 2013 Order.

Both the 2013 Order and the 2010 Order established an emissions trading scheme which applies to direct and indirect emissions from supplies of electricity and gas by public bodies and undertakings.

Procedure

Negative.

Technical Scrutiny

One reporting point is identified for reporting under Standing Order 21.2(ix)(that the instrument is not made or to be made in English and Welsh), because this instrument has been made in English only.

Merits Scrutiny

No points are identified for reporting under Standing Order 21.3 in respect of this instrument.

Implications arising from exiting the European Union

No points are identified for reporting under Standing Order 21.3 in respect of this instrument.

Government Response

No government response is required.

Legal Advisers
Constitutional and Legislative Affairs Committee
September 2018

STATUTORY INSTRUMENTS

2018 No. 841

CLIMATE CHANGE

The CRC Energy Efficiency Scheme (Revocation and Savings) Order 2018

Made - - - -	*11th July 2018*
Laid before Parliament	*18th July 2018*
Laid before the Scottish Parliament	*18th July 2018*
Laid before the National Assembly for Wales	*18th July 2018*
Laid before the Northern Ireland Assembly	*18th July 2018*
Coming into force - -	*1st October 2018*

At the Court at Buckingham Palace, the 11th day of July 2018

Present,

The Queen's Most Excellent Majesty in Council

Whereas the Secretary of State, the Scottish Ministers, the Welsh Ministers and the Department of Agriculture, Environment and Rural Affairs of Northern Ireland(**a**) have in accordance with section 48 of and paragraph 10 of Schedule 3 to the Climate Change Act 2008(**b**)—

(a) obtained and taken into account the advice of the Committee on Climate Change in respect of this Order; and

(b) consulted such persons likely to be affected by this Order as they considered appropriate,

Her Majesty, in exercise of the powers conferred by sections 44 and 90(3) of, and Schedule 2 and paragraph 9 of Schedule 3, to the Climate Change Act 2008, is pleased, by and with the advice of Her Privy Council, to order as follows:

Citation and Commencement

1. This Order may be cited as the CRC Energy Efficiency Scheme (Revocation and Savings) Order 2018 and comes into force on 1st October 2018.

Interpretation

2. In this Order—

(**a**) The functions of the Department of the Environment of Northern Ireland in relation to Part 3 of the Climate Change Act 2008 were transferred to the Department of Agriculture, Environment and Rural Affairs of Northern Ireland by the Departments (Transfer of Functions) Order (Northern Ireland) 2016 (S.R. 2016/76).

(**b**) 2008 c.27.

"the 2010 Order" means the CRC Energy Efficiency Scheme Order 2010(**a**);

"the 2013 Order" means the CRC Energy Efficiency Scheme Order 2013(**b**).

Revocations, continuing effect and amendments

3.—(1) Subject to paragraphs (2) and (3), the 2013 Order is revoked.

(2) The 2013 Order continues to have effect in relation to the initial phase of the trading scheme established under article 2(1) of the 2013 Order subject to the amendments made by Schedule 1.

(3) Article 96(2) and (3) of, and Schedule 9 to, the 2013 Order continue to have effect in relation to the first phase of the trading scheme established under article 2(1) of the 2010 Order.

(4) The 2010 Order as continued in effect by article 96(2) and (3) of the 2013 Order is amended in accordance with Schedule 2.

Richard Tilbrook
Clerk of the Privy Council

SCHEDULE 1

Article 3(2)

Amendments to the 2013 Order

1. The 2013 Order is amended as follows.

2. In article 3 (interpretation)—

(a) at the end of the definition of "account holder", insert "or, after the end of 31st March 2022, the public body, undertaking or other person in whose name an account in the Registry was held at the end of 31st March 2022";

(b) at the end of the definition of "third party", insert "before the end of 31st March 2022".

3. In article 13(3) (administrator's duty to maintain a list of participants), at the beginning, insert "Until the end of 31st March 2025,".

4. In article 37 (cancellation of allowances and surplus surrendered allowances)—

(a) in paragraph (4)(b), after "request", insert "before the end of 31st March 2025";

(b) after paragraph (4), insert—

"(4A) Where the account holder makes a request to the Secretary of State for repayment during the period beginning with 1st April 2022 and ending with 31st March 2025 with respect to any allowances held in the compliance account at the end of 31st March 2022, the Secretary of State may make a repayment to the account holder.";

(c) in paragraph (5), after "paragraph (4)", insert "or paragraph (4A)".

5. In article 38 (allowances and trading)—

(a) in paragraph (1), at the beginning, insert "Until the end of 31st March 2025,";

(b) in paragraph (2), at the beginning, insert "Before 1st April 2022,".

6. In article 50(1) (the Registry), at the beginning, insert "Until the end of 31st March 2022".

7. In article 54 (cancellation of registration of participants)—

(a) in paragraph (5), after "is cancelled", insert "before the end of 31st March 2022";

(**a**) S.I. 2010/768, amended by S.I. 2011/234 and amended and revoked by S.I. 2013/1119 with savings. There are other amendments to the 2010 Order not relevant to this Order.
(**b**) S.I. 2013/1119, amended by S.I. 2014/502. There are other amendments not relevant to this Order.

(b) after paragraph (7), insert—

"(8) Nothing in this Order requires the administrator to cancel the registration of a participant after the end of 31st March 2025.".

8. After article 55 (account holders), insert—

"Accounts on or after 1st April 2022

55A. On 1st April 2022, the administrator must close the compliance accounts, the cancellation accounts and any other accounts set up under this Order.

Communications on or after 1st April 2022

55B.—(1) Communications occurring on or after 1st April 2022 between the administrator and—

(a) a participant; or

(b) a third party,

must take place in writing.

(2) Communications referred to in paragraph (1) may take place by post or by electronic means.

Records and information on or after 1st April 2022

55C.—(1) During the period beginning with 1st April 2022 and ending with 31st March 2025 ('the relevant period'), the administrator must maintain a record of the information held in the Registry at the end of 31st March 2022.

(2) The record referred to in paragraph (1) may be stored electronically.

(3) The record referred to in paragraph (1) must include a record of the information referred to in paragraph 2 of Schedule 6 as at the end of 31st March 2022.

(4) If—

(a) a participant; or

(b) an account holder,

makes a request in writing during the relevant period to the administrator to provide the information referred to in paragraph (5), the administrator must provide that information as soon as reasonably practicable.

(5) The information referred to in this paragraph is the information that would have been provided by the Registry on 31st March 2022 in accordance with paragraph 2 of Schedule 6 to that participant or account holder.

(6) The request and information may be made and provided electronically.".

9. In article 56 (notification), after "address", insert "occurring before 1st April 2025".

10. In article 74 (failures in respect of annual reports), after paragraph (5), insert—

"(6) After the end of 28th February 2022, the administrator must not impose a penalty requiring a participant to acquire and surrender additional allowances under paragraph (4)(b).".

11. In article 77 (failures to surrender allowances contrary to Part 4), after paragraph (3), insert—

"(4) After the end of 28th February 2022, the administrator must not impose a penalty requiring a participant to acquire and surrender additional allowances under paragraph (2)(a).".

12. In article 81 (blocking and publication)—

(a) after paragraph (1), insert—

"(1A) The penalty of blocking must not be—

(a) imposed; or

(b) if already imposed, continued,

after the end of 31st March 2022.";

(b) after paragraph (2), insert—

"(2A) The penalty of publication must not—

(a) be imposed; or

(b) if already imposed, be continued,

after the end of 31st March 2022.".

SCHEDULE 2

Article 3(4)

Amendments to the 2010 Order

1. The 2010 Order is amended as follows.

2. In article 3 (interpretation)—

(a) at the end of the definition of "account holder", insert "or, after the end of 31st March 2022, the public body, undertaking or other person in whose name an account in the Registry was held at the end of 31st March 2022";

(b) at the end of the definition of "third party", insert "before the end of 31st March 2022".

3. In article 13(3) (administrator's duty to maintain a list of participants), at the beginning, insert "Until the end of 31st March 2025,".

4. In article 54 (cancellation of allowances and surplus surrendered allowances)—

(a) in paragraph (4)(b), after "request", insert "before the end of 31st March 2025";

(b) after paragraph (4), insert—

"(4A) Where the account holder makes a request to the Secretary of State for repayment during the period beginning with 1st April 2022 and ending with 31st March 2025 with respect to any allowances held in the compliance account at the end of 31st March 2022, the Secretary of State may make a repayment to the account holder.";

(c) in paragraph (5), after "paragraph (4)", insert "or paragraph (4A)".

5. In article 55 (allowances and trading)—

(a) in paragraph (1), at the beginning, insert "Until the end of 31st March 2025,";

(b) in paragraph (2), at the beginning, insert "Before 1st April 2022,".

6. In article 68(1) (the Registry), at the beginning, insert "Until the end of 31st March 2022".

7. In article 72 (cancellation of registration of participants)—

(a) in paragraph (4), after "is cancelled", insert "before the end of 31st March 2022";

(b) after paragraph (6), insert—

"(7) Nothing in this Order requires the administrator to cancel the registration of a participant after the end of 31st March 2025.".

8. After article 73 (account holders), insert—

"Accounts on or after 1st April 2022

73A. On 1st April 2022, the administrator must close the compliance accounts, the cancellation accounts and any other accounts set up under this Order.

Communications on or after 1st April 2022

73B.—(1) Communications occurring on or after 1st April 2022 between the administrator and—

(a) a participant; or

(b) a third party,

must take place in writing.

(2) Communications referred to in paragraph (1) may take place by post or by electronic means.

Records and information on or after 1st April 2022

73C.—(1) During the period beginning with 1st April 2022 and ending with 31st March 2025 ('the relevant period'), the administrator must maintain a record of the information held in the Registry at the end of 31st March 2022.

(2) The record referred to in paragraph (1) may be stored electronically.

(3) The record referred to in paragraph (1) must include a record of the information referred to in paragraph 2 of Schedule 7 as at the end of 31st March 2022.

(4) If—

(a) a participant; or

(b) an account holder,

makes a request in writing during the relevant period to the administrator to provide the information referred to in paragraph (5), the administrator must provide that information as soon as reasonably practicable.

(5) The information referred to in this paragraph is the information that would have been provided by the Registry on 31st March 2022 in accordance with paragraph 2 of Schedule 7 to that participant or account holder.

(6) The request and information may be made and provided electronically.".

9. In article 97 (failures in respect of annual reports), after paragraph (5), insert—

"(6) After the end of 28th February 2022, the administrator must not impose a penalty requiring a participant to acquire and surrender additional allowances under paragraph (4)(b).".

10. In article 100 (failures to surrender allowances contrary to Part 6), after paragraph (3), insert—

"(4) After the end of 28th February 2022, the administrator must not impose a penalty requiring a participant to acquire and surrender additional allowances under paragraph (2)(a).".

11. In article 105 (blocking and publication)—

(a) after paragraph (1), insert—

"(1A) The penalty of blocking must not be—

(a) imposed; or

(b) if already imposed, continued,

after the end of 31st March 2022.";

(b) after paragraph (2), insert—

"(2A) The penalty of publication must not—

(a) be imposed; or

(b) if already imposed, be continued,

after the end of 31st March 2022.".

EXPLANATORY NOTE

(This note is not part of the Order)

This Order revokes in the United Kingdom the CRC Energy Efficiency Scheme Order ("the 2013 Order") with savings (article 3(1) and (2)). It also makes amendments to the 2013 Order to the extent that it continues to operate by virtue of those savings (Schedule 1); and amends the CRC Energy Efficiency Scheme Order ("the 2010 Order") to the extent that it continues to operate following its revocation, with savings, by the 2013 Order (Schedule 2). Both the 2013 Order and the 2010 Order established an emissions trading scheme which applies to direct and indirect emissions from supplies of electricity and gas by public bodies and undertakings.

The 2013 Order remains in effect for the purpose of the initial phase of the scheme it established. Under the initial phase, participants are required to monitor their supplies of electricity and gas from 1st April 2014 to 31st March 2019, and to annually purchase and surrender sufficient allowances to cover the related emissions. The surrender for the final year is due by the last working day of October 2019. The amendments made to the 2013 Order by Schedule 1 to this Order require the administrator to maintain the Registry used for this process, and participants' and third parties' access to the accounts for their allowances, until 31st March 2022. After that date, the administrator must close the accounts, is not required to maintain the Registry and is required to store the information that had been contained in the Registry, and to maintain the list of participants, until the end of March 2025 to facilitate any outstanding activities relating to the initial phase.

The 2010 Order also continues in effect for the purpose of the first phase of the scheme it created under article 3(3) of this Order. Under the first phase, participants are required to monitor their supplies of electricity and gas from 1st April 2010 to 31st March 2014, and to annually purchase and surrender sufficient allowances to cover the related emissions. The surrender for the final year was due by the last working day of October 2014. The amendments made to the 2010 Order by Schedule 2 to this Order require the administrator to maintain the Registry used for this process, and participants' and third parties' access to the accounts for their allowances, until 31st March 2022. After that date, the administrator must close the accounts, is not required to maintain the Registry and is required to store the information that had been contained in the Registry, and to maintain the list of participants, until the end of March 2025 to facilitate any outstanding activities relating to the first phase.

A full impact assessment of the effect that this instrument will have on the costs of business, the voluntary sector and the public sector is available from the Department for Business, Energy and Industrial Strategy, 1 Victoria Street, London, SW1H 0ET.

EXPLANATORY MEMORANDUM TO

THE CRC ENERGY EFFICIENCY SCHEME (REVOCATION AND SAVINGS) ORDER 2018

2018 No. 841

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department for Business, Energy and Industrial Strategy and is laid before Parliament, the Scottish Parliament, the National Assembly for Wales, and the Northern Ireland Assembly by Command of Her Majesty.

2. Purpose of the instrument

2.1 This Order makes provision for the early closure of the CRC Energy Efficiency Scheme ("the CRC Scheme"), which is an emissions trading scheme. The current phase, which applies to emissions from relevant energy supplies from 1st April 2014 to 31st March 2019, will be the final phase of the CRC Scheme. The CRC Energy Efficiency Scheme Order 2013 ("the 2013 Order"), which provides for phases of the CRC scheme up to 2043, is revoked, with savings, and the 2013 Order is amended to the extent it continues to operate for the purpose of the current phase and the 2010 Order is amended to the extent it continues to operate for the purpose of the previous phase (which applied to emissions from relevant energy supplies from 1st April 2010 to 31st March 2014).

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

3.2 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is the United Kingdom.

4.2 The territorial application of this instrument is the United Kingdom.

4.3 The definition of the extent of the United Kingdom in regard to this instrument is set out in section 89 of the Climate Change Act 2008.

5. European Convention on Human Rights

5.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

6. Legislative Context

6.1 The CRC Scheme was introduced by the CRC Energy Efficiency Scheme Order 2010 ("the 2010 Order") under powers conferred by sections 44, 46(3) and 48 of and Schedule 2 and paragraphs 9, 10, 11 of Schedule 3 to the Climate Change Act 2008. The 2013 Order which simplified the CRC scheme for phases from 2014 onwards and revoked the 2010 Order with savings and amendments for the purpose of the first phase of the scheme. The CRC Energy Efficiency Scheme (Amendment) Order 2014 made amendments to the 2013 Order in order to finalise simplification of the CRC scheme.

6.2 To bring about early closure, this instrument revokes the 2013 Order, subject to savings for the purpose of the initial phase established under the 2013 Order with amendments, and makes amendments to the 2010 Order to the extent it has been saved for the purpose of the first phase established under the 2010 Order.

7. Policy background

What is being done and why?

7.1 The CRC Scheme is a mandatory UK-wide trading and reporting scheme. It was introduced in April 2010, although the qualification period for the scheme started in 2008. It was designed to improve energy efficiency and drive emission reductions in public and private sector organisations through the application of financial and reputational drivers. It is divided into phases. The first phase of the CRC Scheme ran from April 2010 to March 2014 and the second phase commenced in April 2014 and is due to end in March 2019. Each phase is divided into compliance years which run from 1st April to 31st March. The Environment Agency, the Scottish Environment Protection Agency, the Natural Resources Body for Wales and the Northern Ireland Chief Inspector administer the scheme. The existing legislation provides for the scheme to operate until 2043.

7.2 For organisations that meet the qualification criteria for a phase of the CRC scheme, they are required to among other things:

- record and report to the Administrator their energy use in scope of the CRC Scheme for a given compliance year, which runs from 1 April to 31 March, by the last working day of the following July.
- purchase (in sales that take place twice annually) and surrender sufficient allowances to cover emissions from that reported energy use by the last working day of the following October.
- keep records for a specified period.

7.3 Since the introduction of the CRC Scheme in April 2010, stakeholders have argued that it is overly complex and administratively burdensome. They have also stated that the organisational focus of the CRC Scheme is misaligned with their operational management structures and business processes. Government accordingly consulted on simplification proposals and enacted those through the 2013 Order.

7.4 At the 2015 Summer Budget the government announced that it would review the business energy efficiency tax landscape and consider approaches to further simplify and improve the effectiveness of the regime. A public consultation, "'Reforming the business energy efficiency tax landscape" was launched on 28 September 2015 and closed on 9 November 2015. The purpose of the consultation was to obtain views on

the business energy efficiency tax and reporting landscape, including the CRC Scheme, in order to review and consider the interactions between business energy efficiency policies and regulations. The consultation document set out proposals to reform the landscape in order to deliver a simpler and more stable environment for business.

7.5 In March 2016, Government published the response to the consultation. The Government stated that: "…The government has therefore decided to close the CRC energy efficiency scheme (CRC) following the 2018-19 compliance year, with no purchase of allowances required to cover emissions for energy supplied from April 2019. Organisations will report under the CRC for the last time by the end of July 2019, with a surrender of allowances for emissions from energy supplied in the 2018-19 compliance year by the end of October 2019. The government will work with the devolved administrations on scheme closure arrangements".

7.6 This decision to close the CRC scheme forms part of a package of reforms to the energy efficiency taxation landscape. These include:

- recovering the revenue from early closure of the CRC scheme by increasing the main rates of the Climate Change Levy ("CCL") from April 2019.
- rebalancing CCL rates for different fuel types.
- introducing a streamlined energy and carbon reporting framework for business by April 2019.

7.7 As a result of the early closure of the CRC scheme, the CRC compliance year 2018-2019 will be the last compliance year for which participants are obliged to report their energy use to the Administrator and to purchase and surrender CRC allowances to cover their CRC supplies and emissions. In this context this instrument makes the following provision:

7.7.1 There will be no phases of the CRC scheme after the end of the current phase. In effect, the CRC is closed early at the end of the current phase (2014 - 2019). Participants who qualified for the current phase or for the previous phase will still be required to comply with their obligations as usual, including, for participants in the current phase, their obligations to report their emissions to the Administrator by the last working day of July 2019 and to purchase and surrender sufficient allowances by the last working day of October 2019.

7.7.2 The Administrator is required to maintain the Registry until the end of March 2022. The Registry is the place where participants submit annual reports, order, buy, surrender and transfer allowances and also provide contact and organisational structure details. After the end of March 2022, the Administrator must close the accounts opened for the purposes of the CRC scheme. After the end of March 2022, trading of allowances will not be permitted.

7.7.3 The Administrator will continue to have powers to monitor and enforce compliance by participants who qualified for the current phase or for the previous phase (2010 – 2014). After the end of February 2022, the Administrator will not be able to impose a penalty to require the purchase and surrender of additional allowances. After the end of March 2022, after the closure of the Registry, the Administrator will not be able to impose the

penalty of blocking access to the Registry or of publication of a participant's details on the Registry.

7.7.4 Participants who qualified for the current phase continue to be required to inform the Administrator about a change of address until 1st April 2025. The Administrator will maintain an up to date list of participants for the current phase and previous phase until the end of March 2025.

7.7.5 After the end of March 2022, the Administrator must also maintain a record of the information that had been held on the Registry until the end of March 2025.

7.7.6 Provision is made for how those who previously held an account for the purpose of the CRC scheme will be able to communicate with the Administrator once the Registry is closed, and how they can access the information concerning their accounts held in the Registry as at the end of March 2022.

7.7.7 Participants who qualified for the current phase will continue to be required to maintain their records until the end of March 2025. Participants who qualified for the previous phase will continue to be required to maintain their records until the end of March 2021.

7.8 Participants who have surrendered surplus allowances into the cancellation account continue to be able to apply for a refund until the end of March 2025. Participants who held allowances in a compliance account as at the end of March 2022 may also apply for a refund until the end of March 2025. A decision whether to refund continues to be at the discretion of the Secretary of State and guidance for participants is available at: https://www.gov.uk/government/publications/crc-guidance-for-participants-in-phase-2

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

9.1 This instrument revokes the 2013 Order with savings and amendments for the purpose of the current phase and the previous phase of the CRC scheme. The department does not intend to consolidate this legislation.

10. Consultation outcome

10.1 The Government held a public consultation on reforming the business energy efficiency landscape from 28 September 2015 to 9 November 2015. The consultation sought evidence from stakeholders and set out policy proposals to simplify and improve the effectiveness of the landscape in supporting the government's objectives around simplicity, productivity, security of energy supplies and decarbonisation. The review was welcomed by industry, with particular support for simplification of the business energy landscape, particularly the abolition of the CRC Scheme and the move to a single tax, the CCL. Respondents cited several benefits including simplicity, reduction in collection errors and a reduction in administrative burdens.

The Government consultation response was published on 16 March 2016 and is available at: https://www.gov.uk/government/consultations/consultation-reforming-the-business-energy-efficiency-tax-landscape .

10.2 The Committee on Climate Change ("the CCC") has also been consulted, on the proposed early closure of the CRC Scheme UK-wide and in the individual nations of UK. The CCC, in letters in March 2016 and February 2018, agreed that abolition of the CRC scheme could contribute to a worthwhile rationalisation of the complex policy landscape with overlapping carbon price instruments and information requirements. The CCC also recommended that if the CRC Scheme is abolished then an alternative annual energy and emission reporting mechanism be introduced UK-wide with board sign off, that public sector action was also required and that the CCL rates should be increased to reflect the CRC Scheme closure.

10.3 The Devolved Administrations' views have been sought on early closure of the CRC Scheme. The Devolved Administrations have all consented to UK-wide closure.

11. Guidance

11.1 Guidance on how to comply with the CRC scheme continues to be available and the Environment Agency will also continue operate a helpdesk for participants. Guidance for the purpose of the current phase of the CRC scheme is available at https://www.gov.uk/government/publications/crc-guidance-for-participants-in-phase-2

12. Impact

12.1 The impact on the estimated 4,200 business, charities or voluntary bodies which are participants in the CRC Scheme will benefit from the simplification, in particular, the need to no longer deal with what is viewed by stakeholders as a complex trading and reporting scheme.

12.2 The impact on the public sector is the removal of a complex trading and reporting scheme for some 500 public sector participants.

12.3 A full Impact Assessment covering a package of reforms including the closure of the CRC scheme and introduction of the streamlined energy and carbon framework is submitted with this memorandum and published alongside the Explanatory Memorandum on the UK Government website at www.gov.uk and on the legislation.gov.uk website.

13. Regulating small business

13.1 The CRC Scheme generally does not apply to small businesses, given the eligibility requirement that organisations use over 6GWh of qualifying electricity in a specified year. Any small businesses in scope of the CRC scheme will benefit from the removal of the requirement to comply with the complex CRC scheme, including to report their emissions annually and to buy and surrender allowances for those emissions.

14. Monitoring & review

14.1 The approach to monitoring of this legislation is for the Department for Business, Energy and Industrial Strategy, and the Administrator, to continue to monitor the CRC scheme, including the ongoing activities after the end of the current phase, which is the final phase of the CRC Scheme.

