PUBLISH WHAT YOU PAY
UNITED KINGDOM

UK coalition members

ABColombia
Action Aid
Amnesty International UK
Andrew Lees Trust
Burma Campaign
CAFOD
Campaign Against Arms Trade
CARE International UK
Christian Aid
Clean Trade
Ecumenical Council for Corporate Responsibility
Engineers Against Poverty
Eritrea Focus
Global Poverty Project
Global Witness
Natural Resource Governance Institute
The ONE Campaign
OpenCorporates
Open Knowledge International
Open Society Foundations
Oxfam Great Britain
Peru Support Group
Rights and Accountability in Development
Save the Children UK
Scottish Catholic International Aid Fund
Stakeholder Democracy Network
Tearfund
Transparency International UK
United Nations Association of the UK
World Vision International

25 November 2019

The Honorable Jay Clayton, Chair
Commissioner Robert J. Jackson, Jr.
Commissioner Allison H. Lee
Commissioner Hester M. Peirce
Commissioner Elad L. Roisman

VIA EMAIL

Re: Disclosure of Payments by Resource Extraction Issuers (Section 1504)

Dear Chair and Commissioners:

Publish What You Pay UK (PWYP UK) is the United Kingdom chapter of the global civil society coalition Publish What You Pay (PWYP). We work for an open and accountable extractive sector so that the revenues from oil, gas and mining extraction are used to drive development and to benefit citizens in producer countries.

In March 2018, PWYP UK wrote to you to urge strong alignment between the Securities and Exchange Commission's final rule implementing Section 1504 of the Dodd-Frank Act and the existing reporting requirements for extractive companies incorporated in and/or publicly listed on stock exchanges in Europe and Canada. There is clear international consensus, reflected in the disclosure law already in place in 30 countries in Europe and Canada and in the Extractive Industries Transparency Initiative (EITI) standard, that disclosures of payments must be fully public, company-specific, and disaggregated on a project-level basis. It is in the interest of all relevant stakeholders that the SEC's rule, at a minimum, align closely with and thus reinforce these essential components of the established international transparency standard already being implemented around the world.

<u>We write now to provide the SEC with an update on key findings from the UK Government's post-implementation review of its regulations mandating reporting of payments to governments. Copies of the two UK review reports are attached to this letter for reference.</u>

The UK regulations, which implement the European Union law that was inspired by the U.S. Section 1504 rule of 2012, were passed by the UK Parliament in 2014.[1] The first company reports under the UK regulations were filed in 2016 (on

[1] The Reports on Payments to Governments Regulations 2014 (as amended 2015), applying to large UK-incorporated extractive companies; and the Payments to Governments and Miscellaneous Provisions Regulations 2014, applying to extractive companies with securities traded in the London Stock Exchange Main Market. The UK regulations implement

financial year 2015), and by October 2019, more than 115 extractive companies had filed payments to governments reports under UK law, many for four consecutive financial years.

In 2017-18, the UK Government's Department for Business, Energy and Industrial Strategy (BEIS) undertook a post-implementation review (PIR)[2] of the UK regulations, publishing the results of the review in early 2018.[3] Of necessity, the review, which began in mid-2017, could cover only the first full year of extractive company reporting, i.e. reporting in 2016 and the first half of 2017 on payments made in fiscal years starting in 2015.[4]

Overall, the review concluded:

"The policy is on course to achieve its objectives and key success criteria have been met in terms of greater levels of transparency, compliance levels and avoidance of unnecessary costs to business. Furthermore, the research indicates that **this type of reporting does not disadvantage company business interests, including their relationships with governments …**

"There is every indication that in the medium to long term, the benefits of the regulations would outweigh the costs imposed by it."

BEIS, Feb. 2018, para 83, page 22, emphasis added

The following key points from the BEIS review are particularly relevant to the SEC's Section 1504 rulemaking.

(1) No competitive disadvantage

While some U.S. oil companies raised concerns during the SEC's 2015-16 Section 1504 rulemaking that they would be disadvantaged if they were required to report their payments to governments,[5] the UK review found that UK-reporting companies experienced few if any such disadvantage (BEIS, Feb. 2018, para 39, page 11). If there is a small risk of competitive disadvantage, there is at least as much chance of competitive advantage, which the SEC should also take into account:

- More than two-thirds of the responding companies "indicated that they expect the disclosure of the payments to government to have **no impact on their competitive position** over the next 3 to 5 years", while only 1 company indicated that they did (BEIS, Feb. 2018, para 41, page 11, emphasis added).
- "[O]ne company indicated that they **had experienced positive impacts on their investment opportunities**, and **one company had experienced a positive impact on their competitive position relative to their peer-companies** that were not required to report" (BEIS, Feb. 2018, para 49, page 13, emphasis added).
- "The only concerns about competitive disadvantage were voiced within the context of the timing of implementation", due to the fact that the UK and France implemented mandatory reporting one year ahead of the rest of the EU, "and not the existence of the Regulations itself" (BEIS, Feb. 2018, para 40,

respectively the 2013 European Union Accounting Directive chapter 10 and the 2013 European Union Transparency Directive Amending Directive article 1(5).

[2] PIBs are standard practice for business regulation in the UK: https://www.gov.uk/government/publications/business-regulation-producing-post-implementation-reviews

[3] Department for Business, Energy and Industrial Strategy (BEIS), *Reports on Payments to Governments Regulations: Final report*, BEIS Research Paper, Jan. 2018, http://www.legislation.gov.uk/uksi/2014/3209/pdfs/uksiod_20143209_en_001.pdf; and BEIS, *The Reports on Payments to Governments Regulations 2014, Post Implementation Review*, PIR No. BEIS024(PIR)-18-BF, Feb. 2018, http://www.legislation.gov.uk/uksi/2014/3209/pdfs/uksiod_20143209_en.pdf; referred to henceforth respectively as BEIS, Jan. 2018, and BEIS, Feb. 2018.

[4] Most UK-reporting extractive companies' fiscal years start in January, but some start later in the calendar year.

[5] Comment from American Petroleum Institute (Feb. 16, 2016), https://www.sec.gov/comments/s7-25-15/s72515-32.pdf

page 11). “Beyond early implementation concerns, no further issues regarding competitive disadvantage were flagged” (BEIS, Feb. 2018, para 41, page 11).

(2) Fully public, project-level disclosures are not overly burdensome and compliance costs are far lower than some companies had predicted

First, the UK review demonstrated that compliance costs associated with the UK disclosure law – which mandates fully public, company-specific disclosure of payments on a project-by-project basis, and allows for no country exemptions – have been significantly lower than costs previously claimed by some companies in the U.S. rulemaking process.

For example, one U.S. company claimed in the 2011-12 Section 1504 rulemaking that its initial implementation costs could be as high as “$50 million” and that industry-wide costs ”could amount to hundreds of millions of dollars".[6] However, the UK review shows those predictions were wholly unrealistic, putting **the total cost of compliance for all companies reporting in the UK under the regulations in the first year (91 companies) at an estimated £52.5 million** (BEIS, Feb. 2018, para 32, page 10).