14.2 The regulation does not include a statutory review clause and, in line with the requirements of the Small Business, Enterprise and Employment Act 2015 and in line with the requirements of the Small Business, Enterprise and Employment Act 2015, the Rt. Hon Claire Perry MP, Minister of State for Energy and Clean Growth, has made the following statement:

In my view a statutory review clause is not appropriate. This legislation takes forward the outcome of a significant review of the CRC Energy Efficiency Scheme and wider business energy efficiency landscape. This legislation means that, rather than continuing to 2043, the 2018-19 compliance year is the last year for which participants will need to monitor, report and surrender allowances for their relevant emissions and the scheme is being closed early. Given the significant reduction of costs for participants I do not consider a further statutory review is appropriate on proportionality grounds.

15. Contact

15.1 Gary Shanahan at the Department for Business, Energy and Industrial Strategy, Telephone: 0300 068 6172 or email: gary.shanahan@beis.gov.uk can be contacted with any queries regarding the instrument.

15.2 Michael Rutter, Deputy Director – Business Energy Use, at the Department for Business, Energy and Industrial Strategy can confirm that this Explanatory Memorandum meets the required standard.

15.3 The Rt. Hon. Claire Perry, Minister of State for Energy and Clean Growth, at the Department for Business, Energy and Industrial Strategy can confirm that this Explanatory Memorandum meets the required standard.

Title: Streamlined energy and carbon reporting framework
Impact Assessment No: BEIS016(F)-18-CG
RPC Reference No: RPC-3388(2)-BEIS
Lead department or agency:
Department for Business, Energy & Industrial Strategy
Other departments or agencies:

Impact Assessment (IA)

Date: 18th July 2018

Stage: Final

Source of intervention: Domestic

Type of measure: Secondary Legislation

Contact for enquiries:
Sami Gllogjani reporting@beis.gov.uk

Summary: Intervention and Options

RPC Opinion: Fit for purpose

Cost of Preferred (or more likely) Option				
Total Net Present Value	**Business Net Present Value**	**Net cost to business per year** (EANDCB in 2014 prices)	**One-In, Three-Out**	**Business Impact Target Status**
£1,549m	-£245m	£15.6m (regulatory only)	In Scope	To be confirmed

What is the problem under consideration? Why is government intervention necessary?
The Government has a number of policies in place to encourage organisations to invest in energy efficiency and decarbonisation, and individual organisations can be in scope of multiple policies with similar levers, for example mandating reporting of energy use/ emissions or creating a price signal. To simplify the policy landscape and reduce administrative burdens on participants, a package of changes were announced at Budget 2016, consisting of closing the CRC Energy Efficiency Scheme, increasing Climate Change Levy (CCL) rates and rebalancing these to gas, and a consultation on a streamlined energy and carbon reporting framework (SECR). The SECR consultation built on responses from the 2015 consultation on the Business Energy Efficiency Landscape, which found significant stakeholder support for a reformed reporting framework. This IA updates the analysis set out in the SECR Consultation Stage IA.

What are the policy objectives and the intended effects?
The policy objectives of a SECR framework are to reduce the overall administrative burdens on participants, whilst improving the incentive for organisations to save energy through energy efficiency – thus reducing energy bills and carbon emissions. Requiring organisations to report on their energy use is intended to drive behaviour change by raising awareness of energy efficiency with organisational decision makers, and increasing the importance of energy efficiency to organisations through reputational drivers. Increased transparency for investors and others will make them more able to hold companies to account.

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)
This IA is an update to the October 2017 Consultation Stage IA, which considered three approaches for introducing a mandatory SECR framework, as well as an alternative to regulation where a SECR framework was not introduced. The consultation sought views and evidence on a range of issues relating to the options proposed. The preferred option presented in this IA has been informed by these responses, as well as wider engagement with stakeholders. Stakeholders supported a UK wide scheme requiring all large companies to report on onsite electricity, gas and transport and continue MGHG reporting. Additionally companies would report on energy efficiency actions taken. Alternatives to regulation would be to have voluntary reporting of energy and emissions, although this would not provide consistent and transparent information to stakeholders.

Will the policy be reviewed? It will be reviewed. **If applicable, set review date:** 29th February 2024

Does implementation go beyond minimum EU requirements?		N/A		
Are any of these organisations in scope?	**Micro No**	**Small No**	**Medium No**	**Large Yes**
What is the CO_2 equivalent change in greenhouse gas emissions? (Million tonnes CO_2 equivalent)		**Traded: -7.9**	**Non-traded: -5.0**	

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible Minister: Chris Pincher Date: 29/05/2018

Summary: Analysis & Evidence

Policy Option 1

Description: Streamlined energy and carbon reporting framework for all large UK registered, unquoted companies and their corporate groups, and all UK quoted companies. Companies will disclose gas, electricity and transport energy use and associated emissions in annual reports, as well as any energy efficiency actions taken during the previous year.

FULL ECONOMIC ASSESSMENT

Price Base Year 2017	PV Base Year 2019	Time Period Years 17	Net Benefit (Present Value (PV)) (£m)		
			Low: 698	**High:** 9,719	**Best Estimate:** 1,549

COSTS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	12	1	-47	**-465**
High	12		184	**3,251**
Best Estimate	12		105	**2,013**

Description and scale of key monetised costs by 'main affected groups'

The changes announced at Budget 2016 (closing the CRC, increasing CCL rates, rebalancing CCL to gas) plus the introduction of a SECR framework result in a total cost of £2,013m. This package comprises a net reduction in business administrative costs, estimated at PV £20m, and public sector administrative costs, estimated at PV £75m, accruing mainly to organisations currently in the CRC. These changes also cause a net increase in capital, hassle and operational costs, estimated at PV £2,108m, resulting from the increased uptake of energy efficiency measures. Costs are measured against the counterfactual of all current and planned policies before the Budget 2016 changes.

Other key non-monetised costs by 'main affected groups'

There is potentially a rebound effect, whereby organisations improve their energy efficiency and spend some of the financial savings on other energy using activities. This effect has not been monetised as there is insufficient evidence available to assess the scale and likelihood of its effect.

BENEFITS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	0	0	25	**233**
High	0		1,022	**12,970**
Best Estimate	0		287	**3,562**

Description and scale of key monetised benefits by 'main affected groups'

The changes announced at Budget 2016 (closing the CRC, increasing CCL rates, rebalancing CCL to gas) plus the introduction of a SECR framework result in a total benefit of £3,562m. This comprises a net increase in energy savings, estimated at PV £2,856m, resulting from the increased uptake in energy efficiency measures. These energy savings result in a PV £103m improvement in air quality; PV £597m carbon savings; and a PV £7m reduction in noise pollution. An additional £262m of annual bill savings are also expected as an indirect result of reporting. The main groups affected by these benefits will be wider society and organisations implementing energy efficiency measures. Benefits are measured against the counterfactual of all current and planned policies before Budget 2016 changes.

Other key non-monetised benefits by 'main affected groups'

The productivity impact of energy efficiency improvements, as organisations produce goods and services at a lower cost and reinvest these savings into productive activities. Increased productivity has numerous positive impacts on the UK economy: it can increase wages; increase competitiveness; boost exports; and increase economic growth. This impact has not been monetised as there is insufficient evidence available to quantify this impact.

Key assumptions/sensitivities/risks **Discount rate (%)** 3.5

The impact of a SECR framework on organisational behaviour and the responsiveness of organisations to changes in energy costs are key assumptions in the analysis. Another key assumption is the cost of energy efficiency measures that are taken up by organisations. The sensitivity analysis tests the materiality of these assumptions, and several others, on the NPV estimate.

BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:			Score for Business Impact Target (qualifying provisions only) £m:
Costs: 15.6 (regulatory only)	**Benefits:** 0	**Net:** 15.6	To be confirmed

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Glossary of Terms

BIT – Business Impact Target

CCA – Climate Change Agreement

CCL – Climate Change Levy

CRC – CRC Energy Efficiency Scheme

DA – Devolved Administration

EA – Environmental Agency

EANDCB – Estimated Annual Net Direct Cost to Business

EEP – Energy and Emissions Projections

ESOS – Energy Savings Opportunity Scheme

EU ETS – EU Emissions Trading Scheme

GHG – Greenhouse Gas

IDBR – Inter-Departmental Business Register

MACC – Marginal Abatement Cost Curve

ND-NEED – Non-Domestic - National Energy Efficiency Data-framework

NPV – Net Present Value

ONS – Office of National Statistics

RPC – Regulatory Policy Committee

SaMBA – Small and Micro Business Assessment

SECR – Streamlined Energy and Carbon Reporting

Summary

1. This Impact Assessment (IA) follows on from a consultation on the introduction of a Streamlined Energy and Carbon Reporting (SECR) framework. The preferred SECR framework has been refined from the Consultation Stage IA options to reflect feedback from the consultation and other stakeholder engagement. This IA presents the separate and combined policy package impacts of:

    - The closure of the CRC Energy Efficiency Scheme (CRC), from the end of the 2018-19 compliance year.
    - The increase in Climate Change Levy (CCL) rates from April 2019 and rebalancing CCL rates for gas and electricity.
    - The introduction of a SECR Framework.

2. The counterfactual scenario in this IA is based on Energy and Emissions Projections (EEP) 2017 and reflects all current and planned policies in place as of July 2017. This scenario is adjusted to assume that the CRC and Mandatory Greenhouse Gas (MGHG) reporting remain; CCL rates increase annually from 2015 with RPI inflation; and no SECR framework is introduced. The impacts of policy changes are measured against this counterfactual in an incremental manner.

3. The preferred SECR framework requires (i) UK registered, unquoted large companies (Table 9 defines ‘large’ company based on Companies Act 2006 definition) to report their energy use and emissions relating to gas, electricity and transport, and an intensity metric, through their company’s annual reports and (ii) for quoted companies to continue to report their global GHG emissions and an intensity metric, and additionally start to report their global total energy use. Additionally, companies will report on their energy efficiency actions taken.

4. Consultation feedback has led to the three following key policy refinements, to the options presented in the Consultation Stage IA:

    - A statutory de minimis has been added, where it is not cost-effective to audit and report. Companies using lower ‘domestic levels’ of energy are not required to disclose their SECR information, if they confirm they used 40,000kWh or less in the 12 month period.
    - Unquoted companies are now able to benefit from an exemption where it is not practical to obtain information.
    - Reporting requirement now based on Companies Act definition of “large” companies, rather than the ESOS ‘large’ definition for simplicity, as companies are more familiar with this definition and currently provide information for their annual accounts using this definition.

5. The preferred SECR framework leads to an increase in energy savings, which in turn leads to an increase in carbon savings, improvements to air quality and a reduction in noise pollution relative to the counterfactual. There is also an increase in the cost of capital investment in energy efficiency, and

associated hassle costs and operational costs.[1] Overall administrative burdens are reduced due to the CRC removal.

6. Table 1 gives a high level overview of the key impacts of preferred SECR framework and the combined policy package.

Table 1 – Overview of key impacts of the preferred SECR framework and the combined policy package

	NPV, 2017 £m	EANDCB, 2014 £m	Annual Energy Savings, TWh	Annual Carbon Savings, MtCO2e
SECR Framework	818	15.6	2.4	0.47
Combined Policy Package	1,549	-1.3	4.0	0.75

7. The combined impact of the changes announced at Budget 2016 (closing the CRC, increasing CCL rates, and rebalancing CCL onto gas) and introducing the preferred SECR framework, measured against the counterfactual, are estimated to generate benefits of £3,562m and costs of £2,013m, resulting in an NPV of £1,549m over 2019 to 2035. The Equivalent Annual Net Direct Cost to Business (EANDCB) under the combined policy package is -£1.3m.[2]

[1] Hassle costs refer to the administrative costs incurred when making energy efficiency investments whlst operational costs are the running costs associated with these investments (e.g. costs of retraining staff or hiring maintainance personel).
[2]This EANDCB figure reflects the overall admin burden to business of the total package and is different to the regulatory only EANDCB, which does not consider the impact of CRC closure due the status of CRC as an environmental tax (see paragraph 87 for details on what is covered in EANDCB estimates)

Section A: Introduction, Consultation Feedback and New Analysis

Introduction

8. The current business energy policy framework is complex, as organisations can be in scope of multiple policies relating to energy use and emissions: e.g. those creating a price signal (the CCL); those requiring measurement or reporting (the Energy Saving Opportunity Scheme (ESOS) and MGHG Reporting); and those requiring both (EU Emissions Trading System (EU ETS); Climate Change Agreements (CCAs); and the CRC). Following the 2015 Summer Budget[3] the Government consulted on a review of the business energy efficiency tax landscape to simplify and improve the effectiveness of the regime.

9. The Government response[4] to the consultation, published alongside the 2016 Budget[5], announced a simplification of the business energy efficiency landscape that will involve the closure of the CRC Energy Efficiency Scheme (CRC), from the end of the 2018-19 compliance year and a fiscally neutral increase in Climate Change Levy (CCL) rates from April 2019. This involves the ratio of the electricity CCL rate to the gas CCL rate changing from 2.9:1 to 2.5:1 from April 2019. In the longer term, the government announced its intention to rebalance CCL rates to reach a ratio of 1:1 (electricity:gas) by 2025. The government also acknowledged the support for maintaining mandatory energy and carbon reporting and announced a further consultation on a SECR framework, for introduction from April 2019.

10. Following on from the SECR consultation, which closed in January 2018, the estimated impacts of these proposals have been revised to reflect updates to data sources and changes in the scope and design of the preferred SECR framework.

Rationale for intervention

11. The market for energy efficiency can be characterised by two market failures and the associated barriers that these create towards energy efficiency investment.

Information failures:

- lead to a lack of awareness of organisational energy use, energy efficiency opportunities and bill savings potential. This prevents decision makers from identifying and acting on potential energy savings (potentially leading to energy expenditure being viewed a fixed cost);
- contribute to and are sustained by **embryonic markets[6]** which limit the availability of expertise necessary to invest in energy efficiency.

[3] HMT, 2015, *Summer Budget 2015.*
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/443232/50325_Summer_Budget_15_Web_Accessible.pdf
[4] HMT, 2016, *Reforming the business energy efficiency tax landscape: response to the consultation.*
https://www.gov.uk/government/consultations/consultation-reforming-the-business-energy-efficiency-tax-landscape
[5] HMT, 2016, *Budget 2016.* p.52
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/508193/HMT_Budget_2016_Web_Accessible.pdf
[6] Embryonic markets refer to industries still in the development stage usually dealing with products or technologies for which limited demand has been established

Externalities:

- lead to the prices paid for energy not reflecting the wider costs on society from energy use, this also **causes energy efficiency to be undervalued**, as a result even projects with short payback periods are ignored in favour of investments which are considered "core" to the organisation;
- create **misaligned financial incentives**, meaning that decision makers (e.g. an organisation with a short tenancy agreement) would not benefit from their investment decisions (while a subsequent tenant would).

12. Taxing energy use only addresses the barrier of undervaluing energy efficiency by increasing the private cost of energy use, therefore increasing the incentive to invest in energy efficiency measures. The available evidence on reporting, for example the assessment on energy use reporting by Eunomia in 2014[7], suggests that mandatory reporting can address the barriers associated with information asymmetry and help alleviate externalities (which result in undervaluing energy efficiency) by providing organisations with information on their energy use and helping them to identify energy savings opportunities. The evidence also suggests that reporting schemes requiring board-level sign-off and public disclosure can help to address misaligned incentives by creating reputational drivers and encouraging behavioural change. Increasing the demand for energy efficiency measures also attracts profit-seeking entrepreneurs and innovators to enter the market for energy efficiency, helping to overcome the 'embryonic markets' barrier. The package of policies assessed here will therefore server to tackle all the barriers identified. The introduction of SECR acts to correct information failures and to complement changes in CCL rates by increasing awareness of energy costs. Undervaluing of energy efficiency is addressed through CCL rate changes which, through increasing business energy costs to capture societal costs, will incentivise businesses to take up further energy efficiency measure.

13. The stakeholder workshops reviewed the rationale for the need to regulate to achieve the planned SECR objectives. There was widespread stakeholder support for a reformed and simplified reporting framework at the stakeholder workshops and in the consultation feedback. The majority of consultation respondents agreed that mandatory reporting is an important element of the policy landscape; and that board or senior level sign-off delivered greater benefits.

Objectives of policy package

14. The objectives of the policy package are to:
    - Reduce the administrative burdens of complying with business reporting policies;
    - Simplify the policy landscape to increase coherence of policy levers for organisations;
    - Increase the effectiveness of the policy framework in addressing the barriers to energy efficiency;
    - Contribute to the Government's carbon budgets by reducing emissions from energy use, and developing markets for energy efficiency products.

[7] DECC, 2014, *Evidence Review of the Impact of Central and Public Disclosure Methods for Reporting Energy Use and Energy* Efficiency. https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/323114/ESOS_-_Research_on_Impact_of_Reporting_Energy_Use_FINAL_.pdf

Structure of this IA

15. This IA assesses the impact of policy changes announced at Budget 2016, as well as the introduction of the preferred SECR framework. Reflecting this context, the analysis in this IA has been structured as below:
    - Part 1 assesses the impact of the Budget 2016 announcements:
        - Part 1a assesses the impact of closing the CRC;
        - Part 1b assesses the impact of the announced changes to CCL rates.
    - Part 2 assesses the impact of the preferred SECR framework;
    - Part 3 assesses the combined impact of the changes captured in Parts 1 and 2. It demonstrates the overall impact of the simplification package under the preferred SECR framework.

    The impacts of each change are assessed in an incremental manner.

Appraisal period and counterfactual

16. Analysis is based on an appraisal period from 2019 to 2035. This period covers the lifetime of the measures being assessed to capture the full stream of costs and benefits where data is available - principally Energy and Emissions Projections (EEP) (this data is required to inform the counterfactual scenario). These measures include lighting, industrial boilers or building fabric measures such as insulation, all of which have lifetimes of 20 years or more.

17. All monetised values are in 2017 prices. Where estimates have been stated in present value (PV) terms, 2019 has been used as the discounting base year as this is the year in which these policies come in to effect.

18. In order to examine the impact of these changes, the counterfactual scenario in this IA includes all implemented, adopted and agreed policies in place as of July 2017, reflected in BEIS' latest 2017 EEP[8], adjusted for the following policy assumptions:

    - The CRC is assumed to remain beyond 2019;
    - CCL rates are assumed to increase with RPI inflation, in line with the historic trend;
    - Reduced CCL rates available under CCAs are assumed to increase with RPI inflation to 2035, beyond the point at which CCAs expires in 2023; and
    - MGHG reporting is assumed to remain in place.

19. Table 2 presents the counterfactual for energy consumption, emissions and administrative costs[9]. Emissions and energy demand projections are sourced from EEP[10], and refer to organisations in scope from the industrial; commercial services; public services; transport; and agriculture sectors. Counterfactual business administrative burdens capture the administrative costs of the CRC (taken from an externally

[8] BEIS, *Updated energy and emissions projections,* https://www.gov.uk/government/collections/energy-and-emissions-projections
[9] The counterfactual has not been presented for other impacts such as capital costs and air quality, due to the limited data available on the counterfactual for these impacts
[10] Annexes D and E, BEIS, *Updated energy and emissions projections.*

commissioned study on the costs of compliance for CRC participants[11]) and MGHG Reporting (taken from a previous IA on MGHG Reporting[12]).

Table 2 – Estimated annual energy use, emission and business admin burdens under the counterfactual, 2019-2035

Average annual, 2019 to 2035	Counterfactual scenario
Energy consumption, TWh	1,080.6
Emissions, MtCO2e	232.0
Business participants' administrative costs, 2017 £m	23.2

Source: EEP, CRC Cost of Compliance study.

[11] BEIS 2016, Assessment of costs to UK participants of compliance with Phase 2 of the CRC Scheme https://www.gov.uk/government/publications/assessment-of-costs-to-uk-participants-of-compliance-with-phase-2-of-the-crc-energy-efficiency-scheme

[12] Defra, 2012, *Impact Assessment of Options for Company GHG Reporting,* https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/82354/20120620-ghg-consult-final-ia.pdf
Note that this estimate does not include the cost of reporting international emissions.

Consultation Feedback and Rationale for preferred SECR framework

Consultation feedback

20. Table 3 gives an overview of the options presented at the consultation stage and the preferred SECR framework assessed in this IA.

Table 3 – Comparison of options for the introduction of a SECR framework

	Consultation Option 1	Consultation Option 2	Consultation Option 3 (Central)	Consultation Option 4	Preferred SECR framework
Scope of SECR framework	No SECR	CRC (4,000 large companies)	ESOS (11,900 large companies)	ESOS (11,900 large companies)	Companies Act 2006 (11,300 large companies)
Onsite energy used (UK only)		Electricity and gas	Electricity and gas	Electricity and gas	Electricity and gas
Transport energy use (UK only)		✔	✔	✔	✔
Emissions from UK energy use		✔	✔	✔	✔
Intensity metric	Via MGHG reporting	✔	✔	✔	✔
Global GHG emissions (quoted companies only)	Via MGHG reporting	✔	✔	✔	✔
Global total energy use (quoted companies only)		✔	✔	✔	✔
Requirement to publish energy and emissions data		✔	✔	✔	✔
Requirement to report on energy efficiency actions taken		✕	✕	✔	✔
Requirement to report on energy efficiency opportunities		✕	✕	✔	✕
Inclusion of an exemption, where it is not practical to obtain information		✕	✕	✕	✔
Inclusion of a formal 40MWh de minimis exemption		✕	✕	✕	✔

21. The consultation asked a variety of questions such as, who should be in scope, what they should report, where those in scope should report and when the obligation should commence[13]**.** The Department used the consultation to obtain feedback on the options and to test and strengthen the assumptions supporting the range of options provided.

22. There were 155 responses from the consultation. This feedback, along with that received at workshops and from the RPC review of the Consultation Stage IA, were used to inform the preferred SECR framework, along with a consideration of objectives of the policy and the implicit trade-offs between private and social benefits.

Rationale for preferred SECR framework

23. Option 1 in the Consultation Stage IA (no streamlined energy and carbon reporting framework) was rejected as a way forward, as it only addresses the undervaluing of energy efficiency through the increase in CCL rates; it did not address information failures or misaligned financial incentives. Stakeholders supported the role of mandatory reporting in driving energy savings and the role for increased transparency to make investors and others more able to hold companies to account.

24. The **preferred SECR framework** links most closely to options 3 and 4 in the Consultation Stage IA. The preferred SECR framework requires (i) UK registered, unquoted large companies (based on the Companies Act 2006 definition) to report their energy use and emissions relating to gas, electricity and transport, and an intensity metric, through their company's annual reports and (ii) for quoted[14] companies to continue to report their global GHG emissions and an intensity metric, and additionally start to report their global total energy use. Additionally, companies will report on their energy efficiency actions taken (but are not required to disclose ESOS opportunity recommendations).

25. Consultation feedback led to the three following key policy refinements, from the consultation options presented:
    - A statutory de minimis has been added, where it is not cost-effective to audit and report. Companies using lower 'domestic levels' of energy are not required to disclose their SECR information, if they confirm they used 40,000kWh or less in the 12 month period.
    - Unquoted companies are now able to benefit from an exemption, where it is not practical to obtain information.
    - Reporting requirement now based on Companies Act definition of "large" companies, rather than the ESOS 'large' definition for simplicity, as companies are more familiar with this definition and currently provide information for their annual accounts using this definition.

26. A comparison of total NPV and EANDCB figures between the options set out in the Consultation Stage IA and the preferred SECR framework considered in this IA can be seen in Table 4. Here we have presented what NPV and EANDCB figures would be for the Consultation Stage IA options in light of updates to data

[13] https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/652410/SECR_Consultation_-_Final_with_IA_v2.pdf

[14] from section 385 of the Companies Act 2006, a quoted company is a UK registered company whose equity share capital is officially listed on the Main Market of the London Stock Exchange or in an EEA State, or admitted to dealing on either the New York Stock Exchange or Nasdaq

sources and methodology (including population updates). This has been done so that impacts are directly comparable to the figures presented for the package under the preferred framework. Table 17 gives an idea of the components underlying these changes, with further discussion of methodological updates provided in Annex B.

Table 4 – Comparison of total NPV and EANDCB pre and post consultation

	Consultation Option 1	Consultation Option 2	Consultation Option 3	Consultation Option 4	Preferred SECR framework
Total NPV, 2017 £m (Consultation Stage IA)	666	1,034	1,057	1,081	N/A
Total NPV, 2017 £m (Final stage IA)	731	1,322	1,535	1,594	1,549
Total EANDCB, 2014 £m (Consultation Stage IA)	-17.0	-8.6	-6.8	-4.7	N/A
Total EANDCB, 2014 £m (Final stage IA)	-16.9	-8.5	-0.2	2.8	-1.3

27. Table 4 shows that under the preferred framework the policy package delivers the second highest NPV. Whilst the total NPV is higher under the scope set out in Option 4 of the Consultation Stage IA, this policy package also delivers an increase in costs to business estimated at £2.8m annually. The preferred framework reduces business burdens through the inclusion of a statutory de minimis and provisions to exempt reporting of up to 10% of energy that has not been practical to report and ensures the package delivers a net reduction in total admin burdens.

New Analysis

Overview

28. This IA contains new and updated analysis conducted to reflect developments in policy design informed by the consultation and work undertaken to strengthen the assumptions and underlying evidence base. It also includes an update of existing sources of evidence, where new data was published post consultation. The key areas of change with respect to the analysis presented in the Consultation Stage IA are:

- Following best practice, underlying data sources have been updated to utilise latest available releases. This includes an updated counterfactual scenario[15], and updated evidence about the scope and overlaps of this policy with other policies such as CCAs[16]. Finally prices and appraisal values have been updated.
- Large companies are now defined using the Companies Act definition of 'large'. This analysis assumes negligible difference between this and the ESOS definition of large considered in the consultation IA due to the similarities in these definitions.
- Headline estimates of the number of businesses in scope and overlaps have been revised following efforts to strengthen the evidence behind previous estimates. A discussion of the analysis undertaken can be found in Annex B.
- Admin burden assumptions for companies not previously covered by CRC have been revised following feedback from stakeholders that the methodology employed in the Consultation Stage IA underestimated these costs.
- The preferred framework now incorporates the addition of a statutory 40,000KWh de minimis threshold and introduces a 'comply or explain' provision for unquoted companies allowing these companies to exempt a portion of their energy use and emissions from reporting provided they can explain why it would place a disproportional burden on them to report this data.
- The methodology behind estimates of capital, hassle and operational costs has been revised to better reflect the actions likely to be taken up as a result the policy. Principally, the new methodology incorporates stricter payback requirements for the abatement measures used to inform these costs, meaning that only measures with private payback of less than 7 years have been considered.

Quantified impact of new analysis

29. The changes and updates discussed in the above section have meant that the high level figures presented in this impact assessment differ from those presented in the Consultation Stage IA. Table 5

[15] Energy and Emissions Projections 2017 https://www.gov.uk/government/collections/energy-and-emissions-projections

[16] Non-Domestic – National Energy Efficiency Data-framework (ND-NEED) data which is used to determine the amount of energy already in the scope of other policies such as CCAs and EU-ETS

provides a comparison of these figures between the central option in the Consultation Stage IA and the preferred framework presented in this IA.

Table 5 – Comparison of headline impacts in the 2017 Consultation Stage IA and the Final Stage IA

	Total NPV, 2017 £m	EANDCB of policy package, 2014 £m	SECR Annual Energy Savings (TWh)	SECR Annual Carbon Savings (MtCO2e)
2017 Consultation Stage IA	1,057	-6.8	2.4	0.48
2018 Final Stage IA	1,549	-1.3	2.4	0.47

30. The greatest impact has been on the estimated NPV of the policy package and the estimated costs to business, with associated savings being broadly similar between the two IAs. A more detailed breakdown of the impact of the various changes is given in Part 3 of the Analysis and Impacts section.

Section B: Analysis and Impacts

Part 1 – Impact of Budget 2016 Announcements

Part 1a – The Impact of Closing the CRC Energy Efficiency Scheme

31. In its response to the consultation on reforming the business energy efficiency tax landscape, the Government announced its decision to close the CRC following the 2018-19 compliance year, with no purchase of allowances required to cover emissions for energy supplied from April 2019.[17] Organisations will report under the CRC for the last time by the end of July 2019, with a surrender of allowances for emissions from energy supplied in the 2018-19 compliance year by the end of October 2019.

32. To assess the impact on energy savings from closing the CRC it is necessary to consider its legacy savings, i.e. energy savings which will continue to occur after its closure. Legacy savings have been captured by assuming that all energy efficiency measures implemented before 2019 remain in place when the CRC is closed. Table 6 presents the change in energy savings from closing the CRC, which is calculated by taking the difference between its estimated energy savings and legacy savings.

Table 6 – Annual energy savings and legacy energy savings of the CRC, 2019-2035

	Average annual savings, TWh 2019 to 2035
CRC energy savings	**5.6**
CRC legacy energy savings	**2.4**
Change in savings from closing the CRC	**-3.2**

Source: EEP

33. Table 7 presents the impacts of closing the CRC, as compared against the counterfactual of all current and planned policies in place before Budget 2016.

Table 7 – Estimated costs and benefits of closing the CRC, 2019-2035

		Average annual impact
Costs	Change in energy savings, TWh	-3.2
	Change in traded carbon savings, $MtCO_2e$	-0.1
	Change in non-traded carbon savings, $MtCO_2e$	-0.5
	Fall in air quality, 2017 £m	-2.1
Benefits	Change in business participants' administrative costs, 2017 £m	-20.4
	Change in public sector participants' administrative costs, 2017 £m	-5.7
	Change in capital, hassle and operational costs, 2017 £m	-122.2

34. The closure of the CRC leads to a reduction in average annual energy savings of 3.2TWh, along with associated decreases in traded and non-traded carbon savings of $0.1MtCO_2e$ and $0.5MtCO_2e$ respectively. Benefits of its closure include the reduction of average annual business participants' administrative costs of £20.4 million, a decrease in average annual public sector participants' administrative costs of £5.7 million and a £122.2 million average annual decrease in capital, hassle and operational costs.

[17] Page 5, HMT, 2016, *Reforming the business energy efficiency tax landscape: response to the consultation.*

Key risks and uncertainties

35. The largest uncertainty in this analysis relates to the projected energy savings of the CRC and the legacy savings which persist after the scheme is closed. This is due to the difficulty of projecting the future take-up of energy efficiency measures by organisations, and in projecting the persistence of energy savings after the CRC is closed. The sensitivity analysis in Part 3 tests this uncertainty.

Part 1b – Impacts of Increasing and Rebalancing CCL Rates

36. At Budget 2016 the Government announced that the main rates of the CCL will increase from April 2019 to offset the loss of revenue from closing the CRC. Also, the ratio of the electricity CCL rate to the gas CCL rate will be rebalanced from 2.9:1 to 2.5:1 from April 2019, and will reach 1:1 by 2025. This rebalancing will mean an increase in the gas rate to reach that parity with the electricity rate (which will also be increasing over this period). The increase in the gas CCL rate relative to electricity is likely to drive organisations to substitute gas energy for electricity, thereby reducing associated emissions. The specific CCL rates after 2019 have not yet been announced, so the analysis in this IA illustratively assumes that CCL ratios are changed in a linear path from 2019 to 2025, and rates increase with RPI inflation as in previous years.[18] The 2016 Budget stated that the CCL discount available to Climate Change Agreement (CCA) participants will also increase from April 2019 to ensure they pay no more than an RPI increase.[19] Although the current CCA scheme ends in 2023, this analysis illustratively assumes that the reduced rate of CCL for CCA participants increases with RPI inflation from 2019 to 2035.

37. The impacts of rate changes are estimated using a price elasticity of demand (PeD) approach which measures the demand response by businesses to changes in the price of fuels. This IA uses a central PeD estimate of -0.3 based on a literature review conducted on behalf of the department.

38. Table 8 illustrates the incremental impact of increasing and rebalancing CCL rates after closing the CRC: thus the impacts below are additional to those presented in Part 1a. Impacts are monetised and discounted in Part 3.

Table 8 – Estimated costs and benefits of increasing CCL rates, 2019-2035

		Average annual impact, 2019 to 2035
Costs	Change in business participants' administrative costs, 2017 £m	0
	Change in public sector participants' administrative costs, 2017 £m	0
	Change in capital, hassle and operational costs, 2017 £m	168
Benefits	Change in energy savings, TWh	4.8
	Change in traded carbon savings, MtCO2e	0.3
	Change in non-traded carbon savings, MtCO2e	0.6
	Improvement in air quality, 2017 £m	5.1

[18] HMRC, 2016, *Climate Change Levy: main and reduced rates.* https://www.gov.uk/government/publications/climate-change-levy-main-and-reduced-rates/climate-change-levy-main-and-reduced-rates
[19] Page 53, HMT, 2016, *Budget 2016*.

39. Capital, hassle and operational costs increase by an average annual £168 million, as a result of greater uptake of energy efficiency measures being incentivised by the CCL rate increases. As a result of the changes, companies will use less energy overall, with approximate average annual energy savings of 4.8TWh, along with associated decreases in traded and non-traded carbon savings of 0.3MtCO_2e and 0.6MtCO_2e respectively.

Key risks and uncertainties

40. The greatest uncertainty in the analysis is the assumption for the price elasticity of demand for energy. This assumption reflects the average historic response to previous changes in energy costs, which may not hold in the future as business and policy conditions change. The impact of this assumption on the results is tested in the sensitivity analysis in Part 3.

41. The analysis uses the latest published energy price projections from the Green Book supplementary guidance on valuing energy use and greenhouse gas emissions[20]. Energy prices are difficult to predict and have fluctuated significantly over time, so these projections are likely to have considerable uncertainty. The impact of different energy cost scenarios is tested in the sensitivity analysis in Part 3.

[20] https://www.gov.uk/government/publications/valuation-of-energy-use-and-greenhouse-gas-emissions-for-appraisal

Part 2 – Impacts of SECR Framework

42. **Part 2 assesses the preferred SECR framework.** The analysis in this section examines the incremental impact of introducing an SECR framework after closing the CRC (Part 1a) and increasing and rebalancing CCL rates (Part 1b). Impacts in Part 2 are additional to these changes: they do not include impacts discussed in Part 1. Part 3 presents the combined impact of the simplification package.

Information to be reported / exemptions

43. The **preferred SECR framework** requires (i) UK registered, unquoted large companies (Table 9 defines 'large') to report their energy use and emissions relating to gas, electricity and transport, and an intensity metric, through their company's annual reports and (ii) for quoted[21] companies to continue to report their global GHG emissions and an intensity metric, and additionally start to report their global total energy use. Additionally companies will report on their energy efficiency actions taken.

44. A statutory de minimis has been added post consultation, where it is not cost-effective to audit and report. Companies using lower "domestic levels" of energy are not required to disclose their SECR information, if they confirm, on an annual basis, they used 40,000kWh or less in the 12 month period.

45. A 'comply or explain' exemption has also been added allowing unquoted companies to exempt a proportion of their energy use and emissions from reporting, provided they can explain why it would place a disproportional burden on them to report this data.

Organisations in scope

46. The preferred SECR framework will apply to companies registered under the Companies Act 2006. This means that organisations which are not registered as companies, for example public sector organisations, some charities and some private sector organisations, may not be in scope of the SECR framework.

47. This IA makes various references to 'large' organisations. **Unless otherwise stated, all references to 'large' should be taken to refer to 'large' as defined by Companies Act 2006 – see Table 9.** This is a change to the proposals in the Consultation Stage IA, which were based on ESOS 'large' definition. The change was made for simplicity purposes, as companies will be more familiar with the Companies Act definition and are currently providing information for their annual accounts using this definition.

Table 9 – Definitions of 'large' under Companies Act 2006 and ESOS

Framework	Definition of 'large'

[21] from section 385 of the Companies Act 2006, a quoted company is a UK registered company whose equity share capital is officially listed on the Main Market of the London Stock Exchange or in an EEA State, or admitted to dealing on either the New York Stock Exchange or Nasdaq[22] DECC, 2014, *Evidence Review of the Impact of Central and Public Disclosure Methods for Reporting Energy Use and Energy* Efficiency.

Companies Act 2006	Where two or more of the following criteria apply to a company within a financial year: • More than 250 employees • Annual turnover greater than £36m • Annual balance sheet total greater than £18m There are 'smoothing provisions' which apply where a company crosses over the size threshold, a change must persist for two years to have an effect on the company's classification. *These thresholds are set out in sections 465 and 466 of the Companies Act 2006 and are updated from time to time. At group level the financial thresholds are on an aggregate basis.*
ESOS	Undertakings: i) which employ an average of 250 or more people in a certain 12 month period, or an annual turnover in excess of €50m and an annual balance sheet total in excess of €43m, and ii) where undertakings do not satisfy the specified employee or financial thresholds, but are either the UK parent of a 'large' undertaking, or a UK subsidiary of a 'large' UK undertaking, or a UK subsidiary of a parent who has a 'large' subsidiary. *Derived from the requirements of Article 8 of the Energy Efficiency Directive. 'Smoothing provisions' also apply.*

Number of organisations in scope

48. Table 10 shows the number of large companies in scope of the SECR framework. The methodology behind these estimates is presented in Annex B.

Table 10 – Estimated number of large companies in scope of the preferred SECR framework

Population	Large organisation	After exemptions	*Source*
SECR	11,900	*11,300*	*Estimate from the EA, ND-NEED*
of which previously in CRC	3,800	*3,800*	*ESOS IA, Mint*

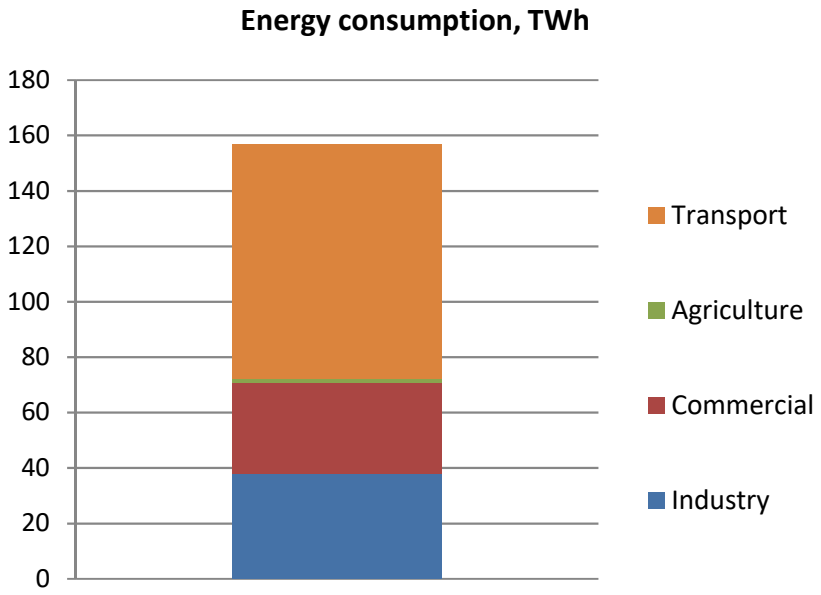
Figures have been rounded. 'EA' is the Environment Agency. 'Mint' is a proprietary business reporting tool.

Energy use in scope

49. The average annual energy use **within which new energy and carbon savings can be realised** under the requirements of the preferred SECR framework (and once CRC is removed) is estimated at **157TWh**. This reflects energy use which is not already reported outside the CRC, for example in CCAs or EU ETS, across the transport, industrial, commercial and agricultural sectors, as shown in Figure 1. This energy forms the basis against which potential savings are calculated. Companies will however be required to report total energy consumption (including that covered by CCAs and EU ETS)**.**

50. Annex B gives further detail of how energy savings are calculated based on energy in scope.

Figure 1 - Annual energy use proposed to be subject to new reporting requirements under the preferred SECR framework once CRC is removed, by sector, 2019 - 2035



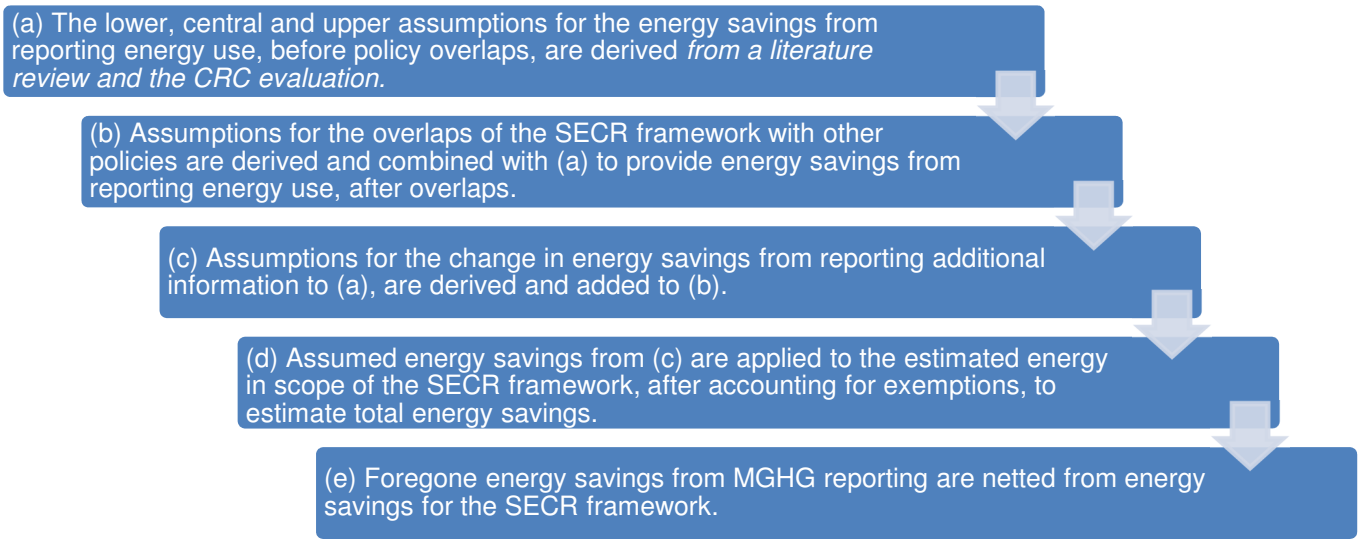
Benefits associated with a SECR Framework

51. **Energy savings.** Mandatory reporting schemes can drive organisations to implement energy efficiency measures and therefore generate energy savings and reduce their energy bills. Existing evidence on reporting, including the Eunomia report[22] and CRC evaluation[23], indicated that reporting energy use delivers energy savings of 4% based on the following key drivers of reporting mechanisms which are likely to drive energy savings:

- Mandatory rather than voluntary reporting;
- Reports which require board or senior management sign-off;
- Reporting the magnitude/costs of energy to increase their salience;
- Structured and standardised reporting formats; and
- Reputational drivers, for example the publication of data on emissions

52. This IA estimates participant energy savings using a staged approach outlined in Figure 2 and explained further in Annex B. The estimated average annual energy savings from introducing SECR are **2.4TWh,** based on the above evidence that reporting drives an additional 4% of energy savings**.** These savings are then used to calculate the carbon, air and noise benefits associated with SECR.

Figure 2 - Methodology for estimating the energy savings of the SECR framework



53. **Carbon savings and air quality improvements.** Higher energy savings lead to a fall in greenhouse gas emissions and improvements in air quality. On an average annual basis over 2019-2035, the estimated reduction in traded and non-traded carbon emissions are **0.23 and 0.24MtCO_2e respectively**

[22] DECC, 2014, *Evidence Review of the Impact of Central and Public Disclosure Methods for Reporting Energy Use and Energy* Efficiency. https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/323114/ESOS_-_Research_on_Impact_of_Reporting_Energy_Use_FINAL_.pdf
[23] DECC, 2015, *CRC Energy Efficiency Scheme Evaluation.* https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/445719/CRC_evaluation_synthesis_report_FINAL_150709.pdf

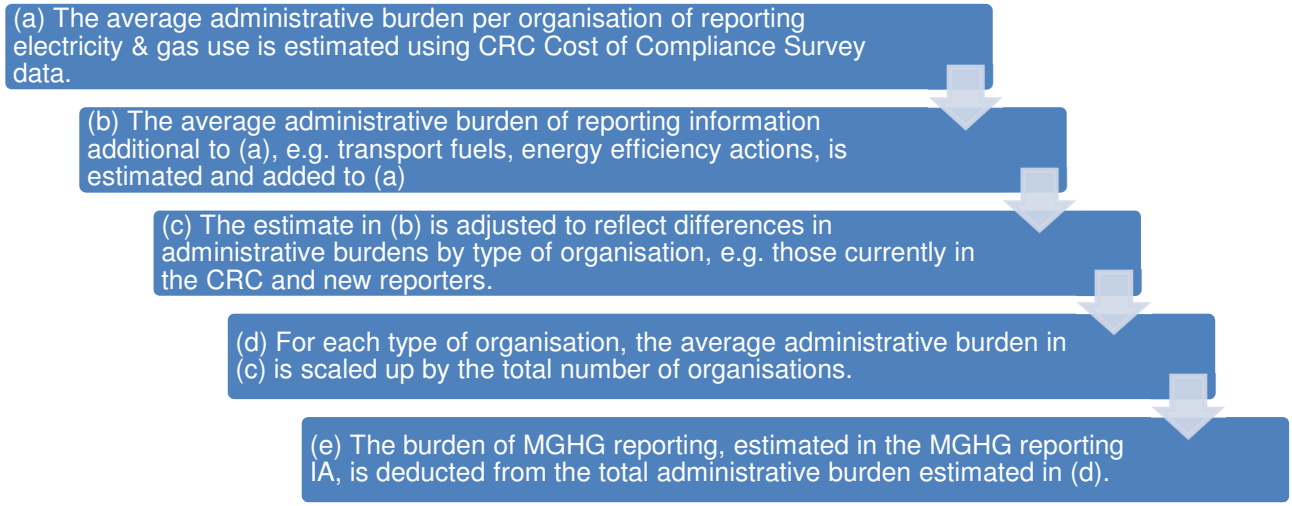
54. **Noise pollution benefits.** Energy efficiency savings in the transport sector lead to reductions in noise pollution (e.g. through less reliance on private transport). The annual average reduction in noise pollution is estimated to be **£0.5m** over 2019-2035.

Costs associated with a SECR Framework

55. **Administrative burdens to participants (including familiarisation and up-front costs)**. A new mandatory reporting scheme imposes an administrative burden on organisations as they need to use staff time or pay external contractors in order to understand the rules and to collect, analyse and disclose the required data. These costs are estimated using data from the CRC Cost of Compliance Study[24], which outlines the costs (as reported by scheme participants) of undertaking activities common to reporting schemes. The full list of activities considered in the CRC study is given in Annex D of this IA (this includes items such as understanding the scheme and identifying exclusions). From this list the activities relevant to SECR are taken to give an indication of SECR admin costs. Costs are broken down in to up-front (or familiarisation) and ongoing costs, allowing these items to be estimated separately. Finally, these costs are adjusted to account for differences between CRC and SECR and the underlying business populations (e.g. costs are scaled up to account for the inclusion of transport energy in SECR).

56. The estimated average annual administrative burden of the preferred SECR framework is **£18.5m**. The full staged approach for calculating participant admin costs is outlined in Figure 3 and explained further in Annex B.