In particular, the UK review found that:

- **Of the 32 extractive companies participating in the UK review, none reported “any substantial costs” associated with disclosing payments to governments** (BEIS, Feb. 2018, page i, and para 23, page 6). These 32 participating companies, whose names BEIS has not published, included roughly six (“Around a fifth of participating companies”) in the largest category of operators with revenue of £10 billion or more (BEIS, Jan. 2018, page 9, and Feb. 2018, figure 1, page 8).
- **Estimated and actual one-off costs were in the ranges of £700 - £30,000 (small companies) to £4,000 - £5,230,000 (large companies); and annual recurring costs were put at £500 - £25,000 (small companies) to £5,000 - £1,200,000 (large companies)** (BEIS, Jan. 2018, page 4, and Feb. 2018, table 1, page 9). Fifteen companies “provided actual or estimated costs for one-off impacts, and 15 provided … recurring costs” (BEIS, Feb. 2018, para 27, page 9).
- **“[T]he estimated aggregate cost of compliance for *all companies in scope* is £52.5 million”** (BEIS, Feb. 2018, para 32, page 10, emphasis added), based on the actual and estimated costs provided by companies for the review. This estimate by the BEIS reviewers is for the 91 companies that filed reports during the first year of UK reporting (BEIS, Jan. 2018, pages 4, 8) and can be understood as representing initial one-off costs plus recurring costs for one year of reporting.
- An additional four companies whose estimates were indicative only, and therefore omitted from the BEIS reviewers’ calculations, “suggested that their **annual costs were likely to be less than £100,000**” (BEIS, Jan. 2018, page 16, emphasis added). The reviewers also found that “companies with lower burdens, reporting on less than five countries, tended to have one-off costs in the first year in the region of **£40,000**” (BEIS, Jan. 2018, page 16, emphasis added).
- “Largely, **companies leveraged existing staff to capture and report the flow of payment to governments”** (BEIS, Feb. 2018, para 30, page 10, emphasis added). It appeared that, while adjustments were made, companies’ comments indicate they did not introduce new systems to comply with the regulations (BEIS, Jan. 2018, page 17). Although “Most companies were unable to provide specific costs associated with internal reporting activities (by grade, time, and total internal salary costs)”, companies that did “provide

[6] Comment from Exxon Mobil (Jan. 31, 2011), https://www.sec.gov/comments/s7-42-10/s74210-11.pdf. While the Exxon figure was based off the SEC’s 2011 proposed rule, the SEC relied on the same figure in its cost analysis of its 2016 rule. See e.g. 81 Federal Register at 49424.

some indications of those costs noted that they were not borne as separate costs since these reporting activities were added to existing roles and hence **absorbed into business-as-usual (therefore not imposing any additional burden)**" (BEIS, Feb. 2018, para 29, page 10, emphasis added).

- "Nine participating companies stated that they had filed a report or reports in more than one jurisdiction. Of these nine companies, four said that there had been **no incremental cost associated with multiple reporting requirements**" and three "said these **costs were marginal**" (BEIS, Jan. 2018, page 20, emphasis added).
- The UK reviewers observed that "one of the main drivers of cost was understanding the regulatory requirements", and thus, "in general, **respondents were hopeful that the Year 2 costs will be less**" than Year 1 costs, on which the review was based (BEIS, Jan. 2018, page 20, emphasis added).

One UK oil company, Tullow, a multinational that makes payments to governments in about 20 countries, shared compliance cost information directly with PWYP and explicitly authorised PWYP to quote those costs to the SEC:

> "[I]mplementation costs were low given that we began reporting just as our internal processes were changing**.** We estimate the cost to have been less than $150,000 for the initial report, and ongoing costs (including assurance work provided by [external auditor]) would be about the same. This is calculated using internal Tullow rates, so the actual opportunity cost will be lower as we have not employed any extra people or services to facilitate this reporting. Tullow's size will also have contributed to this … For the big global mining and oil companies, the task will have been very much more complex … although you could say proportionate to the size of the company/resources available for the task."[7]

The UK experience, as documented above, provides important evidence as to the realities of implementation and the costs of compliance that should inform the SEC's rulemaking. This includes strong indications that some previous compliance cost estimates provided to, and relied upon by, the SEC in its prior rulemaking are not realistic and should not be relied on in the next rulemaking.

<u>(3) No foreign law or other legal prohibitions impeded disclosures of payment information required by the UK law – no country exemptions were required, requested or granted</u>

Some oil companies and industry representatives previously asserted that disclosure laws might make host governments less inclined to do business with companies that were subject to such transparency, and even that foreign legal prohibitions against public payment disclosure might exist that could cause problems and result in a fire sale of assets or some other a major loss of business.[8] Experience with the UK law shows those claims were unfounded.

The UK government reviewers found no evidence of foreign law or other prohibitions resulting in inability to comply with disclosures. Some companies reported "a need to assess" potential conflict of law and to "manage relationships in host countries" and in some instances negotiate with those governments; but no problems were reported with ultimately disclosing as required under the UK law, despite the lack of any country exemptions being granted (BEIS Feb. 2018, paras 42-44, page 12; BEIS, Jan. 2018, pages 21-22):

- "[C]oncerns that reporting could lead to difficulties with the law and authorities in the countries in which [companies] operate have not been realised" (BEIS, Feb. 2018, para 75, page 21).

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[7] Tullow email communication to PWYP UK, February 2018, including permission to quote.
[8] Comment from American Petroleum Institute (Feb. 16, 2016), https://www.sec.gov/comments/s7-25-15/s72515-32.pdf, pp. 25-8.

- **“[C]ompanies have not reported experiencing any problems** related to the reporting activities required by this regulation in countries with laws that prohibit the disclosure of payment information” (BEIS, Feb. 2018, para 42, page 11, emphasis added).
- **The BEIS reviewers “do not have any convincing evidence that any criminal prohibitions on the reporting of payments to governments exist in other countries, or that disclosure of such information would result in any legal action or loss of business”** (BEIS, Feb. 2018, para 20, page 5, emphasis added).

(4) Benefits and positive impacts

In addition to dispelling claims that implementation of the mandatory disclosure law would have negative impacts on extractive companies, the UK government review also brought to light early benefits and signs of positive impacts already showing, even though the scope of the review was limited to only the first year of reporting:

- The UK reviewers noted, as cited above, that one of the participating companies indicated they had already “experienced **positive impacts on their investment opportunities**”, and one company “had experienced a **positive impact on their competitive position** relative to their peer-companies that are not required to report” (BEIS, Feb. 2018, para 49, page 13, emphasis added).
- “Eight companies did think that there would be a **positive impact on the business environment** and the associated ‘license to operate’ and nine thought there would be **a positive impact on good governance and reduced corruption**” (BEIS, Jan. 2018, page 24, emphasis added).
- “16% of companies (5 out of 32) estimated a marginal **future financial benefit**” (BEIS, Feb. 2018, para 50, page 14, emphasis added).
- “Respondents were more optimistic about the 3-5 year outlook”, with 12% of the responding companies expecting “**decreased corruption**” (BEIS Feb. 2018, para 54, page 16).
- While still early in the regulations’ implementation, and thus companies still had some uncertainty about who was using the information, four companies already “felt that the reporting of payments to government made the extractive industry **more attractive to investors**” (BEIS, Feb. 2018, para 55, page 16, emphasis added).

The UK government reviewers also noted benefits to citizens of host countries and to civil society participants in the review:

- “All the participating CSOs found the reports very valuable as a mechanism to achieving the regulatory objective of holding governments and companies to account and to help ensure that companies are providing adequate value to the communities in which they operate” (BEIS, Jan. 2018, page 33).
- “[T]he benefits of mandatory reporting over and above that required by the Extractive Industries Transparency Initiative were thought to include the provision of data which are more timely, more comprehensive and more universal in nature” (BEIS, Jan. 2018, page 34).
- “CSOs indicated that mandatory reporting has led to the provision of information that is more timely, comprehensive, and universal in nature. The general view is that the reporting environment has changed significantly as a result” (BEIS, Feb. 2018, para 61, page 17).
- “CSOs highlighted how they monitor the publication of the reports in real time and then share the availability of reports across the CSO network, nationally and internationally so that their colleagues are aware that the information is accessible and have a sense of the quality of the information provided. Several CSOs reported that they had helped organise communities of activists in developing countries to

analyse and use the data to hold their governments to account. Much of their initial work has been focused on raising awareness of the reports and how grassroots community groups may start using the data" (BEIS, Jan. 2018, page 35).

The reviewers highlighted specific uses of reporting thus far from different countries, including, for example:

- In Niger, "Questions were raised over the value of uranium contracts to the Niger government. The reports have allowed PWYP to engage with both the relevant company and the government on the issue" (BEIS, Jan. 2018, page 36).
- In Uganda, "Reports have been used to raise questions on payments that had not been included in government reports," including a $14 million discrepancy (BEIS, Jan. 2018, page 36).
- In Zimbabwe, "The reports are being used to educate community leaders and councillors on the value of revenues from platinum and diamond mining. Workshops have been held to train local activists on interpreting the data"; "reforming elements of the Government had invited civil society to work with them in analysing the data in order to help combat corruption" (BEIS, Jan. 2018, pages 36, 38).
- In Indonesia, PWYP "has created a phone app … to share the data" (BEIS, Jan. 2018, page 36).
- In Australia, "Reports data contributed to a royalties debate in the media over oil pricing" (BEIS, Jan. 2018, page 36).
- In Tunisia, "The reports have helped the … government, which did not previously have reliable information on oil revenues, to forecast revenues more effectively … [M]ore transparency was helping ease relations between communities in Tunisia and companies, as the latter are better placed to demonstrate their value to the local economy" (BEIS, Jan. 2018, page 40).
- In Nigeria, "The reports have been used … to train CSOs to analyse operations and companies, looking at the difference between what the Government is receiving and what it should be receiving. It is hoped that mandatory disclosures will help [to address] misreporting as well as the diversion of funds. CSOs in Nigeria have been working with companies to consider the importance of the reports for empowering its citizens" (BEIS, Jan. 2018, page 41).
- "Not only do the Regulations allow governments to be held to account by their citizens, but governments of resource-rich countries also benefit from the Regulations, as noted in the examples of Nigeria and Zimbabwe, where reforming elements of government have invited civil society to work with them in analysing data from mandatory reporting in order to fight corruption" (BEIS, Feb. 2018, para 58, page 17).

CSOs also noted "**Enhanced reputation of home countries**, with the UK Government being seen as a leader on the transparency agenda" (BEIS, Jan. 2018, page 38, emphasis added). The review report also noted that "As a result of it being still early on in the post-implementation period, [CSOs] expect the true value of reporting to emerge over time as more time-series data becomes available" (BEIS, Feb. 18, para 62, page 17).

"[T]he legislation provides a mechanism to protect companies from bribery attempts and helps enhance their brand. Both the US and Canadian representatives of Publish What You Pay cited the role of Canadian mining companies in lobbying for the legislation there in **recognition of the need to increase trust and transparency in the industry**" (BEIS, Jan. 2018, page 39, emphasis added).

We hope that the above information will be of assistance to you. If you require any further clarification or information, please do not hesitate to contact me.

Yours sincerely

Miles Litvinoff

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Europe and North America regional representative, Publish What You Pay Global Council
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Attached below:
UK Department for Business, Energy and Industrial Strategy (BEIS):

- *Reports on Payments to Governments Regulations: Final report*, BEIS Research Paper, Jan. 2018
- *The Reports on Payments to Governments Regulations 2014, Post Implementation Review*, PIR No. BEIS024(PIR)-18-BF, Feb. 2018,

Department for Business, Energy & Industrial Strategy

REPORTS ON PAYMENTS TO GOVERNMENTS

Final report

BEIS Research Paper

January 2018

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Executive summary

Introduction

The Reports on Payments to Government Regulations came into force in the UK on 1st December 2014, implementing Chapter 10 of the EU 2013 Accounting Directive a year ahead of the other EU nations.

This new reporting regime is intended to raise global standards of transparency in the extractive sector and so improve accountability and reduce the space for corruption and other illicit activities. The ultimate aim of the Regulations is to help provide information that will help citizens in these countries hold their governments to account.

The Regulations required the Department for Business, Energy and Industrial Strategy (BEIS) to undertake a review of the impact of the new reporting regime on businesses, civil society and investors after the first year of reporting. PwC was therefore commissioned to undertake this review in July 2017.

This report presents the main findings of PwC's research, based on responses from 32 of the 91 businesses that filed reports in the first year, and interviews with civil society organisations nominated by Publish What You Pay. It was originally intended to include investors in the research, but it became apparent that, with only one full year of reporting when the fieldwork started, there was little awareness amongst the investor community and therefore little appetite to participate.

The business view

The research with companies focused on the costs of complying with the regulations and any potential benefits that they might have experienced from compliance to date or which they might expect in the future. Around half of participating companies were able to provide a cost, ranging from £500 to £1,200,000. The range of these costs demonstrate, evidently, that the impact will vary depending on the size of the company, and the geographic spread and number of its operations amongst other factors. The main drivers of costs related, firstly, to understanding the reporting requirements, and then variables such as the number of payment types, of projects and of countries.

The main implementation challenges for companies related to determining reportable payments and the collection of the data. Multiple filing requirements and the early implementation of the Regulations (compared to the rest of the EU) were not perceived to be major issues, though several companies did note the need to keep a level playing field with other jurisdictions.

The actual submission process, and the associated lack of guidance, did cause problems for companies, as did the complexity of the processes, and technical difficulties with the Schema.

In general, companies reported that they have yet to realise the positive or negative impacts which the publication of payments to governments could have on the business environment, government accountability and governance, and corruption levels. Some did think, however, that there would be improvements in these areas in the mid- to longer term. Similarly, companies did not tend to recognise any immediate impact on their reputation, levels of resistance from local civil society organisations, or bribery and corruption, for example.

Finally, the large majority of companies did not see a need to expand the Regulations, highlighting the range of reporting requirements already in existence. This view could well be exacerbated by a lack of information as to which of their stakeholders are using the reports and for what purposes.