Figure 3 - Methodology for estimating the administrative burdens of the SECR framework



57. **Increased capital, hassle and operational costs.** Capital, hassle and operational costs are assessed in line with standard GHG appraisal guidance. They are calculated by taking the average costs of measures likely to be taken up as a result of the policy (weighted by energy savings) and scaling these to account for the level of adoption required to achieve estimated energy savings. Measures and their associated costs

[24] BEIS, Assessment of costs to UK participants of compliance with Phase 2 of the CRC Energy Efficiency Scheme https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/651109/Research_-_Assessment_of_costs_to_UK_participants_of_compliance_with_Phase_2_of_the_CRC_Scheme.pdf

and savings are taken from Marginal Abatement Cost Curves (MACC) developed for the Fifth Carbon Budget. A 7 year payback requirement is included to ensure only measures likely to be considered by business are included. This approach is also used for estimates of hassle and operational costs. Average annual energy savings of 2.4TWh are estimated to increase annual average capital, hassle and operational costs by **£68m.**

58. Table 11 illustrates the impact of introducing the preferred SECR framework once the CRC has been closed (Part 1a) and CCL rates increased and rebalanced (Part 1b). As such, the impacts presented below are additional to those presented in Part 1b.

Table 11 – Estimated costs and benefits under the preferred SECR framework, 2019-2035

Average Annual impacts, 2019 to 2035		Preferred SECR framework
Benefits	Change in energy savings, TWh	2.35
	Improvement in noise pollution, 2017 £m	0.5
	Change in traded carbon savings, MtCO2e	0.23
	Change in non-traded carbon savings, MtCO2e	0.24
	Improvement in air quality, 2017 £m	5.14
Costs	Change in business participants' administrative costs, 2017 £m	18.5
	Change in capital, hassle and operational costs, 2017 £m	68

Key risks and uncertainties

59. The largest uncertainty in the analysis is around the assumed energy savings from the SECR framework. There is limited evidence to quantify the impact of the specific reporting schemes. As such, a combination of illustrative assumptions and evidence from related schemes have been used, with key assumptions discussed at stakeholder workshops and views from the consultation reviewed.

60. Likewise, there is also considerable uncertainty over policy interactions, particularly with ESOS and illustrative assumptions have been made in the absence of quantitative information. Again, assumptions were discussed at stakeholder workshops and views from the consultation reviewed. Feedback from stakeholder workshops and consultees are that these seem broadly appropriate.

61. We have attempted to quantify uncertainty for key assumptions, see sensitivity analysis set out in Part 3**.**

Part 3 – Impact of the Combined Package

62. Part 3 of this IA presents the combined impact of the simplification package, aggregating the impacts of:
    - Closure of the CRC (Part 1a);
    - Increasing and rebalancing CCL rates (Part 1b); and
    - Introducing a SECR framework (Part 2).

63. It also provides a detailed comparison of changes in the NPV and admin burdens of the overall package under the Consultation Stage IA central option and the preferred option set out in this IA.

Costs and benefits associated with the combined package

Overall impacts

64. Table 12 shows the combined annual average impact of the simplification package as compared to the counterfactual. Total impacts over the appraisal period are monetised and discounted in Table 15.

Table 12 – The estimated change in annual energy use, emission and business administrative burdens from the simplification package, 2019-2035

Average annual impacts, 2019 to 2035		Preferred SECR framework (combined package)
Energy use, TWh	**Counterfactual energy use**	**1,080.6**
	[Part 1a] Impact of CRC closure	*3.2*
	[Part 1b] Impact of CCL rate changes	*-4.8*
	[Part 2] Impact of SECR framework	*-2.4*
	[Part 3] Impact of total package	***-4.0***
	After all policy changes	**1,076.6**
Emissions, MtCO2e	**Counterfactual emissions**	**232.0**
	[Part 1a] Impact of CRC closure	0.6
	[Part 1b] Impact of CCL rate changes	-0.9
	[Part 2] Impact of SECR framework	-0.5
	[Part 3] Impact of total package	**-0.8**
	After all policy changes	**231.3**
Business administrative burdens, 2017 £m	**Counterfactual administrative costs**	**23.2**
	[Part 1a] Impact of CRC closure	-20.4
	[Part 1b] Impact of CCL rate changes	0.0
	[Part 2] Impact of SECR framework	18.5
	[Part 3] Impact of total package	**-1.9**
	After all policy changes	**21.3**

Source: EEP, CRC Cost of Compliance study. Figures may not sum due to rounding.

65. The overall package under the preferred SECR framework leads to average annual energy savings of 4.0TWh, along with an associated increase in carbon savings of 0.8MtCO_2e. Average annual administrative costs across all organisations are estimated to fall by around £1.9m a year due to the admin cost reduction from closing CRC offsetting the additional admin burdens from SECR.

66. Table 13 presents the breakdown of carbon impacts for each change considered in this IA over the appraisal period, 2019 to 2035.

Table 13 – Estimated lifetime carbon savings by policy change, 2019-2035

MtCO2e	Total impact, 2019 to 2035			
	Closure of the CRC (Part 1a)	Increase & rebalance CCL rates (Part 1b)	Introducing a SECR framework (Part 2)	Combined package (Sum of Parts 1 & 2)
Traded carbon savings	-1.7	5.7	3.9	7.9
Non-traded carbon savings	-8.5	9.5	4.0	5.0
Total carbon savings	**-10.2**	**15.1**	**7.9**	**12.8**

Figures may not sum due to rounding.

67. Closing the CRC decreases total carbon savings by 10.2 $MtCO_2e$ over 2019-2035, mostly in the non-traded sector, and increasing and rebalancing CCL rates after closing the CRC saves 15.1 $MtCO_2e$. Introducing SECR under the preferred framework saves an estimated additional 7.9$MtCO_2e$, meaning that the whole package saves approximately 12.8$MtCO_2e$ over 2019-2035. Breaking this down further, the combined package is estimated to achieve 2.5$MtCO_2e$ of savings over Carbon Budget 4 (2023-2027) and 3.2$MtCO_2e$ of savings over Carbon Budget 5 (2028-2032).

68. Table 14 presents the average annual and transition impacts of the combined package under the preferred SECR framework. Transition costs are defined as the initial one-off costs associated with the SECR framework (Annex D lists the 'one-off' and 'on-going' activities required under the SECR framework)[25]. There are no transitional benefits associated with policy package. Note these figures are undiscounted and thus differ from Table 15. Table 20 and Table 21 in the Sensitivity Analysis section give high and low estimates of transition costs and benefits.

Table 14 – Estimated lifetime transition costs and benefits of the combined package, 2019-2035

	2017 £m, undiscounted	
Benefits	Total benefits	4,886
	Of which transition benefits	0
	Average annual benefits (excl. transition benefits)	287
Costs	Total Costs	1,801
	Of which transition costs	12
	Average annual costs (excl. transition costs)	105

69. Table 15 shows the incremental impact of each element of the policy package analysed in this IA. From left to right, the first column ('Closure of the CRC') is compared to the counterfactual of all current and planned policies in place before Budget 2016, as set out in the introduction. The second column ('Increase

[25] The one-off costs to participants last one year.

& rebalance CCL rates') illustrates the incremental impact of increasing CCL rates following the closure of the CRC. The third column ('introducing a SECR framework') presents the impact of introducing a SECR framework. The cumulative impact of the simplification package can be seen from the final column ('combined package'), which is the sum of the previous three columns.

Table 15 – Estimated costs and benefits of the combined package, 2019-2035

2017 PV £m	Total impact, 2019 to 2035			
	Closure of the CRC (Part 1a)	Increase & rebalance CCL rates (Part 1b)	Introducing a SECR framework (Part 2)	Combined package (Sum of Parts 1 & 2)
Energy savings	-1,110	2,210	1,756	2,856
Traded carbon savings	-54	208	130	283
Non-traded carbon savings	-505	574	245	314
Air quality improvements	-29	65	67	103
Noise pollution impacts	0	0	7	7
Total benefits	**-1,698**	**3,056**	**2,204**	**3,562**
Admin. burden to business	-266	0	245	-20
Admin. burden to public sector	-75	0	0	-75
Capital costs	-1,536	2,333	935	1,733
Hassle costs	-306	462	186	341
Operational costs	-36	50	20	34
Total costs	**-2,218**	**2,845**	**1,386**	**2,013**
Net impact	**520**	**211**	**818**	**1,549**

Figures may not sum due to rounding. Positive figures indicate an increase in costs/benefits, while negative figures represent a decrease.

70. The policy package delivers substantial societal benefits with energy savings representing the largest contribution to total PV benefits of £3,562m. The increased energy savings also contribute to increased costs over the counterfactual with associated capital costs contributing the majority of total PV costs of £2,013m. Capital costs are relatively lower for the introduction of SECR due associated energy savings being lower than for CRC and CCL. SECR delivers higher monetised PV energy savings than are lost from closure of CRC however. This is due to a greater proportion of energy savings under SECR arising from electricity abatement which has significantly higher long-run supply costs than gas and therefore delivers relatively larger societal benefits. The total package represents a net benefit to society, as benefits from the package outweigh the costs, delivering an overall NPV of £1,549 over the 2019-2035 appraisal period.

Indirect impacts

71. In addition to the benefits estimated above the analysis also provides estimates of participant bill savings as a result of increased energy efficiency. Bill savings are an indirect benefit and not included in NPV estimates since it would risk double counting, they have therefore been provided separately in Table 16. Bill savings are calculated by multiplying estimated energy savings by retail fuel prices.

Table 16 – Participant bill savings

	2017 £m, undiscounted
Total bill savings of policy package	403
Of which from SECR	262

Comparison of impacts of the Combined Package with the central option at Consultation Stage

72. Table 17 breaks down the impact of the key changes outlined in the New Analysis section, focusing on how they impact on NPV, and PV costs and benefits, as well as on business admin burdens.

Table 17 – Comparison of key changes from the 2017 Consultation Stage IA central option to the Final Stage IA preferred option

Update	Total NPV, 2017 £m	PV Costs change, 2017 £m	PV Benefits change, 2017 £m	Total EANDCB, 2014 £m
2017 Consultation Stage IA Option 3 (Central option)	**1,057**	**N/A**	**N/A**	**-6.8**
Updates to existing data sources and price discounting	1,479	-128	+293	-6.0
Revision of methodology for calculating non-CRC admin burdens	1,433	+45	0	-3.0
Revision of methodology behind estimates of capital, hassle and operational costs	1,579	-146	0	-3.0
Update to business population estimates	1,530	+50	0	0.1
Updated population overlap assumption	1,535	-6	0	-0.2
Introduction of a 'comply or explain' provision	1,489	-64	-110	-0.7
Introduction of a formal 40MWh de minimis threshold	1,499	-10	-(0)	-1.3
Added in requirement to report on energy efficiency actions taken (final figures)	1,549	+54	+104	-1.3
2018 Final Stage IA	**1,549**	**N/A**	**N/A**	**-1.3**
2018 Final Stage IA vs 2017 Consultation Stage IA	**+493**	**-205**	**+287**	**+5.5**

Figures may not sum due to rounding. Total NPV gives the cumulative NPV for each change made since the Consultation Stage IA.

73. Compared to the central option (Option 3) in the Consultation Stage IA, the preferred SECR framework set out in this impact assessment has lower estimated present value costs of £205m and higher estimated benefits of £287m totalling a £493m increase in NPV. The total burden to business has also gone up by £5.5m (EANDCB), due to updates to population estimates and admin burden calculations; however the policy package still delivers a net reduction in business admin costs (EANDCB) of approximately £1.3m annually.

74. Updates to underlying data sources and discounting of prices led to a significant increase in NPV driven primarily by three specific updates:

- the utilisation of more recent BEIS guidance on valuing emissions identified greater benefits associated with energy savings increasing the benefits of the policy package;
- the use of more recent EEP and updated ND-NEED data to inform the counterfactual scenario. This data found a greater proportion of energy in scope attributed to the industrial sector which has relatively lower capital costs, this led to a drop in present value costs across the package;

- the discounting base year of all present value estimates was changed from 2016 to 2019 to reflect the start year of the policy, this increased NPV as nominal benefits rose more than nominal costs by approximately 11%, due to a decrease in discounting (3.5% over three years).

75. The methodology for calculating admin burdens for non-CRC companies was revised following feedback from stakeholders. As a result we have looked in more detail at the CRC Cost of Compliance study evidence to refine our estimates of costs for smaller organisations, leading to an increase in admin burdens imposed by SECR on non-CRC firms relative to those previously in the CRC (see Annex B for details). This amounts to a £45m increase in the present value costs of the policy package (equivalent to approximately £3m in EANDCB).

76. The methodology for the estimation of capital, hassle and operational costs was revised to ensure that the assumptions behind these estimates more closely reflected the ambitions of the policy. Given the type of policy being deployed in this framework, we anticipate that businesses will choose to carry out low cost measures to achieve the energy savings, possibly comprising of behavioural or further control measures. We anticipate that these will have relatively low costs and businesses will not invest in them unless they produce a return on investment within an average of 3-4 years. These changes in methodology contributed to a reduction in the present value costs of the policy package of £146m.

77. Estimates of the number of businesses in scope of a SECR framework aligned to all 'large' companies were revised following efforts to strengthen the evidence base behind these estimates and ensure they were fit for purpose. Alongside updated estimates from the Environment Agency additional analytical work was undertaken using Mint[26] (a proprietary business information tool) to provide further estimates of the number of large organisations in scope as well as to provide analytical evidence to inform the assumed overlap between CRC participants and the preferred scope of SECR. This work identified an increase in the number of large companies in the scope of SECR leading to a significant increase in total admin burdens and increasing present value cost by £50m. Furthermore, the overlap between CRC and SECR previously assumed at 100% was revised to 94%, reducing the portion of CRC firms believed to be in the SECR population of 11,900 large companies and lowering estimated admin burdens for the 6% previously assumed to be ex-CRC. An explanation of the methodology used is given in Annex B.

78. The introduction of a 'comply or explain' provision means that a proportion of the total energy in scope of SECR may be exempt in practice due it not being practical for companies to report this data. To estimate the impact of this provision an analytical assumption has been made that this will lead to a 5% reduction in the total energy and emissions being reported therefore reducing associated savings (for simplicity it has been assumed this will be proportionally distributed across sectors and fuel types). This assumption has been chosen to align with findings from a similar 'comply or explain' approach adopted under ESOS. The impact of this provision is to reduce present value benefits with a smaller relative drop in associated costs, thereby leading to a lower total NPV. Business admin burdens also fall as a consequence.

[26] https://mintuk.bvdinfo.com

79. To gauge the potential of introducing a statutory de minimis internal analysis was conducted using ND-NEED data to assess the impact of a de minimis threshold aligned to the ESOS threshold of 40,000KWh. The analysis found that companies with energy use under this threshold presented very low potential savings, likely to be outweighed by the admin burdens of reporting. The analysis estimated that approximately 600 companies would fall under this threshold and therefore not be required to report under SECR. The removal of these companies brings the final population in scope to 11,300 resulting in increased NPV and reduced EANDCB as the associated costs of reporting are removed for those companies falling below the threshold. The impact on energy savings and present value benefits was negligible.

80. The addition of a requirement to report on energy efficiency actions taken during the 12 months of the reporting period is assumed to increase energy savings by 5% with no associated additional costs. Given this is a backwards looking requirement, in that companies will not need to conduct any additional audits to provide this information; we have therefore assumed no additional costs to including it. The associated increase in energy savings from this requirement have been assumed to be 5% (half that assumed under the more burdensome requirement previously set out in option 4 of the Consultation Stage IA). This leads to a net increase in the benefits of the SECR framework with no additional increase in admin burdens.

Impacts in Devolved Administrations

81. Decisions by the Devolved Administrations on their approach on CRC closure will be informed by a range of issues including the 2017 consultation. We have sought views from the Devolved Administrations before making final decisions on SECR reforms. 93% of all consultation responses agreed that an SECR framework should be UK wide. The analysis in this IA presents all results at the UK level, and assumes that the package of policy changes applies to all of the UK. This section presents a high level approach that could be used to disaggregate UK level impacts by each Devolved Administration (DA).

82. This approach involves apportioning UK impacts to each devolved area using the proportion of CRC and ESOS participants headquartered in each geography, as shown in Table 18. This approach assumes that the average costs and benefits of the policy changes per organisation are of a similar magnitude across each respective geography.

Table 18 – Potential disaggregation of impacts by DA

Data used for disaggregation	England	Scotland	Wales	Northern Ireland	UK total
Percentage of ESOS participants[27]	90%	6%	2%	2%	100%
Percentage of CRC participants[28]	88%	7%	3%	3%	100%

Figures may not sum due to rounding.

Qualitative analysis of non-monetised impacts

83. The pertinent non-monetised impacts relevant to the preferred framework are as follows:

- **The rebound effect.** Bill savings resulting from energy efficiency investments may be spent on other energy-using goods and services. This reduces the estimated overall energy savings resulting from energy efficiency policies.
- **ESOS vs. Companies Act 2006 definitions of large company.** The analysis assumes negligible difference between these two definitions. A comparison of the criteria indicates that each definition has the potential to bring some companies in scope whilst excluding some others that may meet the criteria of the other definition (e.g. the Companies Act requires the fulfilment of two or more criteria however has comparatively lower financial thresholds). Given the similarity of these definitions however and the difficulty of estimating population numbers (particularly at the threshold) they are treated as equivalent for the purposes of the analysis in this IA.
- **Government resource costs**. The current proposal is for electronic reporting (which would potentially involve the Government gathering and processing data) to be voluntary. This will be kept under review and be re-visited if the wider Company Accounts regime moves to mandatory electronic reporting. If Government were to process reporting data this would be at an additional cost.
- **Benefits from publishing data.** Improving publically available information on energy efficiency opportunities, by publishing reporting data could: (i) attract entrepreneurs and innovators to enter the

[27] Environment Agency data
[28] Environment Agency data

market for energy efficiency, helping to overcome the 'embryonic markets' barrier; (ii) improve the evidence base available for policy development.

- **Reputational impacts on businesses from publishing emissions.** Publicising an organisation's emissions could affect revenue for the business from environmentally conscious customers, e.g. the improved image of products and services attracting customers away from rivals. Both mechanisms create an incentive to invest in energy efficiency.
- **Productivity, competitiveness and economic growth impacts.** Energy efficiency has the potential to boost growth and lead to productivity gains for firms. Evidence suggests that small and positive impacts exist at both economy wide and firm level.[29] Energy efficiency investments reduce business costs, meaning they can deliver more for less. Capital spending creates jobs for installers and manufacturers of energy efficient equipment. Investment in energy efficiency can also increase innovation.
- **Opportunity cost.** Businesses will incur an opportunity cost on capital allocated towards adoption of energy efficiency measures. The opportunity cost would be equivalent to the return businesses could have earned by allocating capital to alternative uses (e.g. investing it elsewhere). This cost is an indirect impact of the policy package however, since businesses are still ultimately responsible for deciding which measures to adopt given alternative potential uses of their capital.
- **Security of supply.** Reducing energy demand through energy efficiency also improves security of supply. It reduces the UK's exposure to volatile international energy markets and means less energy infrastructure is required, lowering the overall costs of the energy system.
- **Legacy of the CRC.** The analysis estimates legacy energy savings from actions attributed to the CRC (see paragraph 32). However the analysis assumes that no new energy efficiency actions attributable to the CRC will occur once the scheme finishes.

[29] Vivid Economics, 2013, *Energy efficiency and economic growth,* http://www.vivideconomics.com/wp-content/uploads/2015/03/Vivid_Economics_-_Energy_efficiency_and_economic_growth.pdf
Allan G, Hanley N, McGregor PG, Swales JK & Turner K (2007), The impact of increased efficiency in the industrial use of energy: A computable general equilibrium analysis for the United Kingdom, *Energy Economics*, 29 (4), pp. 779-798, https://dspace.stir.ac.uk/bitstream/1893/7681/1/Allan%20et%20al_Energy%20Economics_2007_turner%20last.pdf
Cambridge Centre for Climate Change Mitigation Research, 2006, *The macro-economic rebound effect and the UK economy,* http://ukerc.rl.ac.uk/pdf/ee01015_final_b.pdf

Sensitivity analysis

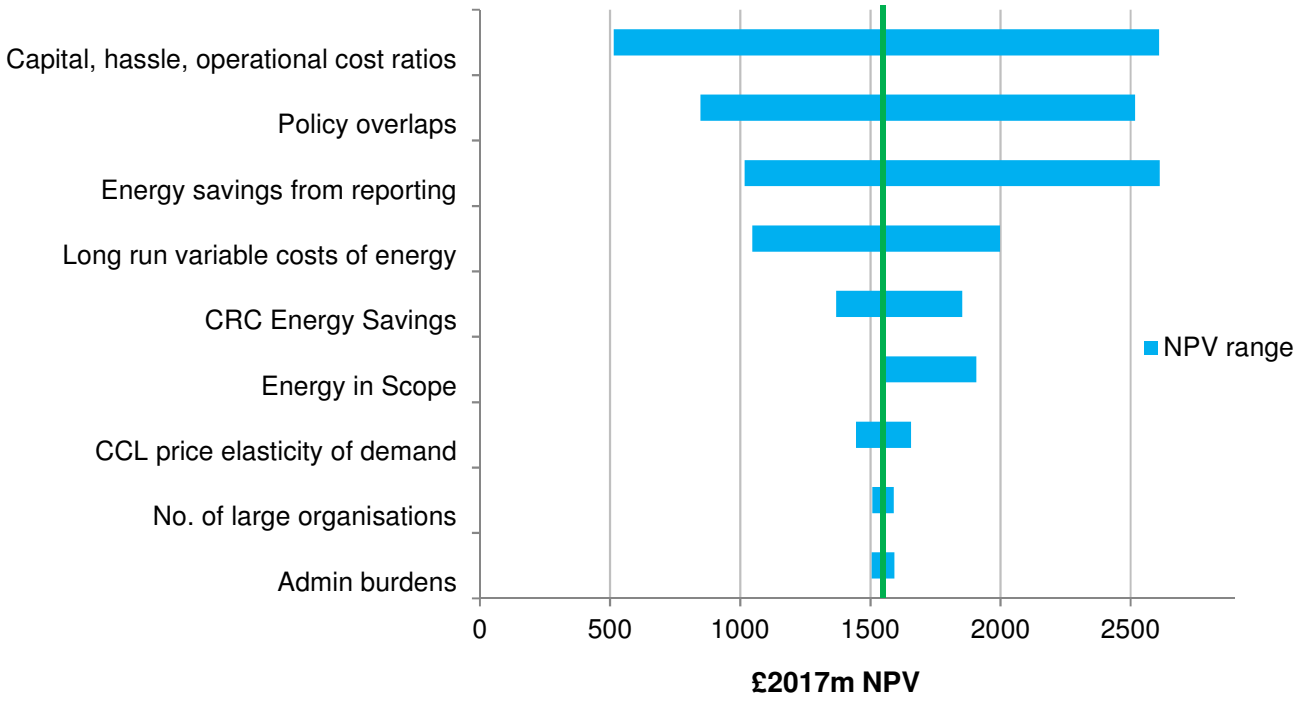
84. This section tests the assumptions with the greatest uncertainty to examine how materially they affect the results presented in this IA. For each assumption, lower and/or upper bounds have been informed by evidence where possible; however in some cases illustrative variations are applied.

85. Table 19 describes the specific assumptions tested. The most uncertain and material assumptions are marked with an asterisk '*' and are combined to estimate 'low' and 'high' NPV scenarios in Table 20 and Table 21. These are as follows: capital, hassle and operational costs; policy overlaps; energy savings from the SECR framework; long-run variable costs of energy supply.