The Civil Society view

Twelve Civil Society Organisations (CSOs) were nominated by Publish What You Pay (PWYP) to participate in this research, all of whom are members of the PWYP coalition. Overall, the response from the CSOs towards the Regulations and indeed the leadership of the UK Government in this area was very positive.

All recognised that reporting is at an early stage and that CSOs are only at the beginning of learning how best to use the new data and to educate the citizens of the societies in which oil, gas and mining companies operate. All enumerated the benefits to governments, companies, citizens and civil society, providing examples of countries such as Tunisia and Nigeria that had already benefited from the availability of the information in the reports.

The CSOs did highlight some areas where, in their view, the quality of reporting could be improved, particularly around joint ventures, the aggregation of projects, clarity around government departments, and payments in kind, for example.

They also indicated several areas where they would like to see more information made available. These areas were consistent across all CSOs and included joint ventures, payments for transportation, social payments and commodity trading amongst others.

The issue of monitoring the reports was also raised, with Canada cited as an example of good practice. From a technical point of view, CSOs, like the relevant companies, noted issues with accessing the reports on the Companies House and FCA websites, but welcomed the fact that, unlike in other jurisdictions, the reports are made publically available.

Introduction

Background

The Reports on Payments to Government Regulations came into force in the UK on 1st December 2014, implementing Chapter 10 of the EU 2013 Accounting Directive a year ahead of the other EU nations.

This new reporting regime is intended to raise global standards of transparency in the extractive sector and so improve accountability and reduce the space for corruption and other illicit activities. The ultimate aim of the Regulations is to help improve transparency and governance in resource-rich developing countries by providing information that will help citizens in these countries hold their governments to account.

The UK regulations apply to oil, gas, mining and logging[1] companies registered in the UK. All payments, or series of payments, that total more than £86,000 (€100,000) must be disclosed, and these payments should be broken down by government, type of payment and, where applicable, specific projects to which the payment applies. Reports are filed with Companies House, and (if the company is listed in the UK) with the Financial Conduct Authority. The UK implemented the EU requirements early to support its commitment to this agenda as affirmed at the G7 summit in 2014. Therefore the Regulations apply to financial years beginning on or after 1st January 2015, so there has currently been two full years of reports submitted. The 2013 Impact Assessment undertaken by the then Department for Business, Innovation and Skills (BIS) estimated that approximately 250 companies would be in the scope of the Directive. This estimation was based on information available at the time, however the actual number of companies submitting reports in the first year of reporting was 91.

The Department for Business, Energy and Industrial Strategy (BEIS) is the UK Government Department responsible for the Regulations. The Regulations contain a review clause that requires the Secretary of State to carry out a review of the Regulations and set out the conclusions of the review in a published report. The review is intended to explore the impact of the additional reporting requirement on companies, investors and the citizens of the countries in which the companies operate. It will be used to inform a later review of the European Accounting Directive. The review is also intended to provide evidence on wider issues connected with reporting on revenues received from natural resources.

As part of the review, BEIS engaged PwC to conduct research to assess the increased costs borne by reporting entities and to ascertain the benefits that have accrued to companies, UK investors, civil society organisations and citizens of the countries affected

[1] As there are no logging companies listed in the UK, this review essentially encompasses the oil, gas and mining sectors

by these Regulations. The research will contribute to an evidence base regarding how transparency in the extractives sector can help to promote accountability and good governance and, for companies, improve profitability by reducing investment risks.

Aims and objectives of this research

The main objective of the research is to assess both the costs that are borne by the companies in scope, and the benefits that accrue to these companies, their respective investors, and civil society organisations that have a particular interest in this legislation. It aims to explore the value of the information provided in the reports and how the information is used in practice.

The five key outcomes of the project are:

- An assessment of the one-off and recurring costs incurred by companies in preparing the reports, including any additional costs that are due to the early implementation of the Regulations in the UK compared to the rest of the EU.
- A consideration of the benefits that companies may have experienced as a result of the regulations.
- An analysis of the benefits that civil society groups have experienced from the additional information available.
- An assessment of the benefits to UK investors in these companies.
- An analysis of the costs to Companies House and the FCA of maintaining the service.

Structure of this report

The report is structured as follows:

- Executive summary
- Introduction
- Methodology
- Business views on the Reports on the Payments to Government Regulations
- Civil Society Organisation (CSO) views on the Reports on the Payments to Government Regulations

Methodology

This research was intended to encompass research with companies, civil society organisations and investors. The paragraphs which follow outline our approach to targeting each of these segments and some of the methodological challenges that we encountered in the course of the fieldwork for this research.

Companies working in the extractives sector

As we have noted, the original number of companies expected to fall under the scope of the Regulations was estimated at approximately 250 in 2014. There was a recognition at the time however, that the number of companies may increase or decrease, given the criteria that was included in the legislation to determine which companies are required to prepare and deliver a report in the UK. We identified 91 companies that have submitted reports to either Companies House, the Financial Conduct Authority (FCA) or both, and shared this list with BEIS[2]. This list also aligns with that used by the civil society organisation Publish What You Pay (PWYP).

Given that it is not always clear who is responsible for dealing with the Regulations in an individual organisation, an introductory letter was posted to the company secretary of each business requesting participation in this research. This letter was then followed up with a second mailing a month later to all relevant companies to maximise response rates, alongside targeted telephone contacts.

There had only been one full year of reporting for some companies during the research period, and anecdotal evidence suggested that it is difficult for companies to assess accurately the costs of compliance. In light of this, a flexible approach to this strand of the research was adopted during the design and fieldwork phases of the study. Companies were able to respond either through a telephone interview or through an interactive pdf which was sent to all those companies that responded to our mail-out. In many cases, companies preferred to use the pdf approach as this allowed them to gather views across a number of internal functional teams and businesses more easily. Several face-to-face interviews were also held with some of the larger businesses.

In addition to the general reminders, targeted follow ups were made with companies in the following segments to provide good coverage across different business types:

[2] Requirements in Chapter 10 of the Accounting Directive were also carried across to amendments to the EU Transparency Directive. This means that those companies that are listed in the UK also have to comply with the requirements in the directive. The FCA amended its rules for listing to ensure that those companies listing in the UK and active in the extractives sector would be required to make the same information available.

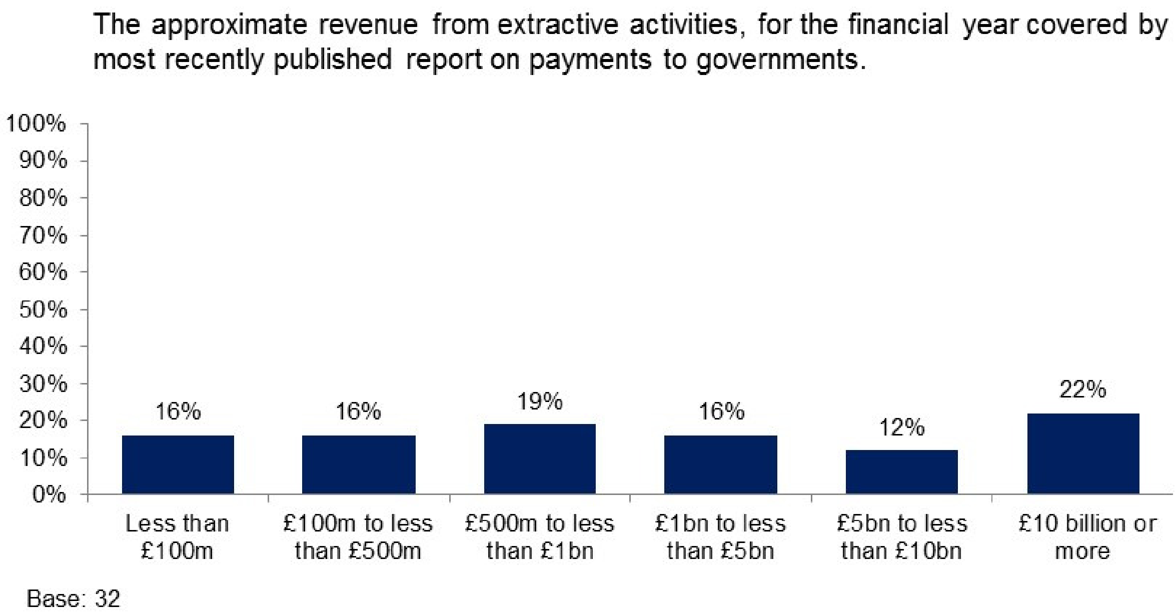
- Companies that actively participated with BEIS and Civil Society Organisations on the UK Regulations
- UK Registered companies with international operations
- UK Registered companies with domestic operations
- Non UK Registered companies listed on the London Stock Exchange

In all, 32 responses (out of a total population of 91 companies) were received from August to October 2017, after a number of mail-outs and telephone calls to the entire sample. This sample represents a response rate of 35%. Three companies declined to participate. Please note that, given the small total population, the percentages provided, may, in some cases, relate to a small number of companies.

Profile of participating companies

There was representation from each of the primary segments including 22% who report only to the FCA, 25% who report only to Companies House and 53% who report to both FCA and Companies House. There was also a broad distribution of organisations by revenue and employee size in the achieved sample as illustrated by Chart 1. Around a fifth of participating companies have revenue of £10 billion or more but there is also a long tail of smaller companies, with a third with revenues of less than £500m.

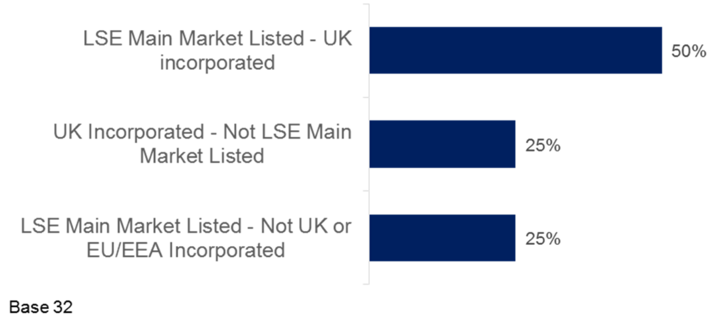
Chart 1: Revenue of participating companies



The same applies to the number of employees, where the proportion of companies with less than 500 employees and the proportion with 50,000 or more employees are equally balanced. This diversity in scale and scope will have implications for the comparability of the costs of compliance incurred and the relative administrative burden for companies.

The following chart provides an illustration of the breakdown of the achieved sample by the listed or non-listed status of participating companies.

Chart 2: Category of Company



It is understood that companies who are non UK incorporated and listed on the LSE do not have to submit reports to Companies House and therefore their compliance costs will naturally be lower.

The ‘LSE Main Market Listed: UK Incorporated’ segment comprises both the UK registered subsidiaries of multinational companies that are parented outside of the EU and non-listed companies that are parented in the UK. Companies in this category will have prepared and delivered a report covering the payments of a single subsidiary rather than the consolidated report that would have been delivered by companies in the other categories.

There were no respondents in the ‘LSE Main Market Listed: UK Incorporated in other EU/EEA Member State’ segment due to the exemption in the UK Regulations that applies to UK extractive subsidiaries of parent undertakings that report in another EU member state.

Civil Society Organisations

The PwC Research team received the following interview nominations from the Publish What You Pay coalition:

- Publish What You Pay UK
- The Natural Resource Governance Institute
- Global Witness
- Publish What You Pay International Secretariat
- Oxfam France
- Zimbabwe Environmental Law Association

- Oxfam America
- Publish What You Pay Canada
- The ONE Campaign
- Publish What You Pay South Africa
- Publish What You Pay US
- Publish What You Pay Australia

Interviews were completed with all Civil Society Organisations with the exception of Oxfam America and Publish What You Pay Australia who were unavailable during the fieldwork period for this research. Invitations to participate in the review were also extended to non-PWYP groups, but these groups did not contribute to the review process.

Investors

The research team liaised with the Investment Association and other organisations to engage with investors. Overall, the level of awareness amongst investors was low and there was a low level of response to this strand of the research. This is in part due, no doubt, to the fact that the reporting requirements are relatively new. As investors were largely unaware of the regulations, they were, as a consequence, unwilling to participate in the review.

Government agencies

Interviews were also held with Companies House and the FCA to enable them to explain the costs of the current system and potential areas for improvement.

Methodological challenges

During the fieldwork period, we encountered a number of challenges, deriving mainly from the nature and the timing of the Regulations.

Timing of the review

There was a general view that, given the timing of the introduction of the Regulations, it is difficult to ascertain any direct benefits at this point of time. Some companies and all the CSOs did think however that benefits would accrue over time, but that these may take over a decade to become apparent. It was difficult therefore for companies to comment on the current benefits of the Regulations.

Engaging with investors

Given the comments above, there is no separate section on the views of investors on the regulations as we encountered very little awareness of the regulations amongst this stakeholder group. There was therefore no substantive participation of investors in this research, despite multiple channels to recruit them, and even with the kind help of the Investment Association (IA). Indeed, when we spoke to the IA, they believed that it was unlikely that many of their members would be aware of the Regulations and therefore would be unlikely to participate in this research. This feedback was consistent with the messages received from companies that their investors had so far shown little interest in these reports. Some CSOs did however believe that investors would welcome the reporting as the reports become more embedded.

Business views on the balance between costs and benefits

Likewise, participating businesses, around a third of all those subject to the reporting regime, tended to view the Regulations as an additional administrative obligation rather than a regime with significant commercial benefits for them now or in the future, i.e. an additional administrative burden on their tax and finance reporting teams. This tended to be absorbed as a business-as-usual cost rather than through the whole-scale creation of new roles and systems – which makes it harder for businesses to identify standalone costs, especially as they did not tend to monitor costs from the outset.

A small number of companies viewed the Regulations positively: these tended to be the companies which reported voluntarily before the introduction of the legislation. The other companies demonstrated less appetite for promoting their reporting activity to, for example, show their contribution to the economic development of the countries in which they operate.