Table 19 – Summary of sensitivity analysis

Assumption	Description	Policy change affected	Impact on NPV (NPV Range, 2017 £m)
Capital, hassle and operational costs*	The ratios of these costs to energy savings are increased or decreased by 50%	All	495 - 2,603
Policy overlaps*	The lower and upper bound assumptions for policy overlaps are used (see Table 30)	SECR framework	847 - 2,517
Energy Savings*	The lower and upper bound assumed energy savings of the SECR framework are used (see Table 27)	SECR framework	1,018 – 2,613
Long-run variable costs of energy supply*	Low and high cost scenarios are taken from BEIS guidance on valuation of energy supply	All	1,047 – 1,998
CRC energy Savings	For the lower bound, lost energy savings from closing the CRC assumed to be zero. For the upper bound, legacy savings of the CRC assumed to be zero	Closure of the CRC	1,369 - 1,853
CCL Price elasticity of demand*	The price elasticity of demand is increased and decreased by 50%	Change in CCL rates	1,445 - 1,657
Energy in scope	Electricity and gas use of large organisations is increased by 50%. Note that a lower value is not applied as the current analysis already uses a lower bound assumption (see Annex B for details on estimating energy in scope)	SECR framework	1,549 - 1,907
Number of large companies in scope	The number of large organisations in scope has been varied by +/-20% to align with upper and lower bound estimates found during analysis of population numbers	SECR framework	1,508 – 1,591
Administrative burdens of the SECR framework	Administrative burdens of the SECR framework varied by +/-15.5%, using the 95% confidence interval of from the Cost of Compliance study	SECR framework	1,506 - 1,593

Figure 4 – Sensitivity analysis for the NPV of the policy package



86. Table 20 and Table 21 present 'high' and 'low' scenarios, which have been constructed based on varying the assumptions with the greatest uncertainty, and which the results are most sensitive to (marked with an asterisk '*' in Table 19).

Table 20 – Sensitivity analysis: results of low NPV scenario

Low NPV Scenario, 2017 £m	Preferred SECR framework
Total transition costs	12
Total transition benefits	0
Average annual undiscounted costs	-47
Average annual undiscounted benefits	25
Total costs (PV)	-465
Total benefit (PV)	233
NPV	**698**

87. The **low NPV scenario** assumes high capital, hassle and operational costs, low energy savings, high policy overlaps, and low long-run variable costs of energy supply. Even under the low NPV scenario the combined package delivers a £698m overall benefit to society. NPV is higher under this combination of assumptions than the bottom of the range when looking at just the capital, hassle and operational costs assumption, as the policy overlaps assumptions negates any transport savings (by assuming 100% overlaps) meaning that the associated costs of transport abatement are also negated.

88. Costs are negative for the policy package, because the increase in costs from changing CCL rates and introducing the preferred SECR framework are outweighed by the reduction in costs from the closure of the CRC. The assumptions in the low scenario (such as lower energy savings from reporting and high policy overlaps) cause a reduction in the energy savings from the CCL changes and the SECR framework, but they do not affect the change in energy savings from closing the CRC. The lower energy savings lead to reduction in capital, hassle and operational from CCL changes and SECR, even after accounting for the

50% increase in these costs under the low NPV scenario. The 50% increase in capital, hassle and operational costs also mean that total cost savings from closure of the CRC are higher.

89. The **high NPV scenario** assumes low capital, hassle and operational costs, high energy savings, low policy overlaps and high long-run variable costs of energy supply. Energy savings under the high scenario are significantly larger than the central scenario, which results in greater benefits and therefore greater NPV. The total costs are also larger for the high scenario, because the increase in energy savings leads to an increase in the capital, hassle and operational costs associated with energy efficiency measures.

Table 21 – Sensitivity analysis: results of high NPV scenario

High NPV Scenarios, 2017 £m	Preferred SECR framework
Total transition costs	12
Total transition benefits	0
Average annual undiscounted costs	184
Average annual undiscounted benefits	1,022
Total costs (PV)	3,251
Total benefit (PV)	12,970
NPV	**9,719**

Equivalent Annual Net Direct Cost to Business

90. The EANDCB and Business NPV estimates presented on the cover sheet capture the following:
    - Reduced administrative burdens from removing MGHG reporting;
    - Increased administrative burdens from introducing a SECR framework.

    Estimates of the total administrative burden under the preferred framework (including the closure of the CRC) can be found in Table 22 and Table 23 below.

91. As the CRC is classed as an environmental tax[30] for the purposes of regulatory accounting, the fall in administrative burdens from closing the CRC is not in scope. This is consistent with the treatment of the CRC in the 2013 Impact Assessment[31], however could change with updates to the Better Regulation Framework. As a result, for the purposes of assessing the regulatory impact of this policy package the closure of CRC would not entail any direct costs or benefits for businesses. In reality, however, the closure of the CRC will result in a reduction in administrative burdens for businesses which will offset the increase in burdens resulting from introducing the SECR framework. Hence, in addition to the regulatory EANDCB (presented on the cover sheet), this IA also provides a total EANDCB. This latter value includes the reduction in direct costs from closing the CRC. While the tax review package is classed as an 'IN' for regulatory purposes, including the impact of closing the CRC results in a negative total EANDCB and a reduction in administrative burdens to business. Both EANDCBs estimates exclude impacts on the public sector.

[30] HMT, 2012, *Definition of environmental tax published,* https://www.gov.uk/government/news/definition-of-environmental-tax-published
[31] Paragraph 5, DECC, 2013, *Simplification options for the CRC Energy Efficiency scheme to help businesses,*: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/138377/CRC_Simplification_Final_Stage_Impact_Assessment_December_2012__updated____.pdf

92. Table 22 shows the business NPVs for the policy package under the preferred SECR framework. These estimates are used to calculate the EANDCB by applying annuity rates and rebasing to 2014 prices and 2015 present values.

Table 22 – Estimated Business NPV for each option, 2019-2035

2017 prices, 2019 present value	Preferred SECR framework
Regulatory Business NPV	-£245m
Total Business NPV	£20m

93. Table 23 outlines the EANDCB value under the preferred SECR framework. In line with BEIS Impact Assessment guidance, the EANDCB values have been converted into 2014 prices using the GDP deflator from the Business Impact Target Calculator[32], rather than the GDP deflator in the IAG appraisal guidance[33] which has been used elsewhere in the analysis presented in this IA.

Table 23 – Estimated EANDCB values for each option, 2019-2035

2014 prices, 2015 present value	Preferred SECR framework
Regulatory EANDCB	£15.6m
Total EANDCB	-£1.3m

94. Explanation of changes to EANDCB since the Consultation Stage IA can be found in paragraphs 73-80 and in Table 17.

Business Impact Target

95. The business impact target (BIT) for this parliament has not yet been agreed, and therefore at this stage we have been unable to produce a BIT score for this IA.

Small and micro business assessment

96. A small and micro business assessment (SaMBA) is mandatory for all new domestic regulatory proposals. Individual small and medium companies will not generally be in scope of the regulatory SECR framework which will apply to companies meeting the Companies Act 2006 definition of large as defined in Table 9 (however, quoted small and medium companies will continue to report their GHG emissions and an intensity metric): thus by definition there is no risk that it will generate disproportionate impacts for small and micro businesses. This is consistent with the SaMBA presented in the ESOS IA, which has a similar organisational scope.

[32] BIS, 2016, *Impact assessment calculator,* https://www.gov.uk/government/publications/impact-assessment-calculator--3
[33] BEIS, *Green Book supplementary guidance: valuation of energy use and greenhouse gas emissions for appraisal.*

Distributional impacts

97. The administrative burdens vary across organisations depending on what policies they are currently covered by. Table 24 illustrates how these impacts vary. Under the **combined package** there is a reduction in administrative burdens for the organisation currently subject to MGHG reporting and/or in the CRC, on average. For organisations not currently in the CRC or subject to MGHG reporting, the introduction of SECR results, on average, in an increase in administration burdens. Approximately 900 organisations currently in the CRC will not meet the Companies Act definition of large and therefore won't be required to report under SECR; these consist mostly of public sector organisations and companies not incorporated in the UK.

Table 24 – Estimated change in annual administrative burdens by organisation type, 2019-2035

Average change in annual administrative burden per organisation under the combined package, 2019-2035		Number of companies	Estimated change in annual admin burdens, 2017 £, undiscounted
Businesses in the scope of the SECR framework	Currently in the CRC but not in MGHG reporting	2,700	-1,300
	Currently in the CRC and in MGHG reporting	1,100	-3,800
	Not currently in the CRC or MGHG reporting	7,600	1,300
Businesses not in the scope of SECR	Currently in the CRC	900	-4,300

Figures have been rounded.

Competition Test

98. Under the existing policy landscape, businesses pay different tax rates on their energy use. Organisations in the CRC pay higher tax rates than their non-CRC, full CCL rate equivalents. Removing this asymmetry may remove competitive distortions between CRC and non-CRC firms operating in the same market. Overall, no significant impacts on competition are expected as a result of this package of policy changes.

Enforcement

99. Monitoring of non-financial reporting is undertaken by the Financial Reporting Council, and looks for false/reckless disclosures but does not check non-financial content. It is not proposed that additional monitoring or enforcement activities are added to this regime.

Evaluation plan

100. If implemented, the Government will review the impact of the SECR framework. This review plans to include an evaluation of the quantitative impact of the SECR framework and a qualitative understanding of the process through which it affects the energy efficiency of different enterprises.

101. Provisional evaluation questions may include:
- What have been the outcomes and impacts of the SECR framework?
- Which, if any, are the most influential aspects of the SECR framework?
- What explains any impacts seen / how have they come about (or not)?
- How has this differed for the organisations in scope of the SECR framework?
- What are the administrative burdens of the SECR framework, for different organisations and compared to the previous reporting systems?

102. The key metrics used to evaluate the policy may include:

- The number of organisations reporting under the SECR framework;
- The overall change in costs to businesses reporting;
- Any energy efficiency measure installed as a result of the SECR framework;
- Any energy and associated emissions savings realised by the SECR framework through reporting energy use and emissions;
- Financial savings to non-SMEs, delivered by the SECR framework.

As well as a qualitative assessment of e.g. the benefits to investors and others from increased transparency.

Key evaluation issues

103. In order to evaluate the impact of a SECR framework, it is necessary to isolate the impact directly attributed to the policy and strip out all other effects. This identifies the energy savings achieved as a result of the SECR framework *that would not have been achieved otherwise.* Additionality can be identified by comparing a 'treatment' group (those in the SECR framework) with a 'counterfactual' – organisations with identical characteristics, though not being in the policy. This can be difficult: characteristics are often related to eligibility for the policy, meaning there is no relevant population to compare to the 'treatment' group.

104. Approaches to establishing the counterfactual could include:
    - Establishing the amount of energy efficiency potential identified in an organisation;
    - Identifying action taken as a result of annually reporting this potential to decision makers;
    - Identifying action taken as a result of publishing energy use and emissions;
    - Accounting for organisations that would have published their energy use and emissions in the absence of mandated reporting; and
    - Comparing the energy efficiency behaviours of organisations just within the eligibility threshold with those of organisations just below the threshold.

    If a suitable counterfactual can be identified, an evaluation will also have to ensure that there is data which can estimate robustly the different impacts for the SECR framework and comparison groups.

105. The Government is committed to reviewing the SECR framework, if implemented. The planned publication date is 29th February 2024, within five years of the policy implementation date.

Annexes

Annex A – Summary of literature review on the quantitative impact of reporting

The 2014 Eunomia reviewed the evidence on the impact of reporting of energy use[34]. A selection of its conclusions is as follows:

- Qualitative evidence suggests reporting schemes drive energy efficiency behaviour; quantitative evidence on the causal relationship is limited;
- Mandatory reporting schemes appear to be more effective than voluntary reporting;
- Mandatory board-level sign off on reporting can drive investment in energy efficiency;
- Public disclosure of emissions (less evidence for energy use) is likely to incentivise behavioural change through reputational drivers; and
- Comparability is important when data are published: information that can be directly compared is more effective than information disseminated by individual organisations.

The 2014 CRC evaluation gathered evidence on the impact of the CRC between 2010 and 2012.[35] The evaluation found the main mechanisms driving the energy and emissions savings of the CRC were:

- The cost of allowances (both in raising awareness of, and in slightly improving the business case for, energy efficiency investments);
- Improved data and internal reporting on energy use;
- High-level sign-off of CRC allowances, which raised awareness at board level within some organisations;
- The reputational aspects of complying with the CRC; and
- Reputational aspects of CRC publications.

The lower bound assumption of the energy savings from the SECR framework has been informed by a literature review on the impact of energy reporting schemes. The evidence from this review is presented in Table 25 and clusters around an estimated annual energy savings of approximately 2%.

Table 25 – Summary of the quantitative evidence on the impact of reporting

Policy	**Estimated energy savings**	***Source***
National Australian Built Environment Rating System (Australia)	8%	*2013/14 NABERS annual report*[36]
Energy Star (US)	2%	*Energy Star Data Trends report*[37]

[34] DECC, 2014, *Evidence Review of the Impact of Central and Public Disclosure Methods for Reporting Energy Use and Energy* Efficiency.
[35] DECC, 2015, *CRC Energy Efficiency Scheme Evaluation.*
[36] IPD, 2013, *IPD Australia Green Investment Property Index,* https://www.nabers.gov.au/AnnualReport/life-of-program-statistics.html
[37] Energy Star, 2012, *Benchmarking and Energy Savings,* http://www.energystar.gov/ia/business/downloads/datatrends/DataTrends_Savings_20121002.pdf?3d9b-91a5

Display Energy Certificates (UK)	2%	*Page 31, 2014 ESOS IA*[38]
Energy Efficiency Opportunities (Australia)	2%	*Page 83, 2014 Eunomia report*[39]

The quantitative impact of reporting was discussed at a series of consultation workshops, with broad support for the estimated lower bound energy savings (which were based on this literature review). This was also the consensus from the consultation feedback. It was however pointed out that savings in some sectors (such as energy intensive industries) may be lower than this**.**

[38] DECC, 2014, *Energy Saving Opportunity Scheme IA*.
[39] DECC, 2014, *Evidence Review of the Impact of Central and Public Disclosure Methods for Reporting Energy Use and Energy* Efficiency.

Annex B – Detailed methodology for estimating number of organisations in scope, policy overlaps, energy savings and administrative burdens

Number of organisations in scope

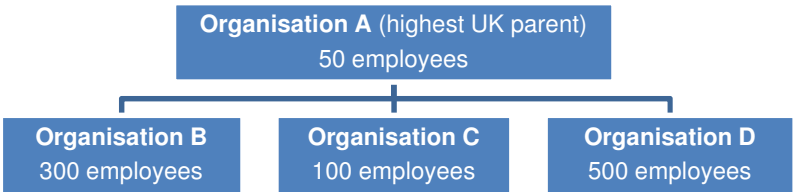
Headline estimate

All UK quoted companies currently in scope of MGHG reporting will be in scope of SECR. It is assumed that these around 1,200 companies are a subset of the large company populations set out below.

Under the preferred SECR framework, all 'large' UK companies formed and registered under the Companies Act 2006 and their corporate groups will be required to report, with the highest UK-based parent of each corporate group responsible for ensuring compliance. It follows from this definition that many of the groups in the SECR framework will therefore consist of several individual organisations.[40]

The distinction between groups and individual organisations is illustrated in Figure 5. Figure 5 shows a corporate group with at least one organisation within the group meets one of the Companies Act 2006 criteria of 'large'. The energy use and emission of all four organisations A, B, C & D in the group would be in scope of SECR under the preferred framework, and the entity(s) responsible for reporting would need to include the proposed energy and carbon information, either individually or for all organisations in the group, in annual reports to comply.

Figure 5 – An illustrative example of a group in the SECR framework



The analysis in this IA uses administrative burden estimates from the CRC Cost of Compliance study[41] to estimate the burden of the SECR framework. This requires the number of organisations in the CRC to be compared to the number of organisations in scope of the SECR framework. While data on total number of individual organisations under the preferred SECR framework and the CRC is unavailable, the total number of individual 'large' organisations can be estimated.

The number of individual large private and third sector organisations in scope of SECR (so under the Companies Act 2006 definition, Table 9, which includes organisations like A and C above who may not individually meet the definition of 'large') is estimated at 11,900, based on the latest estimate from the EA. This definition excludes public sector organisations (for whom we are looking to put in place a voluntary reporting framework), certain types of charity, and a number of private sector organisations, particularly

[40] This IA focuses on the number of organisations in scope of the SECR framework, rather than the number of groups. This is because data gathering is likely to occur at the organisation rather than group level: thus administrative burdens are likely to be more closely related to the number of organisations, rather than the number of groups.
[41] BEIS, Assessment of costs to UK participants of compliance with Phase 2 of the CRC Scheme https://www.gov.uk/government/publications/assessment-of-costs-to-uk-participants-of-compliance-with-phase-2-of-the-crc-energy-efficiency-scheme

companies operating in the UK who are not UK-registered. While the EA estimate is based on the ESOS definition of large we assume negligible difference in population numbers between this and the Companies Act definition employed in this IA.

The estimated number of large private and third sector organisations in scope of the CRC is approximately 4,700. This figure was originally estimated in the ESOS IA[42] for Phase 1 of the CRC, and has been scaled down to reflect the lower number of participants in Phase 2. Using data from the ONS labour market statistics portal[43] this number is scaled down to 85% to reflect the proportion of organisations which are UK registered, unquoted companies, which produces an estimated scope of 4,000 CRC companies prior to any analysis of how many are meeting the Companies Act large definition thresholds.

Additional analysis – post Consultation Stage IA

The Consultation Stage IA quoted 9,100 large companies in the scope of ESOS based on previous analysis conducted by the Environmental Agency (EA). For the final impact assessment the EA updated their estimate and additional analysis was carried out internally to further strengthen the evidence base. The latest estimate from the EA identified approximately 11,900 large companies under the preferred scope of SECR (before any de minimis exemptions). This estimate is supported by other sources such as the Interdepartmental Business Register (IDBR), which confirm an increase in the number of large companies in the timeframe between the current and previous estimates. Furthermore, analysis using Mint[44] (a proprietary business information tool) also indicated a greater number of companies than identified at the consultation stage. The Mint analysis was also used to improve estimates of the number of CRC companies that would fall under the scope of SECR and is discussed in detail below.

While the stated populations represent the best estimates provided by the data available, in practice company population numbers are subject to change over the appraisal period and as such no single static estimate will be fully representative of the true population in scope in any given year. Given this uncertainty over population numbers this IA has included additional analysis on the sensitivity of key impacts to varying the estimate of businesses in scope by 20% either way (broadly aligning with upper and lower bound population estimates) – this can be found under the Sensitivity Analysis heading in Part 3 of this IA.

Policy overlaps

To strengthen estimates of population numbers presented in the consultation IA additional analytical work was undertaken using Mint to provide further estimates of the number of large organisations in scope as well as to provide analytical evidence to inform the assumed overlap between CRC participants and the Companies Act definition of large (the analysis in the consultation IA assumed 100% of CRC companies would continue to report under SECR given that they are large energy users and would therefore likely meet the ESOS or Companies Act definitions of large).

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[42] *Annex D, DECC, 2014, Energy Saving Opportunity Scheme IA, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/323116/ESOS_Impact_Assessment_FINAL.pdf*

[43] http://www.nomisweb.co.uk/

[44] https://mintuk.bvdinfo.com

Using ESOS and CRC participant lists provided by the EA identified participants were run through Mint to aggregate each organisation to its highest level UK parent. This list of domestic ultimate owners was then run through Mint again to pick up all UK registered subsidiaries of the parent organisations. This process of aggregation and disaggregation was carried out to ensure all relevant organisations were picked up for those corporate groups identified by the EA as in the scope of each policy. The disaggregated lists were then cross-referenced to identify the overlap between companies appearing in CRC and those appearing in ESOS.

This analysis provided an indicative overlap of 88% between CRC and ESOS. This estimate was taken as a lower bound since the true populations are not known with certainty. A review of CRC participants also identified a number who are not UK incorporated and would therefore not be in scope of SECR under the Companies Act 2006 criteria, meaning any upper bound estimate of overlaps between CRC and ESOS would be under 100%. Using these two numbers an illustrative assumption was employed taking the 94% mid-point as the overlap between CRC and ESOS. This means that the number of CRC companies in SECR was reduced by 6% to 3,800 companies, to reflect the true proportion of the large company population currently reporting under CRC.

Exemptions

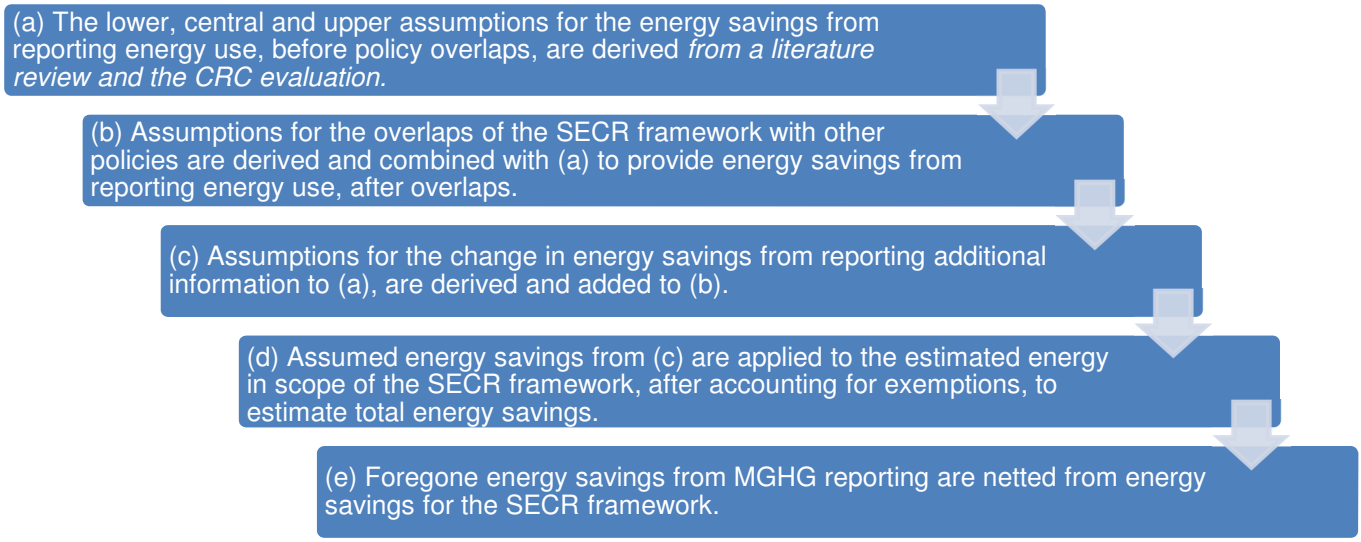
Under the preferred SECR framework a de minimis threshold has been included allowing companies using domestic levels of energy (under 40,000kWh annually) to be exempt from reporting. Analysis of ND-NEED data identified that approximately 600 companies would fall below this threshold. These companies and the associated energy use and admin burdens from reporting have therefore been removed from the analysis. Given these companies are by definition low energy users they would fall under the non-CRC population. Table 26 gives final estimates of the number of individual large companies in the CRC and SECR before and after exemptions.

Table 26 – Estimated number of large organisations in the CRC and ESOS by sector

Population	Large organisations	After exemptions	*Source*
SECR	11,900	*11,300*	*Estimate from the EA, ND-NEED*
of which previously in CRC	3,800	*3,800*	*ESOS IA, Mint*

Energy savings

Figure 6 - Methodology for estimating the energy savings of the SECR framework



(a) Energy savings for new reporters

Table 27 presents the lower, central and upper bound assumptions for annual energy savings from reporting energy use. These assumptions are informed by evidence on 'new reporters', i.e. those not required to measure or report on energy use for other policies.