Civil Society Organisation diversity

Although it was encouraging to receive input from civil society representatives based in both the UK and resource rich countries, there was a significant concentration of responses from organisations associated with the Publish What You Pay coalition. Efforts to obtain input to the review from unrelated civil society organisations were unsuccessful.

Differences in focus and purpose of participants

This point should be borne in mind in the context of the Civil Society Organisation response which was based on co-ordinated interviews with several members of the same organisation (Publish What You Pay (PWYP)). It should be noted that PWYP is a single issue campaigning group while businesses have many other competing compliance demands on their time. The companies that participated in this research are, consequently, less focused on the Regulations than the PWYP coalition.

Further, as the project design evolved it became clear that it would be more appropriate to engage with CSOs in a more qualitative way while several businesses opted to engage in writing rather than in a discussion. This will evidently impact on the flavour of the relative discussions.

Sample size

Please note however that while we received responses from a third of the companies under the scope of the regulations, the universe is small in statistical terms. The percentage figures in this interim report are based on 32 responses out of a total of 91 relevant companies. This gives a substantial response rate, but also means that sub-analysis is problematic given the diverse nature of the companies that fall under the reporting regime and the myriad drivers of the cost of compliance.

Business views on the Reports to Payments to Governments Regulations

Introduction

This section presents the main themes emerging from interviews conducted with, and the questionnaires completed by, the 32 companies who participated in the research. The research assessed the costs associated with complying with the Regulations, the nature of the work required to compile the reports and the staff required by companies to prepare and submit the reports. The challenges faced by companies when complying with the Regulations such as data capture, internal reporting and the submission process undertaken to prepare and deliver the reports were also considered. In addition, we explored the impact and benefits (where these could be identified) of the Regulations in order to shed light on the wider issues connected with reporting payments to governments in the extractive industry.

Given that the first reports were only published in 2016 and the full benefits of the Regulations are unlikely yet to be realised after only one year of reporting, companies were also asked about the potential (future) benefits as well as current financial and non-financial benefits of the regulations.

The following paragraphs outline the oil, gas and mining companies' responses to the research in more detail, structured as follows:

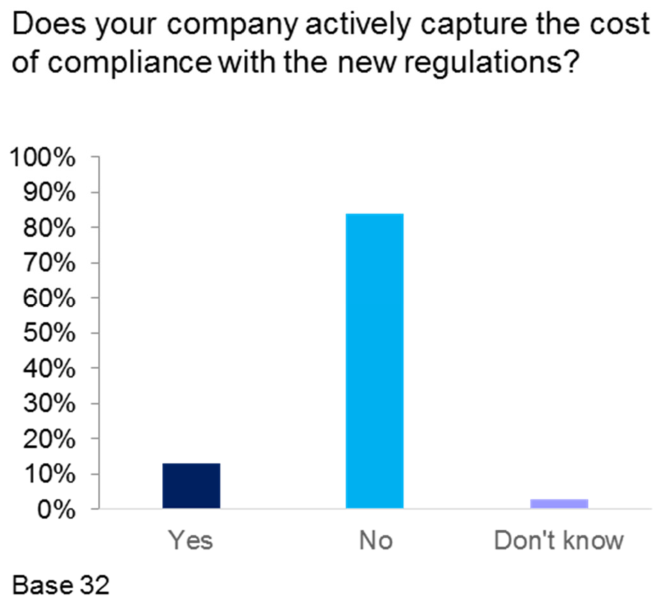
- Costs of compliance
- Implementation challenges
- Impacts of the regulations
- The future of reporting
- Summary

Costs of compliance

This section of the report addresses the costs associated with complying with the Regulations. As would be expected, the companies in our sample list have very different profiles and vary in terms of size, scale, type of operations and number of countries in which they work. For example, participating companies ranged in size from fewer than 500 employees to over 50,000. This will evidently impact on the degree of reporting required and therefore the experience of the reporting regime. It would therefore not be logical to arrive at an average cost by company so we have presented the costs reported to us in ranges by size of company.

The majority (84%) of participating companies indicated that they do not actively capture the cost of compliance with the new Regulations, irrespective of company type, size or listed versus non-listed status.

Chart 3: Companies that actively collect compliance costs



This finding was anticipated at the outset of the research, through both anecdotal evidence and our experience on previous research projects which have assessed the administrative burdens of compliance with regulations on business. The questionnaire was designed with this in mind and therefore also explored:

- Actual measured one-off and recurring costs
- Estimated one-off and recurring costs
- Time taken by staff to complete the activity alongside their grade and costs
- Bands of costs to give a broad indication of likely cost.

These questions were designed to gain some insight, even if this was more qualitative in nature, into the costs incurred by companies in complying with the Regulations.

While most participants were not able to give actual costs, several did provide their best estimates of the annual recurring costs of compliance and of the one-off costs for their first reporting period. For some this was challenging, with one company stating, for example

"We tried to make reliable computation of relevant costs but found out that it is very difficult to make reasonable estimations."

In total, 15 companies were able to give actual or estimated costs[3]. A further four companies suggested that their annual costs were likely to be less than £100,000, however, as this was indicative only, we have not included these four values in the table below. We have aggregated the actual and estimated costs as, in practice, these costs are likely to be equivalent. Table 1 below illustrates the range of costs reported to the research team.

Table 1: Costs of compliance

Costs of compliance by company size			
	Small	Medium	Large
One-off costs	Range: £700-£30,000 (9 companies)	£25,000 (1 company)	Range: £4,000-£5,230,000 (5 companies)
Recurring	Range: £500-£25,000 (8 companies)	Range: £12,000-£100,100 (2 companies)	Range: £5,000-£1,200,000 (5 companies)
Total estimated costs	£167,900	£137,100	£8,589,000

The table above suggests that, not only (and as would be expected), is there some correlation between company size and costs of compliance, but also that there are other factors which drive cost, as we have noted above.

When we looked at the reporting burden[4] for example (i.e. the number of countries on which companies report), the companies with lower burdens, reporting on less than five countries, tended to have one-off costs in the first year in the region of £40,000.

When asked about the reporting process associated with the Regulations and what is required annually by grade, time and total internal salary costs to their organisation, most participants were unable to answer with specific figures.

[3] Please note that while 15 companies responded to both the one-off and the recurring costs questions, these were not the same 15 companies in each case.
[4] While 9 small companies are illustrated in the table under one off costs these are not the same companies referenced in the reporting burden example.

However, those who did respond indicated that the reporting processes on the whole, have been added to existing roles, mostly at manager grade supported by junior staff. There did not appear to be substantial recruitment to administer the reporting requirements: this tended to be absorbed into business-as-usual costs (which of course remain a cost to the companies).

“In order to comply with new requirements we have 1.5 FTE in the headquarters and approximately 1 FTE in our subsidiaries in total, which is quite substantial for our function, along with some legal and consulting fees.”

New systems and processes

Similarly, when asked what new systems or processes, if any, have been implemented to capture and report the flow of payments to governments from their extractive activities, companies tended to respond that they are leveraging existing staff. Nearly all companies (90%) stated, however, that they had implemented new systems or processes to gather payment information and consolidate the reportable data into the final report. From participants’ comments, it appears that companies did not introduce new systems, but did adjust their ways of working.