Table 27 - Annual energy savings assumptions (before overlaps) for reporting energy use

	Lower bound	Central	Upper bound
Estimated impact	2%	4%	8%
Informed by:	Literature review	Various	Analysis of CRC evaluation

This 2% estimate is used as a lower bound as the policies examined in the literature review lack one or more of the key drivers of behaviour change, as identified from the Eunomia report and CRC evaluation (see Annex A). There is uncertainty around this estimate as the evidence relates to various policies across different countries and policy contexts.

The 8% upper bound assumption is derived from the CRC evaluation. The CRC evaluation compared CRC participants' energy use to the control group of 'information declarers' (organisations which fell just below the CRC electricity use threshold). The total savings estimated in the CRC was split into the 'price' element (from the purchase of CRC allowances), and the 'reporting' element (assumed to be the residual). The price element was estimated using the price elasticity of demand approach previously used to estimate the impact of the CCL on energy savings in Part 1b. Removing the 'price' element of these savings produces an estimate of annual energy savings from the reporting elements of the CRC of approximately 8%. However since the CRC evaluation relates to the early years of the scheme, these large energy savings may be short-term effects. The econometric analysis in the evaluation shows some evidence that energy savings began to fall towards the end of the period. Thus the estimate of 8% is used as an upper bound assumption.

The central assumption of 4% has been informed by a number of factors:

- 4% is a conservative midpoint between the lower and upper bound estimates of 2% and 8%.

- Using the energy savings of the CRC employed in EEP to estimate the reporting elements of the CRC yields an estimate of approximately 4%. This data is considered more appropriate than the evaluation for estimating the long term impact of the scheme.
- Evidence from the Energy Efficiency Opportunities Program in Australia found long term impacts of reporting to be approximately half the short-term impact (2-3 years)[45]. Applying this ratio to the 8% estimate from the CRC evaluation, which captures the first three years of the scheme, yields approximately 4%.

There is limited evidence quantifying the impact of reporting transport energy use. The analysis in this IA therefore applies the same energy savings assumptions to both onsite and transport energy use.

(b) Energy savings after policy overlaps

Some organisations in scope of the SECR framework are already required to measure or report some of their energy use through other policies. The estimates in Table 27 do not account for policy overlaps, and therefore need to be scaled down to avoid double-counting.

The main overlap is with ESOS, which requires all large private and third sector undertakings to conduct an energy audit once every four years (or to take an alternative route to compliance such as being ISO50001 compliant). There is uncertainty over which energy efficiency measures will be taken up as a result of these audits: this results in uncertainty over the size of the overlap. As a result, illustrative lower, central and upper overlap assumptions are used.

Both ESOS and the preferred SECR framework require the measurement of energy consumption; once every four years under ESOS, and annually for the SECR framework. Assuming measurements of energy use from ESOS can be re-used for the SECR framework (as SECR electricity, gas and transport is a subset of ESOS total energy use scope), in any given year, an average of 25% of organisations in the SECR framework are assumed to already be measuring their energy use. Thus the overlap of SECR with ESOS is assumed to be at least 25%. (As noted below, there is no change in scope of emissions reported proposed for UK quoted companies, and underlying energy is already measured to calculated total global emissions).

Further, an ESOS assessment produces a list of energy efficiency recommendations for organisations undertaking audits: this may lead to additional overlaps. In the absence of quantitative evidence, an illustrative assumption that this overlap is the same size as the overlap from measuring energy use is made. Further, given the uncertainty, lower and upper bounds of ± 25% are used, the impact of which is tested in the senesitivity analysis.

Table 28 summarises the overlap assumptions made for the SECR framework and ESOS. A higher percentage means that a greater overlap has been assumed, and fewer energy savings are therefore attributed to the SECR framework.

[45] Page 83, DECC, 2014, *Evidence Review of the Impact of Central and Public Disclosure Methods for Reporting Energy Use and Energy* Efficiency.

Table 28 - Overlap assumptions between ESOS and the SECR framework

	Lower bound	Central	Upper bound
Overlap due to measuring energy use in ESOS	25%	25%	25%
Overlap due to identification of energy efficiency recommendations in ESOS	50%	25%	0%
Total overlap between ESOS and the SECR framework	**75%**	**50%**	**25%**

Transport intensive organisations – e.g. those in the rail, bus and haulage sectors – are likely to spend a larger proportion of their total costs on energy than organisations that are not transport-intensive[46]. The ESOS IA accounts for this through illustrative assumptions to scale down the impact of ESOS[47]. The same overlap assumptions, presented in Table 29, have been used here to scale down the impact of the SECR framework.

Table 29 - Overlap assumptions for transport energy use

Transport	Lower bound	Central	Upper bound
Aviation, rail & shipping	100%	100%	100%
LGVs & HGVs	100%	50%	0%
Buses & coaches	100%	50%	0%
Company cars	100%	0%	0%

Source: ESOS IA

Table 30 presents the assumed energy savings from reporting energy use after all policy overlaps from Table 28 and Table 29 have been applied to the assumptions in Table 27.

Table 30 - Assumed energy savings (after overlaps) from reporting energy use

	Lower	Central	Upper
Onsite energy use	0.5%	2.0%	6.0%
Transport energy use			
Aviation, rail & shipping	0.0%	0.0%	0.0%
LGVs & HGVs	0.0%	1.0%	6.0%
Buses & coaches	0.0%	1.0%	6.0%
Company cars	0.0%	2.0%	6.0%

(c) Additional energy savings assumptions

As illustrated in Table 3, the preferred SECR framework requires organisations report on energy efficiency actions taken during the reporting period. Annually reporting on energy efficiency actions may enhance the impact of reporting by providing more frequent board and investor level awareness of the extent to which organisations are investing towards a low carbon future.

[46] The ESOS IA estimates that for transport-intensive organisations, energy costs are 10% of total expenditure, compared to 2% for services sectors.
[47] Section 6.4.7, DECC, 2014, *Energy Saving Opportunity Scheme IA*.

As only an interim process evaluation has been carried out on ESOS, the analysis here relies upon qualitative feedback gathered from stakeholders. Stakeholders were asked to compare expected energy savings from various reporting requirements during workshops (e.g. reporting energy efficiency opportunities; transport energy use; global emissions), and validated the assumptions used here. An illustrative assumption was made at the consultation stage that reporting on the scale and progress of energy efficiency opportunities increases the impact of the SECR framework by 10%. The preferred SECR framework only requires companies to report on energy efficiency actions taken rather than also mandating them to report on identified energy efficiency opportunities (previously required under option 4 of the Consultation Stage IA). It is therefore anticipated that additional savings from this requirement will be half of those previously assumed under the more burdensome requirement (i.e. 5%). As a result of this requirement, the assumed energy savings for onsite and transport (shown in Table 30) would increase by 5% (e.g. from 2% to 2.1%) under the preferred SECR framework.

It is also proposed that organisations report an intensity metric based on information that has already been gathered, for example energy use per £m of turnover. The rationale for this requirement is that it will allow more meaningful comparisons of data across companies in the SECR framework. This analysis has not assumed any additional energy savings from the requirement to report an intensity metric, due to the uncertainty around what information would be reported and therefore its likely impact.

Table 31 illustrates the central energy savings assumption under the preferred SECR framework. Applying these assumptions to the energy use in scope, described below, provides the estimate of energy savings from the SECR framework.

Table 31 - Central energy savings assumptions (after overlaps) under the preferred SECR framework

	Preferred SECR framework
Onsite energy use	2.1%
Transport energy use	
Aviation, rail & shipping	0%
LGVs & HGVs	1.05%
Buses & coaches	1.05%
Company cars	2.1%

(d) Energy use in scope

The energy use in scope of the SECR framework is estimated using different data sources for each sector. The Non-Domestic National Energy Efficiency Data (ND-NEED) framework splits energy use into SMEs and large organisations (using the Business Populations Estimates definition of large as having 250 or more employees, and we assume again that one ‘large’ definition is a good proxy for another); and Department for Transport (DfT) datasets are used for transport. For more detail on the approaches used, see Annex C.

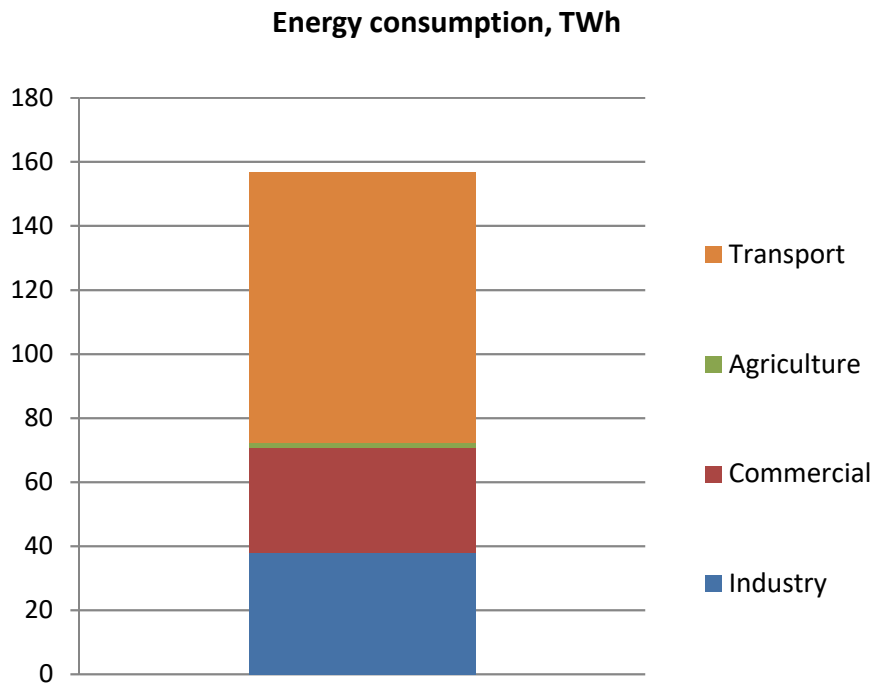
106. The average annual energy consumption **within which new energy and carbon savings can be realised** under the requirements of the preferred SECR framework (and once CRC is removed) is estimated at **157TWh**. This reflects energy use which is not already reported outside the CRC, for example in CCAs or EU ETS, across the transport, industrial, commercial and agricultural sectors, as shown in Figure 1. This energy forms the basis against which potential savings are calculated. Companies will however be required to report total energy consumption (including that covered by CCAs and EU ETS)**.**

This figure also accounts for the energy which will be exempt from reporting due to the formal de minimis exemption and 'comply or explain' provision included under the preferred SECR framework, estimated at approximately 8TWh annually. The implementation of these provisions is explained below.

For the 'comply or explain' provision companies can exempt a proportion of total energy use from reporting provided they can explain why it would impose disproportional burdens on them to report this data – an analytical assumption has been made that this will reduce the total energy in scope of SECR by 5% (informed by findings from a similar 'comply or explain' approach adopted in ESOS).

For the de minimis exemption additional analysis was conducted using ND-NEED data to assess the impact of including a 40,000kWh de minimis threshold on companies and energy savings. The analysis found the impact of introducing a threshold of this size to be negligible in term of energy savings, reducing the energy in scope by less than 0.1%.

Figure 7 - Annual energy use proposed to be subject to new reporting requirements under the preferred SECR framework once CRC is removed, by sector, 2019 - 2035



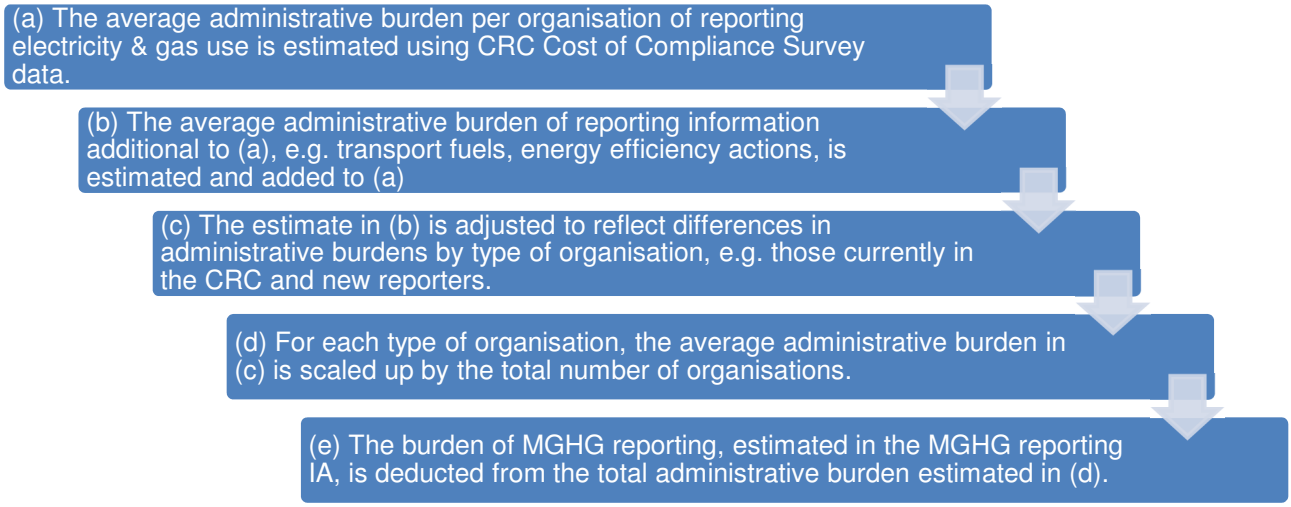
Source: ND-NEED, BEIS, DfT

(e) Forgone energy savings from moving from separate MGHG reporting

It is assumed that there is no impact on energy savings from moving from separate MGHG reporting. This is because it is proposed that quoted companies continue to report on domestic and international GHG emissions for which they are responsible, and an intensity metric, in the SECR framework (as well as starting to report underlying total global energy use).

Administrative burdens

Figure 8 - Methodology for estimating the administrative burdens of the preferred SECR framework



(a) Reporting electricity and gas use

The CRC Cost of Compliance survey estimates the administrative burdens of the CRC, and is used as a starting point for estimating the administrative burdens of the SECR framework. The activities required for the CRC that are not relevant to the SECR framework are identified and excluded. Examples include purchasing/trading CRC allowances and determining eligibility for the scheme, as organisations in scope have already been determined as they are companies required to provide the proposed energy and carbon reports (e.g. in Directors' reports or Strategic reports, or another report), and will know they are 'large' within the according to the Companies Act definition (see Table 9) – Annex D gives a detailed list of activities considered. After this process, only activities relating to the measurement/ reporting of electricity and gas use remain. Under the preferred SECR framework, participants would be required to convert energy use into emissions (while in the CRC this is calculated automatically), but it is assumed that the additional burden of doing this would be negligible if there are published factors available for use.

The average administrative burden per large organisation is then calculated. Table 32 presents estimated first year burdens, before and after the activities not relevant to the SECR framework are stripped out. First year costs presented below include a single year of one-off costs and on-going costs.

Table 32 - Average administrative burdens per large organisation in the Cost of Compliance study by sector, 2017 prices

	First year administrative burden per large organisation
All activities in the CRC	£6,900
Reporting electricity and gas use only	£3,800

Source: CRC Cost of Compliance study.

(b) Reporting additional information and exemptions

The preferred SECR framework requires some additional information to be measured and reported which is not currently required under the CRC. These include:

- Transport energy use;
- Energy efficiency actions taken during the reporting period; and

- An intensity metric

Transport energy use – It is proposed that transport energy is in scope of the preferred SECR framework. The ESOS IA used illustrative assumptions, tested with stakeholders, to estimate the burden for transport energy use as approximately 26% of the burdens for onsite energy use. The analysis in this IA uses the same assumption.

Energy efficiency actions taken – Under the preferred SECR framework companies would be required to report on energy efficiency actions taken during the period covered by reporting. Since this is a backward looking requirement (in that companies will not need to conduct any additional audit activities) no additional administrative burdens have been assumed as a result of its inclusion.

Intensity metric – It is proposed that organisations report an intensity metric based on information that has already been gathered, for example energy use per £m of turnover. The rationale for this requirement is that it will allow more meaningful comparisons of data across companies in the SECR framework. As the intensity metric is likely to be based on information that is already available, it is assumed that there are no additional administrative burdens from this requirement.

Additionally the preferred SECR framework includes a 'comply or explain' provision which is assumed to reduce the proportion of energy being reported by 5%. The methodology for discounting admin burdens due to this exemption is discussed in the next section. The impact of including this provision is to reduce average admin burdens per large organisation by approximately 2.3% (equivalent to £100).

Table 33 shows the average estimated burden of reporting information in addition to gas and electricity use, and after accounting for exemptions, under the preferred SECR framework. It builds upon the estimates in Table 32 using the approach outlined above.

Table 33 - Average administrative burdens associated with reporting additional information to CRC, 2017 prices

	First year administrative burden per large organisation
Reporting electricity and gas use only (from Table 32)	£3,800
Adjustment for reporting transport energy use	*+£1,000*
Total	**£4,700**
Adjustment for 'comply or explain' exemptions	*-£100*
Total (after exemptions)	**£4,600**

Source: EEP, ESOS IA. Figures may not sum due to rounding.

(c) Estimating average administrative burdens by organisation type

The Consultation Stage IA assumed a one-to-one relationship between admin burdens and energy in scope of reporting. Consultation feedback from stakeholders was that this was not appropriate and was underestimating the reduction in admin burdens for non-CRC companies from having less energy in scope. To improve on this assumption, evidence from the CRC Cost of Compliance Study (Appendix 2) was used to evaluate the relationship between energy use and compliance costs (emissions were used as a proxy for organisation energy use based on the available data). This analysis found the relationship between changes in emissions and changes in participant compliance costs to be stable at between 40-50%. Using this data an analytical assumption was made that there is on average a 0.45:1 relationship between admin burdens and energy in scope of reporting (i.e. a 10% reduction in energy in scope leads to a 4.5% reduction in admin burdens).

The above relationship is applied to all reductions in admin burdens due to lower energy in scope of reporting. This includes the 2.3% reduction in admin burdens due to 'comply or explain' detailed in (b) above (calculated by multiplying the 5% reduction in energy in scope by 0.45 to arrive at a 2.3% reduction in admin costs). The reduction in admin burdens for non-CRC companies discussed below also makes use of this relationship thereby improving on the estimates given in the Consultation Stage IA.

The data on administrative burdens in *(a)* and *(b)* are based on the CRC Cost of Compliance Survey. This may not be applicable to organisations not currently in scope of the CRC, who could have a different scale and pattern of energy use. Stakeholder feedback indicated that the burden of reporting would likely differ between organisations currently in and out of the CRC. This is because the latter are likely to have i) lower or less complex energy use, and ii) a greater proportion of energy use in scope of other policies such as CCAs or EU ETS.[48] The following paragraphs deal with these two factors in turn.

Administrative burdens for non-CRC participants are estimated to be 40% lower (£1,800 per organisation) than for CRC participants, using data from Annex D of the MGHG reporting IA. These estimates are used to calculate the difference in burdens for large organisations in the CRC versus large organisations outside the CRC (under the Companies Act 2006 definition of 'large', consistent with the rest of the analysis in this IA), reflecting the lower energy consumption and less complex energy use of non-CRC participants.

The analysis then adjusts the cost of reporting to take into account the proportion of energy used by organisations in the SECR framework which is already reported under CCAs and the EU ETS, and therefore is likely to not require gathering again in the SECR framework. CRC participant data and the ND-NEED framework were used to estimate that approximately 68% of total energy use in CRC organisations is not reported under CCAs and the EU ETS, so organisations would be required to gather data on this energy use.

These data were also used to estimate that only 24% of total energy use in large organisations not currently in the CRC would be in scope of the SECR framework, with a much larger proportion of energy use already reported under CCAs and EU ETS. Thus large organisations not currently in the CRC are required to report on approximately 65% less of their energy use compared to organisations in the CRC. Following the assumed 0.45:1 relationship between administrative costs and reported energy use described above, the estimated burden of reporting is reduced by 29% for non-CRC organisations (equivalent to £800 per organisation).

The difference in the proportion of energy use covered by CCAs and EU ETS between the CRC and non-CRC populations is driven by the design of the CRC as a scheme which is intended to target large, non-energy intensive organisations. Eligibility for the CRC applies only to consumption which is not already covered by CCAs or EU ETS, ensuring most energy-intensive organisations are out of scope of the policy.

Stakeholders indicated in the 2016 workshops they expect the one-off costs of the new reporting scheme to be similar for both CRC and non-CRC organisations: both groups would have to put in place new

[48] This assumption is supported by the Cost of Compliance Survey, which found that administrative burdens increase as energy use and the number of meters increase

systems to measure energy use. This finding is supported by the Cost of Compliance survey. Average Year 1 administrative burdens of Phase 2 were approximately 4% lower for new participants, compared to those already in the scheme in Phase 1. The analysis in this IA therefore includes no additional one-off costs for organisations not currently covered by the CRC.

Table 34 adjusts the estimated administrative burdens of CRC organisations in Table 32 to reflect different organisation types using the approach outlined above.

Table 34 - Average administrative burdens under the preferred SECR framework for CRC and non-CRC organisations, 2017 prices

	First year administrative burden per large organisation
CRC organisations (from Table 33)	£4,600
Adjustment due to lower energy use of non-CRC organisations	*-£1,800*
Adjustment from lower proportion of energy use in scope of reporting	*-£800*
Non-CRC organisations	£2,000

Sources: ND-NEED, CRC participant data. Figures may not sum due to rounding.

(d) Scaling up average administrative burdens to the population

The average administrative burdens per business are then scaled up by the total number of large organisations in each of the following groups:

- Companies currently in the CRC and in the scope of the preferred SECR framework;
- Companies not currently in the CRC.

As discussed above in Annex B an appropriate metric for comparing the CRC and ESOS populations is the number of individual large organisations. Analysis of policy overlaps also discussed in this Annex informed the assumption that 96% of CRC organisations would be in scope of the preferred SECR framework.

Table 35 gives total first year administrative burdens by organisation type.

Table 35 - Estimated administrative burdens under the preferred SECR framework by organisation types, 2017 prices

	First year burdens per organisation (from Table 33)	Number of individual large organisations	Total first year burdens
Companies in CRC	£4,600	3,800	£17.4m
Companies not in CRC	£2,000	7,600	£15.2m
Total	**-**	**11,300**	**£32.5m**

Source: the EA, ESOS IA, BEIS. Figures may not sum due to rounding.

(e) Deducting the administrative burdens from MGHG reporting

In addition to reporting on UK emissions, MGHG reporting also requires that all UK quoted companies report on the global emissions for which they are responsible in their annual reports. Under the preferred SECR framework it is proposed that the requirement for quoted companies to report on global GHG emissions is retained within the new reporting scheme, and that there is no separate MGHG reporting.

This means that quoted companies would still have to measure and report their international GHG emissions as before. Underlying energy use is proposed to be reported, but that would have had to be calculated to derive associated emissions. Therefore it is assumed that the administrative burden of reporting international emissions does not change for all options, and there is no additional burden from

reporting underlying energy use. However, it is assumed that quoted companies would already be measuring and reporting their UK emissions and energy use for the purposes of the SECR framework, so the administrative burdens relating to this activity are removed. These administrative burdens are taken directly from the MGHG IA[49], which are then subtracted from the figures in the right-hand column of Table 35 to estimate the net administrative cost of the preferred SECR framework.

Table 36 illustrates the impact of removing MGHG reporting on administrative burdens. This approach assumes that all companies reporting under MGHG would be in scope of the SECR framework – which matches consultation proposals to retain such reporting by UK quoted companies.

Table 36 – Estimated administrative burdens of the SECR framework (Option 3) and the removal of MGHG reporting, 2017 prices

	Total first year burdens	Average annual burdens
SECR framework only (from Table 35)	£32.5m	£21.3m
Removal of MGHG reporting	-£2.8m	-£2.8m
Total	**£29.8m**	**£18.5m**

Source: MGHG IA. Figures may not sum due to rounding.