“We have not implemented new systems as the information we require is available in one form or another. The new processes are collating the information and ensuring the payments are calculated in the same way.”

"We decided that we'd use existing resources, so we haven't had to implement any new systems".

“No new systems or changes to existing systems were required to be able to report under the Regulations. The main relevant payments were already separately tracked and reviewed through the existing accounting systems and other control mechanisms. The Regulations required us to implement a process to collate and review potential relevant payments, and to flow this information into the required reporting template.”

For some respondents, developing an understanding of the requirements of the legislation required significant time and therefore money. For another, the delay in implementation of similar regulations in the USA meant that a considerable amount of preparation had already been done.

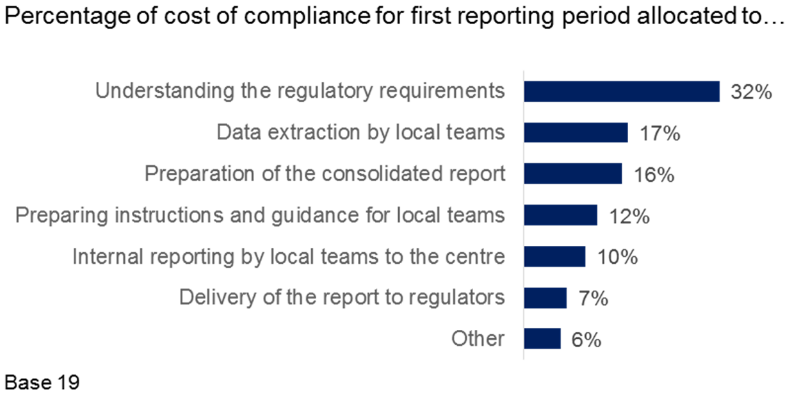
“A considerable amount of time and effort was required to develop a full understanding of the requirements of the regulations for the first reporting period. This included discussing issues of interpretation with industry peers.”

“A substantial amount of expenditure had been incurred in establishing the processes in the preceding two years in preparing for the aborted US regulations. If that work hadn't been performed (in setting up a central team, developing internal guidance, establishing contacts with local finance teams, creating reporting templates) the one off costs in Year 1

would have been considerably higher. The internal audit team also reviewed a number of aspects of our efforts to provide management with confidence that the teams were well prepared and that the company would be compliant."

The chart below presents respondents' views on the cost allocations in Year 1 across a number of activities. It demonstrates that "understanding the regulatory requirements" was the most time-consuming element of the initial implementation, which was also reflected in some of the more qualitative responses.

Chart 5: Allocations of cost in Year 1



External costs incurred

Nearly a third of companies indicated they had not incurred external costs as a result of their reporting requirements. For those that did, assurance fees were the highest costs reported. External legal fees ranged from £1,000 to £10,000; advisory fees from £500 to £25,000 and assurance from nearly £6,000 to £280,000. Again, these costs are likely to vary greatly by organisation type and scale.

Drivers of costs of compliance

As we have noted, the geographic spread of a company's operations will be a significant factor in determining the level of costs. This applies to both the number of countries that have to be included in the report and the relative diversity or concentration of the company's operations within particular countries.

When prompted, company participants suggested that the factor that had the most impact on costs incurred as a result of complying with the regulations was the number of payment types, followed by the number of projects and the number of countries in which they operate.

Table 2: Factors with the most impact on costs

	Factor
1	The number of payment types
2	Number of projects on which they report
3	Number of countries on which they report
4	Number of Government payees
5	Scale of payments
6	Types of country
7	The size of projects on which they report

In relation to payment types, production entitlements in the oil and gas sector were cited as being particularly challenging as this information is not captured within company financial systems.

"The size of projects has very little impact. The number of countries is very important. The tight definition of reportable fees helped limit the task of reporting this payment type. The most challenging payment type is production entitlements[5]. As we tend to be the operator of most joint ventures we have the responsibility to report production entitlements where those operations are subject to a production sharing agreement. As these arrangements don't involve real payments, there are no entries in our company's financial systems in relation to the production volumes or values. Reference has to be made to hydrocarbon accounts that are maintained separately."

Overall, therefore, it was clear that companies find it hard to attribute costs to compliance with the Regulations. In our achieved sample, only 15 companies out of 32 companies were able to give actual or estimated costs and there are many drivers of cost as we see.

Implementation challenges

This section is structured as follows:

- Filing in multiple jurisdictions
- Early implementation of the Regulations
- Disclosures and relationships with the host countries
- The submission process

[5] Production entitlements are amounts of extracted commodities that are due to governments under production sharing agreements. These amounts of oil, gas and other commodities are transferred to governments in kind but as they are not monetary amounts they are not tracked by companies in the same way as cash tax payments which are recorded in the financial reporting system.

The main implementation challenge identified by respondents is determining reportable payments. This is in line with the facts that one of the main drivers of cost was understanding the regulatory requirements and that, in general, respondents were hopeful that the Year 2 costs will be less. While delivering the report to the regulators was the least costly element of the process (see Chart 5), it ranked sixth as an implementation challenge. Further exploration of the submission process can be found on page 24. Collecting the data was also viewed as problematic, and was the second highest implementation challenge.

Table 3: Implementation challenges

	Challenge
1	Determining reportable payments
2	Data collection
3	Preparing the report
4	Identifying government payees
5	Classifying activities into projects
6	Delivering the report
7	Identifying in-scope subsidiaries
8	Identifying relevant extractive activities

Filing in multiple jurisdictions

Nine participating companies stated that they had filed a report or reports in more than one jurisdiction. Of these nine companies, four said that there had been no incremental cost associated with multiple reporting requirements. Three companies said these costs were marginal, one company said the costs were material and one company could not answer this question. None of the companies that had filed a report in another jurisdiction were able to provide an indicative value for these increased costs.

Early implementation of the Regulations

The majority of companies stated that the early implementation of reporting in the UK compared to the rest of the EU did not result in greater costs. Only two companies agreed that it did. However, one respondent noted the lack of guidance available to the industry, suggesting that if they hadn't prepared for the implementation of the legislation in the USA, the deadlines would have been more challenging.

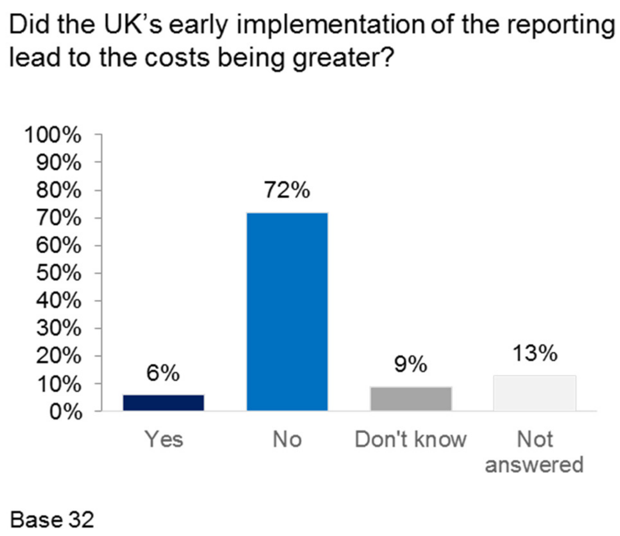
"Some UK companies needed to devote considerable resources in developing industry guidance. All of them needed to devote resources developing internal guidance and interpretations. As we had spent time prior to the UK regulations in preparing for the aborted US regulations, we didn't find the early implementation left us with tight deadlines. If that prior work hadn't been performed, meeting the UK deadlines would have been much more challenging."