Table 36 shows that the estimated average annual burden under the preferred SECR framework and after the impact of removing MGHG reporting is **£18.5m**.

[49] Note that the administrative burdens presented in the MGHG IA do not capture the cost of reporting international emissions.

Annex C – Energy use in scope

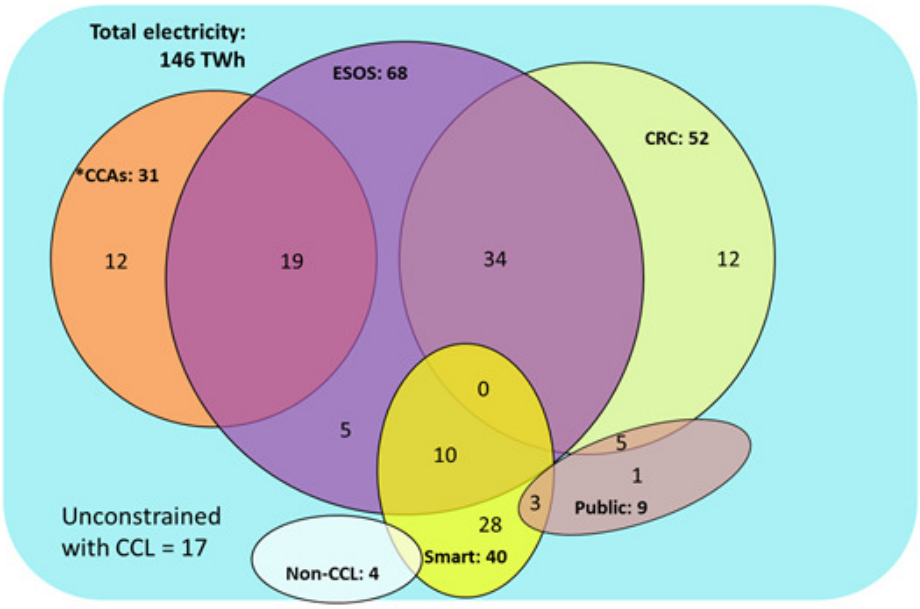
Business energy use

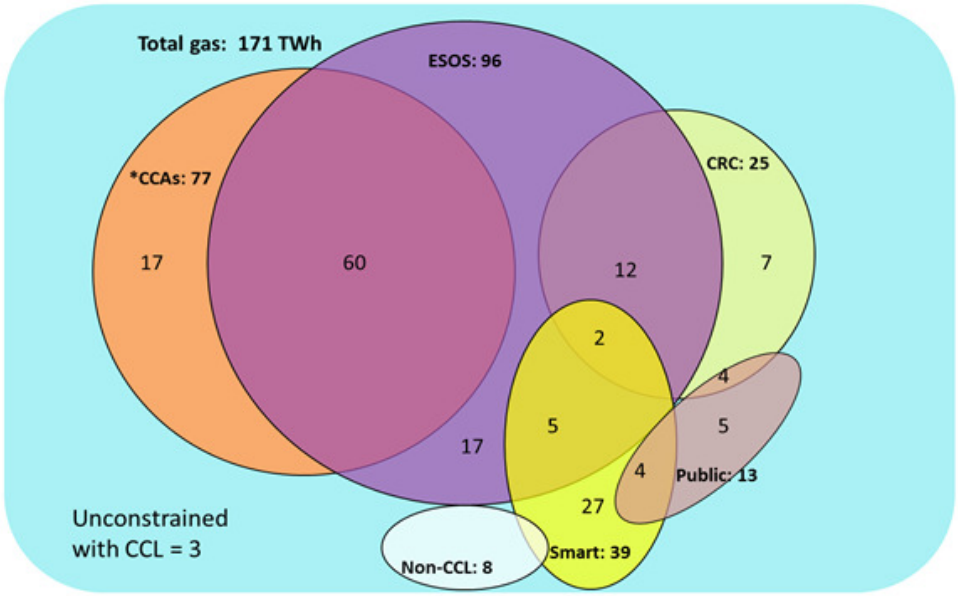
The analysis of large business energy use for the ESOS IA was based on high-level assumptions, which were partially informed by an early version of the non-domestic National Energy Efficiency Data Framework (ND-NEED). These assumptions were calibrated by comparing business estimates against data from BEIS business population statistics. To derive the split of energy use covered by different policies such as CCAs and the CRC, programme data from the various policies were used, where energy use was presented in primary energy equivalent terms.

Over the intervening period, ND-NEED has improved such that the sample data can be weighted to be representative of the population, and matched with Experian data to identify whether businesses are SMEs or non-SMEs. This means that final energy consumption data for electricity and gas from ND-NEED are now used as the main input in assessing large business energy use within this IA, and how this energy use is covered by different policies. However, it has been established that this approach underestimates large business energy use, as the Experian data do not fully aggregate some businesses, and therefore do not identify them as large. The impact of this issue on the final NPV is explored further in the sensitivity analysis.

The ND-NEED data are used in conjunction with programme data to estimate the final energy use covered by different policies. CRC registration data are used to identify meters in ND-NEED that are covered by the CRC and by CCAs, and the total energy use covered by CCAs is estimated based on CCA sector information and data on CCL receipts. Figure 9 shows the estimates of business energy use which are covered by ESOS, the CRC and CCAs. EU ETS energy use is assumed to be covered already by CCAs or in consumption by the fuel industry. The data from ND-NEED are only available for electricity and gas use in England and Wales in 2015, so they provide only a partial estimate of the energy in scope of large businesses. This analysis is therefore supplemented with data from EEP to provide projected energy use over time, and to provide coverage of energy use not captured by ND-NEED, such as use non-metered fuels, consumption from the fuel industry and UK-wide business energy use.

Figure 9 - Business electricity and gas use from ND-NEED split by ESOS, the CRC and CCAs, England & Wales 2015





**CCA energy consumption expressed here is an estimate of 'eligible facility' consumption that is eligible for the reduced rate of CCL*

This is based on ND-NEED version 5 (2015).

Transport energy use

Transport energy use associated with large organisations is estimated using the same approach as taken in the ESOS final IA, and key data sources have been updated, such as total transport energy consumption. Further detail on this approach is provided in Annex E of the final ESOS IA, but it can be summarised as follows:

- Projections of transport energy consumption are taken from EEP;
- The amount of transport energy consumption attributable to business for each transport mode is then estimated, using DfT data such as the National Travel Survey[50] and Road Freight Statistics[51];
- The amount of transport energy consumption attributable to large businesses for each transport mode is then estimated, using data from BEIS Business Population Estimates[52] and illustrative assumptions (including that the Business Population Estimates 'large' population is a good proxy for the data for the ESOS 'large' population as considered in this IA, and so can also be used to estimate energy use for the CRC subset of that 'large' population).

[50] DfT, 2016, *National Travel Survey statistics,* https://www.gov.uk/government/collections/national-travel-survey-statistics
[51] DfT, 2017, *Road freight statistics*, https://www.gov.uk/government/collections/road-freight-domestic-and-international-statistics
[52] BEIS, 2017, *Business population estimates,* https://www.gov.uk/government/collections/business-population-estimate

Annex D – List of activities included in the SECR framework

This annex lists the activities required under the CRC and labels those in scope of the SECR framework. The costs associated with each of these activities were estimated using CRC participant data from the CRC Cost of Compliance survey. The costs of activities in scope are used to estimate the administrative burden of the SECR framework.

Two activities ('Undertaking internal quality assurance'; 'Internal auditing process') are assumed to be less burdensome in the SECR framework than under the CRC. Given that the information reported will not be used to determine the amount of allowances to be purchased, the level of validation under the SECR framework is assumed to be less rigorous than under the CRC. An illustrative assumption has been made that these costs would be half from that of the CRC under the SECR framework.

ONE-OFF COSTS	**In scope of the SECR framework?**
Time spent to understand the rules of CRC efficiently to understand whether within scope	No
Collect and collate energy to understand if within scope of CRC phase 2	No
Once determined in scope, time spent to understand fully rules of CRC phase 2 (including attending internal or external training, and accessing consultants	Yes
Determining organisational boundaries and structure as at 31st March 2013: defining legal structure, parent entity and 'participant equivalent' units	No
Identify any exclusions as a result of CCA / EU ETS and non-policy factors	Yes
Identifying all the settled Half Hourly Meters for inclusion	No
Declare emissions in registration year (2013/14)	No
Any other time spent registering for Phase 2	Yes
Any costs of installing software and equipment for compliance with the CRC (this includes any meters and software)	Yes
Other one-off compliance activities not included above	Yes

ONGOING COSTS		**In scope of the SECR framework?**
On-going maintenance of monitoring and reporting systems		Yes
Collating energy supplies	Gather and collate energy consumption data from CRC meters	Yes
	Gather information on renewable energy supplies	Yes
	Understand and apply exclusions	Yes
Reporting	Preparing annual report according to CRC guidance	No
	Undertaking internal quality assurance	Yes (50%)
	Senior officer sign off	Yes
	Submission of report	Yes
Purchase and surrender of allowances	Deciding on overall approach in relation to forecast window (whether forecast sale and / or buy to comply sale	No
	Order allowances from regulator.	No
	Payment for allowances	No
	Surrendering allowances	No
Record keeping and auditing	Adding record of supplies and other information in your evidence pack.	Yes
	Internal auditing process	Yes (50%)
	Engaging with external compliance auditing by the regulator	Yes
Notifying regulator of any changes	Administrative changes (e.g. new contact registration)	No
	Mergers, acquisitions, sales, termination of operation	No
	Any other notifications	No
Other annual compliance activities not included above		Yes
Voluntary activities: Costs incurred for activities that are not mandatory to fulfilling the requirement e.g. attendance at meetings		No

SL(5)226 – The Law Derived from the European Union (Wales) Act 2018 (Repeal) Regulations 2018

Background and Purpose

These Regulations repeal the Law Derived from the European Union (Wales) Act 2018 ("the Act") in its entirety and are made under section 22 of the Act. Section 22 of the Act enables the Welsh Ministers to repeal, by regulations, the Act or any provision of the Act.

Procedure

Enhanced procedure.

Under the enhanced procedure set out in Schedule 2 to the Act, a draft of these Regulations must be laid before the National Assembly for Wales for 60 days (excluding any time during which the National Assembly for Wales is dissolved or in recess for more than four days).

At the end of the 60 days, the Welsh Ministers must have regard to any representations, any resolutions of the National Assembly for Wales, and any recommendations of a committee of the National Assembly for Wales charged with reporting on the draft Regulations.

If, after the expiry of the 60-day period, the Welsh Ministers wish to make the Regulations in the terms of the draft, they must lay before the National Assembly for Wales a statement stating whether any representations were made, and if any representations were made, giving details of them.

Technical Scrutiny

No points are identified for reporting under Standing Order 21.2 in respect of this instrument.

Merits Scrutiny

One point is identified for reporting under Standing Order 21.3 in respect of this instrument.

1. Standing Order 21.3(ii) - that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Assembly

We note the significance of these Regulations and how the repeal would mean that important constitutional and legal matters (such as the continuation of EU-related Welsh law after exit and the powers of the Welsh Ministers to correct deficiencies in retained EU law) will be dealt with under the European Union (Withdrawal) Act 2018.

We also note that the repeal of the Act forms part of the Intergovernmental Agreement on the European Union (Withdrawal) Bill and the Establishment of Common Frameworks.

Implications arising from exiting the European Union

See our comments under Merits Scrutiny.

Government Response

No government response is required.

Legal Advisers
Constitutional and Legislative Affairs Committee
18 September 2018

Draft Regulations laid before the National Assembly for Wales under paragraph 1(1)(g) and (2) of Schedule 2 to the Law Derived from the European Union (Wales) Act 2018, for approval by resolution of the National Assembly for Wales.

DRAFT WELSH STATUTORY INSTRUMENTS

2018 No. (W.)

EUROPEAN UNION, WALES

The Law Derived from the European Union (Wales) Act 2018 (Repeal) Regulations 2018

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations repeal the Law Derived from the European Union (Wales) Act 2018 ("the Act") and are made under section 22 of the Act. Section 22 of the Act enables the Welsh Ministers to repeal, by regulations, the Act or any provision of the Act.

The Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. A regulatory impact assessment was undertaken in relation to the Act. That regulatory impact assessment included an assessment of the option to continue to work with the UK Government to amend the EU (Withdrawal) Bill, the better to reflect the devolution settlement. As these Regulations reflect that option, information on the impact of these Regulations can be found in that regulatory impact assessment. The regulatory impact assessment can be accessed at: http://www.assembly.wales/laid%20documents/pri-ld11449-em/pri-ld11449-em-e.pdf.

Draft Regulations laid before the National Assembly for Wales under paragraph 1(1)(g) and (2) of Schedule 2 to the Law Derived from the European Union (Wales) Act 2018, for approval by resolution of the National Assembly for Wales.

DRAFT WELSH STATUTORY INSTRUMENTS

2018 No. (W.)

EUROPEAN UNION, WALES

The Law Derived from the European Union (Wales) Act 2018 (Repeal) Regulations 2018

Made	***
Coming into force	*3 October 2018*

The Welsh Ministers make the following Regulations in exercise of the power conferred by section 22 of the Law Derived from the European Union (Wales) Act 2018(**1**) ("the Act").

In accordance with paragraph 1(2) of Schedule 2 to the Act, a draft of this instrument has been laid before the National Assembly for Wales along with a statement setting out the Welsh Ministers' view on whether the procedure in sub-paragraphs (6) to (14) of paragraph 1 of Schedule 2 should apply to this instrument.

In accordance with paragraph 1(3) of Schedule 2 to the Act, a statement has been laid before the National Assembly for Wales explaining why provision to modify primary legislation is needed.

In accordance with paragraph 1(6) of Schedule 2 to the Act, the Welsh Ministers have had regard to—

(a) any representations,

(b) any resolutions of the National Assembly for Wales, and

(**1**) 2018 anaw 3.

(c) any recommendations of a committee of the National Assembly for Wales charged with reporting on the draft regulations,

made during the 60-day period with regard to the draft regulations(**1**).

In accordance with paragraph 1(7) of Schedule 2 to the Act, the Welsh Ministers have laid a statement before the National Assembly for Wales—

(a) stating whether any representations were made, and

(b) if any representations were made, giving details of them.

In accordance with paragraph 1(8) of Schedule 2 to the Act, a draft of the regulations has been approved by a resolution of the National Assembly for Wales.

Title and commencement

1.—(1) The title of these Regulations is the Law Derived from the European Union (Wales) Act 2018 (Repeal) Regulations 2018.

(2) These Regulations come into force on 3 October 2018.

Repeal of the Law Derived from the European Union (Wales) Act 2018

2. The Law Derived from the European Union (Wales) Act 2018 is repealed.

Cabinet Secretary for Finance, one of the Welsh Ministers
Dated

(**1**) Paragraph 1(16) provides that the "60-day" period in relation to any draft regulations is the period of 60 days beginning with the day on which the draft regulations were laid before the National Assembly for Wales. Paragraph 1(17) provides that no account is to be taken of any time during which the National Assembly for Wales is dissolved or in recess for more than 4 days.

Explanatory Memorandum to the Law Derived from the European Union (Wales) Act 2018 (Repeal) Regulations 2018

This Explanatory Memorandum has been prepared by the Office of the First Minister Group and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

Cabinet Secretary's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Law Derived from the European Union (Wales) Act 2018 (Repeal) Regulations 2018.

Mark Drakeford AM
Cabinet Secretary for Finance

8 June 2018

1. Description

The **Law Derived from the European Union (Wales) Act 2018** ("the LDEU Act") provides powers for the Welsh Ministers to preserve EU law covering subjects devolved to Wales on the withdrawal of the UK from the EU. It also provides powers for the Welsh Ministers to ensure that legislation covering these subjects works effectively after the UK leaves the EU and the European Communities Act 1972 ("the ECA 1972") is repealed by the European Union (Withdrawal) Bill ("the EU (Withdrawal) Bill").

The draft **Law Derived from the European Union (Wales) Act 2018 (Repeal) Regulations 2018** ("the Regulations") have been brought forward under section 22 of the LDEU Act. They repeal that Act in its entirety following the Intergovernmental Agreement ("the IGA") between the Welsh Government and the UK Government on the EU (Withdrawal) Bill[1], as well as the agreement of the National Assembly for Wales ("the Assembly"), on 15 May 2018, to the Legislative Consent Motion on that Bill.

[1] https://www.gov.uk/government/publications/intergovernmental-agreement-on-the-european-union-withdrawal-bill

2. Matters of special interest to the Constitutional and Legislative Affairs Committee

Paragraph 1(1)(g) of Schedule 2 to the LDEU Act provides that the enhanced procedure, laid out in paragraph 1 of Schedule 2, is to apply to regulations to be made under section 22. Paragraph 1(5) further provides that the procedure in sub-paragraphs (6) to (14) apply to draft regulations to be made under section 22.

The draft regulations must therefore be laid before the Assembly for 60 days (not taking into account any time during which the Assembly is dissolved or in recess for more than four days). At the end of those 60 days, the Welsh Ministers must have regard to any representations, any resolutions of the Assembly, and any recommendations of a committee of the Assembly charged with reporting on the draft regulations.

If, after the expiry of the 60-day period, the Welsh Ministers wish to make the regulations in the terms of the draft, they must lay before the Assembly a statement stating whether any representations were made, and if any representations were made, giving details of them.

Only when this statement is laid may the Welsh Ministers make regulations in the terms of the draft if it is approved by a resolution of the Assembly.

3. Legislative background

The LDEU Act was passed by the Assembly on 21 March and received Royal Assent on 6 June 2018. Section 22 of the LDEU Act empowers the Welsh Ministers to repeal, by regulations, the LDEU Act or any provision of the LDEU Act.

As noted above, paragraph 1(1)(g) of Schedule 2 to the LDEU Act provides that the enhanced procedure, laid out in paragraph 1 of Schedule 2, is to apply to regulations made under section 22. Moreover, sub-paragraph (2) of paragraph 1 of Schedule 2 to the LDEU Act requires the Welsh Ministers to lay a draft of such regulations before the Assembly along with a statement setting out their view on whether the procedure in sub-paragraphs (6) to (14) of paragraph 1 should apply.

Consequently, in accordance with sub-paragraph (2) of Schedule 2 to the LDEU Act, the Welsh Ministers are of the view that the enhanced procedure contained in sub-paragraphs (6) to (14) of paragraph 1 in Schedule 2 to the LDEU Act should apply to the Regulations. This view reflects the provision contained in sub-paragraph (5) of paragraph 1 of Schedule 2 to the LDEU Act which requires that regulations to be made under section 22 are subject to sub-paragraphs (6) to (14).

Sub-paragraph (3) of paragraph 1 of Schedule 2 to the LDEU Act requires that if draft regulations contain provision that modifies primary legislation, the Welsh Ministers lay a statement before the Assembly explaining why the provision is needed. By repealing the LDEU Act, the Regulations are modifying primary legislation and, in accordance with the requirement to explain why the provision to modify primary legislation is needed, the Welsh Ministers state that this is in order to fulfil the terms of the IGA between the Welsh Government and the UK Government on the EU (Withdrawal) Bill. For reference, paragraph 10 of the IGA states:

'As part of the implementation of this agreement, the governments agree that steps will be initiated to secure the repeal of Bills passed by the devolved legislatures as possible alternatives to the Withdrawal Bill, before the Withdrawal Bill receives Royal Assent.'

4. Purpose & intended effect of the legislation

It was made clear in *Securing Wales' Future* that the Welsh Government respects the result of the referendum on the UK's membership of the EU held on 23 June 2016.

The Welsh Government also recognises the need for legislation to maintain the effective operation of the law at the point of the UK's exit from the EU.

On 13 July 2017, the EU (Withdrawal) Bill was introduced in the House of Commons[2]. It contained provision for the repeal of the ECA 1972 and other provision in connection with the withdrawal of the UK from the EU.

The EU (Withdrawal) Bill—

- repeals the ECA 1972 from "exit day";
- preserves all of the domestic legislation that has been made in the UK to implement EU obligations (e.g. regulations made under section 2(2) of the ECA 1972 that implement EU directives);
- converts the body of EU law that applies directly in the UK (e.g. EU regulations that apply directly in the UK through the operation of the ECA 1972) into the domestic law of the UK jurisdictions ("UK law");
- incorporates any other rights etc. that are available in domestic law by virtue of the ECA 1972, including the rights contained in the EU treaties, that can currently be relied on directly in UK law without the need for specific implementing measures; and
- provides that pre-exit case law of the Court of Justice of the European Union ("CJEU") be given the same binding, or precedent, status in UK courts as decisions of the Supreme Court.

The law that is converted or preserved by the EU (Withdrawal) Bill is "retained EU law". Retained EU law is defined in clause 7(7) of the EU (Withdrawal)

[2] https://services.parliament.uk/bills/2017-19/europeanunionwithdrawal.html

Bill[3] as anything which, on or after exit day, continues to be, or forms part of, domestic law by virtue of clause 2, 3 or 5 or sub-clause (3) or (6) of clause 7 of the EU (Withdrawal) Bill (as that body of law is added to or otherwise modified by or under the EU (Withdrawal) Bill or by other domestic law from time to time). Retained EU law will therefore include law on subjects that are devolved to the Assembly as well as law on subjects that are reserved.

Further details regarding the EU (Withdrawal) Bill can be found in the explanatory material published by the UK Government[4].

On 12 September 2017, the Welsh Government laid a Legislative Consent Memorandum before the Assembly in respect of the EU (Withdrawal) Bill as introduced on 13 July 2017[5]. It included a full list of clauses that are within, or modify, the legislative competence of the Assembly. The Legislative Consent Memorandum stated that the Welsh Government would not be able to recommend to the Assembly that it give consent to the EU (Withdrawal) Bill as drafted on introduction.

The Welsh Government's objective from the very beginning was an amended EU (Withdrawal) Bill that delivers stability and certainty for businesses and citizens about the rights, obligations and responsibilities that will exist at the point at which the UK leaves the EU, while also respecting the existing devolution settlement.

Consequently, on 19 September 2017, the First Minister of Wales and the First Minister of Scotland sent a joint letter to the Prime Minister with a set of proposed amendments to the EU (Withdrawal) Bill. The letter explained that if the amendments were made to that Bill, the Welsh Government and the Scottish Government could consider recommending that consent be given to the EU (Withdrawal) Bill by the National Assembly for Wales and the Scottish Parliament. The amendments were subsequently debated in the House of Commons on 4 and 12 December at Committee stage, but were not agreed. No significant amendments to the relevant parts of the EU (Withdrawal) Bill were tabled by the UK Government at Report stage.

On 29 January, again working jointly with the Scottish Government, the Welsh Government arranged a briefing session for members of the House of Lords on the interaction of the EU (Withdrawal) Bill and devolution.

The Joint Ministerial Committee met a number of times between February and May 2018 – in the formats of both JMC (Plenary) and JMC (EU Negotiations). Those meetings included discussion of proposals put forward by the Welsh Government, Scottish Government and UK Government on the EU (Withdrawal) Bill and agreement that all three governments shared the objective of reaching an agreement on the issues. Intensive work took place outside of those meetings, at both official and Ministerial level, to negotiate a

[3] As amended on Report in the House of Lords: https://publications.parliament.uk/pa/bills/lbill/2017-2019/0102/18102.pdf
[4] https://services.parliament.uk/Bills/2017-19/europeanunionwithdrawal/documents.html
[5] http://www.assembly.wales/laid%20documents/lcm-ld11177/lcm-ld11177-e.pdf

position where such an agreement could be reached and a compromise could be achieved.

The Law Derived from the European Union (Wales) Bill ("the LDEU Bill"), also known as the Continuity Bill, was introduced in the Assembly on 7 March 2018, following the Assembly's agreement to treat it as an Emergency Bill. The introduction of the Bill was to provide a fallback option, both to provide legal continuity of EU legislation about devolved matters in Wales and to safeguard devolution in the scenario where no agreement was reached with the UK Government on the EU (Withdrawal) Bill.

Stage 1 of the LDEU Bill was completed on 13 March, Stage 2 on 20 March and Stages 3 and 4 on 21 March. The Bill was passed with 39 votes in favour and 13 against (with one abstention).

At the end of the four week intimation period, the Attorney General referred the LDEU Bill to the Supreme Court to consider whether the Bill was within the Assembly's legislative competence. The Attorney General and the Advocate General for Scotland similarly referred the Scottish Continuity Bill.

The Welsh Government's preference throughout the process was for an amended EU (Withdrawal) Bill that respected devolution. The negotiations between the Governments continued and produced the IGA, with the UK Government putting forward amendments to the EU (Withdrawal) Bill as part of the IGA. This represented substantial progress from the initial position, and soundly defends the interests of the National Assembly for Wales. This enabled the Welsh Government to recommend to the Assembly that it give its consent to the Bill.
The amendments and the IGA have resulted in the following being agreed:

- all devolved powers and policy that apply to Wales will now rest in Wales, unless specified to be temporarily reserved. These will be areas where the Governments agree that future common UK-wide frameworks with a legislative underpinning may be necessary.

- a process for seeking the consent of the devolved legislatures as to which areas of current EU law in devolved policy areas will be 'frozen' while these common UK-wide frameworks are agreed. In these, limited, areas the Assembly and the Welsh Ministers will not then be able to make any legislative changes until the frameworks are agreed.

- if the Assembly does not give consent to the 'freezing' of specific areas of EU law, the UK Government will be able, exceptionally, to ask the UK Parliament to do so but it will need to explain to Parliament why this is necessary and provide the view of Welsh Ministers as to why the proposal was not acceptable to the Assembly. Parliament will then make a decision on the issue.

- an unequivocal commitment that the UK Government will not ask Parliament to make legislative changes to these areas of law in respect of England while they are in the ‘freezer’.

- a ‘sunset’ clause that guarantees that the ‘freezing’ of any powers will be temporary.

- the Sewel convention (by which the UK Government would not normally legislate with regard to devolved matters without the consent of the devolved legislatures) will apply to any primary legislation to put new frameworks in place.

The Regulations repeal the LDEU Act in line with the agreement reached with the UK Government in the IGA.

5. Consultation

The Welsh Government’s preferred option was to see the UK’s EU (Withdrawal) Bill amended so that it provided the necessary legislative framework in consequence of the decision to leave the EU. The LDEU Act provided an alternative legal mechanism in the event that appropriate amendments were not made to the EU (Withdrawal) Bill. Those appropriate amendments have now been made. Those, along with the accompanying commitments contained in the IGA, mean that the fallback option of the LDEU Act is no longer needed and the decision has been taken to seek to repeal the LDEU Act.

Given the short timescale available for bringing forward this legislation, no consultation has been possible on the Regulations. However, reaching the IGA between the Welsh Government and UK Government was as a result of in-depth discussion and negotiation.

In addition, the Welsh Government has issued a number of policy documents, including *Securing Wales' Future* and *Brexit and Devolution*, and has taken steps to secure stakeholder engagement, for example through the European Advisory Group set up to advise the Welsh Government. The feedback from stakeholders has been, and continues to be, taken into account by the Welsh Government as it formulates and implements its response to the UK’s decision to leave the EU.

Consultation will be taken as appropriate on regulations made under the EU (Withdrawal) Bill, which will provide the legislative framework following repeal of the LDEU Act.

6. Regulatory Impact Assessment

The Regulatory Impact Assessment (RIA) conducted for the LDEU Act[6] contained three options:

Option 1 – Do nothing and, as a consequence, use the powers provided in the UK Government's EU (Withdrawal) Bill (as it was at the time of the introduction of the LDEU Bill prior to the amendments to the EU (Withdrawal) Bill being made.

Option 2 – Continue to seek to work with the UK Government to amend the EU (Withdrawal) Bill, the better to reflect the devolution settlement.

Option 3 – Introduce the LDEU Bill to preserve EU law, as it applies in relation to devolved subjects, as the United Kingdom withdraws from the European Union and further associated provision.

Option 2, which was the Welsh Government's preferred option, has been realised via the IGA reached between the Welsh Government and the UK Government on the EU (Withdrawal) Bill. The Regulatory Impact Assessment for the LDEU Act included a statement on the costings for this option and a further RIA has not been conducted in relation to the Regulations as the information on these costings has not changed since the RIA on the Act was carried out.

However, as stated in the RIA for the Act, while it has not been possible to produce a reliable estimate of the cost of each option at this stage, it would appear reasonable to assume that the administrative cost to the Welsh Government would be lowest under Option 1 and greatest under Option 3.

Consequently, it can be reasonably assumed that the administrative cost to the Welsh Government associated with bringing forward the subordinate legislation under the amended EU (Withdrawal) Bill (Option 2) would be lower than that associated with the subordinate legislation under the LDEU Act (Option 3).

7. Impact Assessments

Equality / Children and Young People

Impact Assessments for Equality[7] and for Children and Young People[8] were conducted for the LDEU Act.

Those impact assessments highlighted the fact that EU derived Welsh law was to be created by regulations made under the Act and therefore that the Act itself would not directly lead to changes in the EU law that is currently applicable in Wales. These Regulations repeal the Act in its entirety and no

[6] http://www.assembly.wales/laid%20documents/pri-ld11449-em/pri-ld11449-em-e.pdf
[7] https://gov.wales/docs/caecd/publications/180308-equality-impact-assessment-en.pdf
[8] https://gov.wales/docs/caecd/publications/180308-children-impact-assessment-en.pdf

regulations are intended to be made under the LDEU Act before its repeal. The repeal will not have any direct impact on individuals as it will not be removing any rights currently being enjoyed by individuals.

Those impact assessments did consider that the LDEU Act included a requirement to interpret EU derived Welsh law in accordance with the EU Charter of Fundamental Rights compared to the EU (Withdrawal) Bill as it stood at that time which provided that the Charter did not form part of retained EU law. The assessments analysed the possibility that to the extent that the powers under the LDEU Act were exercised to create EU derived Welsh law the requirement to interpret that law in accordance with the Charter could mitigate any potential loss of rights as a result of the approach taken in the EU (Withdrawal) Bill to the Charter.

However, since the LDEU Bill was passed the EU (Withdrawal) Bill has been amended by the House of Lords so that the EU Charter of Fundamental Rights would form part of domestic law. If such a provision in the EU (Withdrawal) Bill were to remain in the Bill the Charter would be relevant in all areas of retained EU law, and not only those areas of EU law retained in devolved areas by the LDEU Act. Subject to this amendment (or a form of the amendment) staying in the Bill it would go further in terms of the incorporation of the Charter into domestic law than that provided for under the LDEU Act. The House of Commons are due to consider this amendment but if they were to overturn the Lords' amendments then the Charter would not form part of domestic law under the terms of the Bill after the UK withdraws from the EU. The Welsh Government will continue to monitor the progress of the EU (Withdrawal) Bill through Parliament and how any changes impact the assessments relevant to the Regulations.

Human Rights

The draft regulations do not raise any issues in respect of the rights set out in the European Convention on Human Rights ("the ECHR"). The enactment and subsequent repeal of the Act will see no direct impact on the rights of individuals. However, the repeal of the Bill will mean that the legislative action required to make the legislative changes to devolved law will be under the EU (Withdrawal) Bill. The UK Government will be primarily responsible for assessing the human rights impact of that Bill, but each set of regulations made by the Welsh Ministers (and UK Ministers) will have to be considered individually to ensure that they are compatible with the ECHR.

The Welsh Language

A Welsh Language Impact Assessment[9] was conducted for the LDEU Act. This stated that there would be some positive impacts on the Welsh language from two of the three options considered (Option 2 – an amended EU (Withdrawal) Bill – and Option 3 – the LDEU Act). The subordinate legislation made under the LDEU Act would have provided the greatest potential for an

[9] https://gov.wales/docs/caecd/publications/180308-language-impact-assessment-en.pdf

increase in the amount of legislation available in the Welsh language, for example as directly applicable EU law would have been available bilingually. However, the scenario where the EU (Withdrawal) Bill was amended was also expected to offer a potential positive impact from a greater proportion of regulations being available bilingually as the powers of the Welsh Ministers would be expanded. This would offer greater scope for law to be made bilingually. In particular, a choice could be made to restate directly applicable EU law to provide clarity and accessibility which would mean that a Welsh language version of the law would be provided[10].

Although repeal of the LDEU Act may not provide the greatest positive impact for the Welsh language, it is considered to be the best overall solution and in line with the Welsh Government's preferred outcome from the outset – an amended EU (Withdrawal) Bill respecting devolution and providing certainty for businesses and the people of Wales, as achieved under the IGA and which also confirmed that steps would be taken to repeal the LDEU Act.

The impact of the Regulations on the Welsh Ministers' statutory duties set out under sections 77- 79 of the Government of Wales Act 2006 or the local government, voluntary sector and business schemes made under sections 73, 74 and 75 of the Government of Wales Act 2006 respectively was considered in the RIA for the LDEU Act and the associated Impact Assessments.

[10] See paragraph 20(b) of Schedule 7 to the EU (Withdrawal) Bill.

Agenda Item 5.1

SL(5)252 – The Transmissible Spongiform Encephalopathies (Wales) Regulations 2018

Background and Purpose

These Regulations, which apply in relation to Wales, revoke and remake with amendments the Transmissible Spongiform Encephalopathies (Wales) Regulations 2008 (S.I. 2008/3154 (W. 282)).

These Regulations continue to enforce Regulation (EC) No 999/2001 of the European Parliament and of the Council laying down rules for the prevention, control and eradication of certain transmissible spongiform encephalopathies (OJ No L 147, 31.5.2001, p. 1) ("the EU TSE Regulation").

Procedure

Negative.

Technical Scrutiny

No points are identified for reporting under Standing Order 21.2 in respect of this instrument.

Merits Scrutiny

No points are identified for reporting under Standing Order 21.3 in respect of this instrument.

Implications arising from exiting the European Union

These Regulations implement and enforce EU obligations in respect of animal health, and therefore these Regulations will form part of retained EU law after exit day.

The Intergovernmental Agreement on the European Union (Withdrawal) Bill and the Establishment of Common Frameworks states that "animal health" is a policy area likely to be subject to clause 11 regulations under the Withdrawal Bill (now section 12 regulations under the European Union (Withdrawal) Act 2018). Therefore, the law covered by these Regulations is likely to be an area of EU law that is frozen while common frameworks are put in place.

Government Response

No government response is required.

Legal Advisers
Constitutional and Legislative Affairs Committee
19 September 2018

Huw Irranca-Davies AC/AM
Y Gweinidog Plant, Pobl Hŷn a Gofal Cymdeithasol
Minister for Children, Older People and Social Care

Llywodraeth Cymru
Welsh Government

Our Ref: MA - L/HID/0441/18

Mick Antoniw
Chair
Constitutional and Legislative Affairs Committee
National Assembly for Wales
Ty Hywel
Cardiff
CF99 1NA

17 September 2018

Dear Mick,

Childcare Funding (Wales) Bill

Thank you for the committee's consideration of the Childcare Funding (Wales) Bill during Stage 1 and for the report which was published on 28 June 2018.

I have noted the committee's concerns about the way the Bill has been constructed and the committee's view the government has not succeeded in striking the right balance between what is on the face of the Bill and what is left to subordinate legislation.

I have asked my officials to review the balance between what is on the face of the Bill and what is left to regulations. Consequently, I shall be bringing forward government amendments, which will help to respond to the committee's recommendations and which will help to clarify the Bill's intended purpose.

By including more information about who is a "qualifying child" on the face of the Bill, I hope the committee's concerns about the potential for the Bill, as drafted, to be "used to pursue an entirely different policy to that which is contained in the Explanatory Memorandum, for example after-school care for 8 to 13-year-olds, will be alleviated.

I have balanced the committee's views in this respect with recommendation 10 from the Children, Young People and Education Committee which makes the case for maintaining flexibility for the future around the age of qualifying children.

In responding to the recommendations of the three committees which have scrutinised the Bill, I have tried to strike a careful balance, but there have inevitably been occasions when I have had to fall on one side rather than the other.

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I also note the committee's concerns about the administrative scheme not being subject to the scrutiny of the National Assembly. In my response to the Children, Young People and Education Committee, I have offered to share an initial framework administrative scheme with the committee ahead of Stage 3. I have also said I would welcome the opportunity to return to the committee in the Spring with a draft scheme.

I would like to take this opportunity to make you aware of a change in the delivery arrangements for the second year of early implementation of the childcare offer which will have an impact on the options in the Bill's Regulatory Impact Assessment.

In the first year, each local authority undertook the full process themselves, including the assessment of applications and processing of payments to childcare providers. For the remaining period of early implementation until the national roll out in 2020, we will be asking local authorities to work in partnership with one authority accepting and processing applications on behalf of others and making relevant payments. This is intended to minimise the sunk costs (costs already incurred and non recoverable) in an approach we are not taking forward in perpetuity and to maximise efficiencies for taxpayers.

This approach will be added to the Bill's Regulatory Impact Assessment as a fifth option during Stage 2. The data will be shared as soon as it becomes available, although it is not expected to make a significant difference to the balance of costs between our preferred option of using HMRC and the other options.

Annex A provides a more detailed response to the recommendations made by the Constitutional and Legislative Affairs Committee during Stage 1 scrutiny.

I am copying this letter to the chairs of the Children, Young People and Education and Finance committees for information.

Yours sincerely

Huw Irranca-Davies AC/AM
Y Gweinidog Plant, Pobl Hŷn a Gofal Cymdeithasol
Minister for Children, Older People and Social Care

Recommendation 1

The Minister should update the National Assembly on the progress of the consent discussions with the UK Government during the Stage 1 debate.

I **accept** this recommendation.

I am pleased to report that all necessary consents for the information sharing provisions in sections 4 and 5 of the Bill have been secured. The consent of the Chief Secretary to the Treasury had been secured in advance of the Bill's introduction and the consent of the Home Secretary and the Secretary of State for Work and Pensions were secured, via the Secretary of State for Wales, on 28 June. My letter of 9 July to the Presiding Officer, copied to the chairs of committees, confirmed this. I shall provide an update, as requested, during the Stage 1 debate.

Recommendation 2

We are not satisfied with the balance between what is on the face of the Bill and what is left to subordinate legislation. The Minister should undertake a fundamental review of the balance ahead of Stage 2 proceedings, with the objective of tabling amendments at Stage 2 to ensure that the Bill's policy intent is much clearer.

I **accept** this recommendation.

I have listened to the concerns of this committee and those of the Children, Young People and Education Committee about the balance of what is on the face of the Bill and what is left to subordinate legislation and have undertaken a review.

I consider there to be a strong case, as this is a technical Bill, for placing most of the operational detail in regulations and in an administrative scheme rather than on the face of the Bill. However, I recognise that it is important the Bill is clear about its intended purpose, while maintaining a degree of flexibility to accommodate any slight adjustments that may be required in the light of evidence emerging from the evaluation reports or to accommodate the policy aspirations of future administrations. With this in mind, I am considering bringing forward an amendment to the Bill, with a view to also addressing recommendation 5.

Recommendation 3

The Minister should consider including in the Bill provisions that would require the Welsh Government to review and repeal the legislation (should it be enacted and commenced). Such provisions should ensure that:

- **the review takes place after an appropriate period and its conclusions are enclosed within a report laid before, and debated by, the National Assembly;**

- **in the event that the review shows the legislation is (for example) not operating as intended, it should be repealed. This sunset provision should follow the approach included in the Public Health (Minimum Price for Alcohol) (Wales) Bill.**

The Minister should update the National Assembly of the outcome of his consideration during the Stage 1 debate on the Bill.

I am **continuing to explore the options** available in respect of this recommendation. I do not believe that review provisions such as this are appropriate for all legislation or that this would be apt in the context of a power to provide funding. However I do recognise that, in some cases, there can be a benefit in including them.

I am considering how best to address the points you have made in relation to recommendation four, together with those made by the Children, Young People and Education Committee. I see this recommendation being linked to how those matters are taken forward.

I will write to the committee to update it as proposals are developed.

Recommendation 4

The Bill should, on its face, commit the Welsh Government to providing its Childcare Offer.

There is a strong correlation between this recommendation and recommendation nine made by the Children, Young People and Education Committee, which calls for the Bill to require Welsh Ministers to provide funded childcare within the terms of the offer.

I am **continuing to explore the options** available to me to meet these recommendations, and the principles which support them. I will write to the committee to update them as proposals are developed.

Recommendation 5

The Bill should be amended so that the core eligibility criteria concerning who is a "qualifying child" or a "working parent" appear on the face of the Bill. The Bill should consequentially include provision enabling these criteria to be amended in the future by regulations which are subject to the affirmative procedure.

I **accept** this recommendation.

I'm proposing to bring forward amendments during Stage 2 to provide more clarity in relation to who is a "qualifying child".

I am mindful of the Children, Young People and Education committee's recommendation 10 around the need to ensure a degree of flexibility around the age of eligible children and therefore will be seeking to strike a balance between the recommendations of the two. committees in this respect.

Recommendation 6

Should the Minister not accept Recommendation 5, the regulations made under section 1 should be subject to a superaffirmative procedure, as opposed to the

affirmative procedure, to provide a counterbalance to the breadth of power being sought.

I **do not accept** this recommendation.

This recommendation is linked to recommendation 5; I intend to provide more clarity in relation to who is a "qualifying child" and that the policy intention of the Bill will be made clearer as a result. I therefore do not intend to make the regulations under section 1 of the Bill subject to the super-affirmative procedure.

Recommendation 7

We do not consider that either the hourly rate payable for the childcare or who can provide such care are matters that should be decided without scrutiny by the National Assembly and amendments should be brought forward at Stage 2 to ensure that such provision will be made in regulations subject to the affirmative procedure.

I **do not accept** this recommendation.

The hourly rate sits outside the scope of this Bill.

The Bill's purpose is to provide the legislative basis necessary to develop a digital application and eligibility checking process for the childcare offer. It does not extend to issues relating to the hourly rate, and it was not our intention that such matters should be included in the remit of secondary legislation flowing from the Bill. Instead they would be within the administrative scheme. Issues such as who can provide the childcare, what rate is payable to them and how and where parents can access the offer are important elements of how the scheme will operate in its entirety and it is important Assembly Members have an opportunity to consider these issues in greater depth.

I would welcome an opportunity to return to the Children, Young People and Education Committee in the Spring to discuss an initial draft administrative scheme, which will cover these issues in more detail.

The hourly rate is subject to ongoing testing as part of the early implementation of the childcare offer. New areas in Cardiff, for example, are being added to the offer to see whether the hourly rate is workable in areas where the cost of childcare is higher than in other parts of Wales.

By placing details of the hourly rate in the administrative scheme, rather than in regulations, we will be in a better and more agile position to keep the hourly rate under regular review.

Recommendation 8

The Minister should justify during the Stage 1 debate why he has chosen to publish an administrative scheme rather than issue statutory guidance to local authorities.

I **accept** this recommendation.

In developing this Bill it was determined that the best approach this was to keep this technical Bill short and focused on giving Welsh Minister's the power to make arrangements for the administration of the scheme, with regulation-making powers only where legislation is necessary, for example in respect of permitting third parties to provide information and appeals to the First Tier Tribunal.

We are proposing an administrative scheme to be established under the powers in section 1 of the Bill, setting out the operational details of how the offer will work – this will cover such details as the split between childcare and early education, how the offer works during school holidays; which providers can deliver the offer and how providers are to be paid, for example.

It is envisaged that guidance relating to the scheme (whether statutory or otherwise) will be issued to various audiences. However this will supplement the scheme. I do not consider that guidance can be used as an alternative to having an administrative scheme: this would not achieve the certainty and consistency that we need parents across Wales to benefit from.

Guidance will also be required, targeted at different audiences. It will explain to each party their specific role in delivering the childcare scheme and to provide advice on application of the scheme. We will work with local authorities as we develop the guidance.

Recommendation 9

The Minister should, during the Stage 1 debate, provide a further explanation as to why he believes the UK Government will not have, in effect, a veto over the proposed childcare funding arrangements should the UK Government refuse to provide the necessary consent for any regulations which make provision under sections 4 and 5 of the Bill.

I **accept** this recommendation.

The Bill will enable us to set up a system for applications and eligibility checking for the childcare offer. Our preferred approach uses HMRC as the delivery agent and requires access to specific datasets held by HMRC, the Department for Work and Pensions and the Home Office.

Officials have been working with HMRC, the Wales Office and other UK Government departments for many months and I have been confident the necessary UK Government consents would be secured.

These initial consents have been obtained and my officials are now engaging with the relevant UK departments on the next stage, which will involve securing the consents of Ministers of the Crown to subordinate legislation where there is an impact on third parties.

I do not foresee the issue of consents being a barrier to us delivering on the proposed arrangements.

Recommendation 10

The Minister should provide during the Stage 1 debate a further explanation regarding the use in section 11 of the wording "to confer a discretion on any person".

I **accept** this recommendation.

The wording "to confer a discretion on any person" is a standard form of words frequently used in legislation and is intended to ensure there is sufficient legislative cover and flexibility built into any administrative arrangements to ensure any exceptional circumstances can be dealt with as effectively as possible.

Recommendation 11

The Explanatory Notes which will accompany the legislation should make clear the intention and effect of the wording "to confer a discretion on any person" in section 11.

I **accept** this recommendation and the Explanatory Notes will be amended to address this recommendation during Stage 2.

Recommendation 12

The Bill should be amended so that any Order made under section 12(1) of the Bill is subject to scrutiny and the negative procedure.

I **do not accept** this recommendation.

The making of commencement orders is not normally subject to any procedure, as they bring into force what the National Assembly has approved. The Welsh Government's position on this issue has already been clarified. I see no reason, therefore, to deviate from the current convention in relation to commencement orders.

Julie James AC / AM
Arweinydd y Tŷ a'r Prif Chwip
Leader of the House and Chief Whip

Llywodraeth Cymru
Welsh Government

Our ref MA(L)-JJ-0445-18

Mick Antoniw AM

Chair, Constitutional and Legislative Affairs Committee

17 September 2018

Dear Mick,

European Union (Withdrawal) Act 2018 – regulations made under Schedule 4

Thank you for your letter of 11 July about this. You say that you do not believe that the sifting process provided for by paragraph 4 of Schedule 7 to the Act is intended to apply to negative resolution regulations made by the Welsh Ministers under Schedule 4, but you seek the Welsh Government's view on the point.

You suggest that it is the application of paragraph 1(10) of Schedule 7 which is the source of potential confusion. Our view is that this is a 'signposting' provision only. If it had been intended to apply the provisions of paragraph 4 of Schedule 7 to the making of Schedule 4 regulations, then it would have been necessary to make specific reference to the application of paragraph 4, and this of course the Act does not do. It is worth noting that paragraph 18 of Schedule 7 does make specific provision for paragraph 4 to apply to regulations made by the Welsh Ministers under Part 2 of Schedule 2 (implementing the withdrawal agreement). The absence of any such specific provision for the application of paragraph 4 to regulations made by Welsh Ministers under Schedule 4 supports our interpretation that the sifting procedure envisaged by paragraph 4 was not intended to, and does not, apply to regulations made by Welsh Ministers under Schedule 4 (as indeed that procedure does not apply to Schedule 4 regulations made by UK Ministers).

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I hope that is helpful. I am copying this letter to the Cabinet Secretary for Finance.

Yours sincerely

Julie James AC/AM
Arweinydd y Tŷ a'r Prif Chwip
Leader of the House and Chief Whip

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Agenda Item 11

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Agenda Item 12

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