There was some evidence however that companies were concerned about competitive advantage in relation to their peer companies which may not be subject to similar reporting regimes. Referring to the costs of compliance with the regulations, one company representative stated that there was "*competitive harm to the extent that UK companies were ahead of US and other EU countries in reporting government payments."* Several companies were keen to see a "level playing field":

"The un-level playing field that results in only EU and Canadian companies having to report may impact our competitive position, in particular relative to our US counterparts."

"We strongly recommend that stability of the framework is ensured and that the scope is not changed or further extended. The legislator should aim to improve a level playing field for companies reporting under the UK Regulations."

Chart 6: Early implementation of the Regulations



Disclosures and relationships with the host countries

In the main, companies have not experienced problems with laws that prohibit the disclosure of payment information in other jurisdictions, with overall, nearly half stating that they had no issues in any of the countries in which payments were made. However some shared experiences where "*there was a need to assess any conflict of law around disclosure in every jurisdiction where we would need to report payments."* They also had to manage relationships in the host countries.

"We had to request, with various degrees of associated effort, consent from a number of countries in order to make the required disclosures. The engagement process with national governments addressed the different levels of understanding and concern about the UK requirements."

"We engaged with governments in our largest paying countries to let them know this was happening."

"Briefings were provided to government officials in a number of sensitive countries to make them aware of the payment information that now needed to be disclosed publicly."

Two thirds of companies stated that they had not experienced any resistance or concerns from government agencies in countries in relation to the payments information being made public. Nearly a quarter of companies indicated they did, however, experience problems which required negotiations with the relevant governments. This will, of course, entail additional cost for companies in terms of the time required to navigate these potential conflicts.

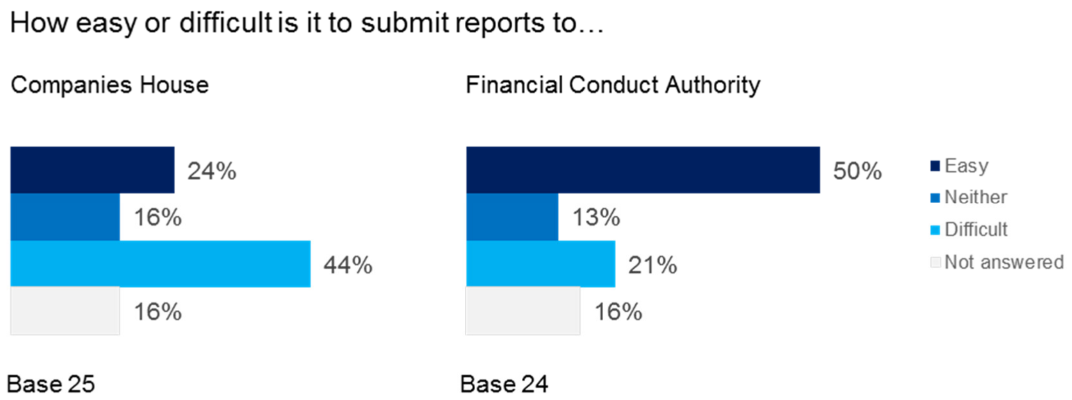
"*We had concerns raised and the threat of a possible legal challenge (which did not materialize). However, we have no evidence of lasting impact beyond high start-up and ongoing compliance costs."*

"The process of reconciliation was complex. We had to seek permission to disclose payment data from governments and in some cases this required lots of engagements. Permission from reporting countries has so far been obtained, but we remain worried of possible issues arising from conflict of law. Furthermore, ambiguity in the legislation, lack of available guidance for reporting and the diverse contracting arrangements in various countries added additional challenges to the implementation of the regulation."

The submission process

The submission process did appear to present challenges for companies, particularly to Companies House. Overall, 11 companies (out of 25) who submit reports to Companies House stated that the submission process was difficult. This is in contrast with the FCA where 12 companies said the submission process was easy (of the 24 interviewed who submit reports to the FCA). Common themes were the lack of guidance for the industry, the complexity of the processes, and technical difficulties with the Schema. There was also some concern about the appearance of the reports, given that these reports are publically available. The companies that are subject to these regulations are accustomed to presenting their corporate information in a very visually appealing way which does not equate with the appearance of the Schemas.

Chart 7: Submission process



"*For Companies House, the fact that you've got to change format is difficult. There's not a lot of guidance on how to do that. I had to Google industry guidance. It was technically difficult, if you're not used to reporting this way. Also for the FCA, there's a lot of steps. You have to announce it to the market.*"

"The software for Companies House is appalling. It doesn't work. It took the Junior Manager four months to resolve it with the bugs."

"Companies House is done with a series of Excel Schemas and the FCA, it's copying and pasting the tables to a Word document. It's bizarre that you're required to do both and also both are at different times. They don't make monitoring the deadlines easy".

"Why does it cost us £250 to upload it? This was difficult to understand. To have to pay to upload it was very weird. I spent about two days on this and as it was a request for information, it seemed strange to have to pay".

By contrast Companies House appears to be unaware of these challenges, suggesting that the extensive industry and CSO consultation prior to launching the service meant that there were few issues in using the system and that there were few complaints.

Companies House

Companies House described the consultation process that led to the service being established, which included extensive consultation with industry and civil society representatives. Fees were set on a cost recovery basis.

The service accepts the information provided and presents it on the register. Companies House does not monitor statistics or downloads of the reports nor does it follow who is accessing the reports. Companies House provides its own guidance, which sticks strictly to the requirements of the legislation, but recognised the efforts of industry in providing further guidance.

Financial Conduct Authority (FCA)

The FCA noted that, in its view, there were few issues with the setup of the system. It explained that listed companies have a suite of reporting obligations and that it would therefore expect companies to be familiar with the National Storage Mechanism. The FCA stated that there were no initial requirements to report in XML when the system was first implemented, and that some work was required on their behalf to work with Morning Star to make the system compatible.

The FCA did receive some queries from companies about the scope and format of the regulations, which, in their view, was relatively normal for new reporting obligations. As with Companies House, these queries are not tracked or recorded. The volume of queries has declined since Year 1, which is apparently the case with the introduction of many new reporting regimes. The FCA was not able to give an indication of the costs it incurred with the introduction of the reporting system, which were thought to be “quite marginal”. It has no immediate plans to change the existing system. Again, like Companies House, the FCA does not record downloads of the reports, so did not have a view on how the reports are used or by whom.

Impacts of the Regulations

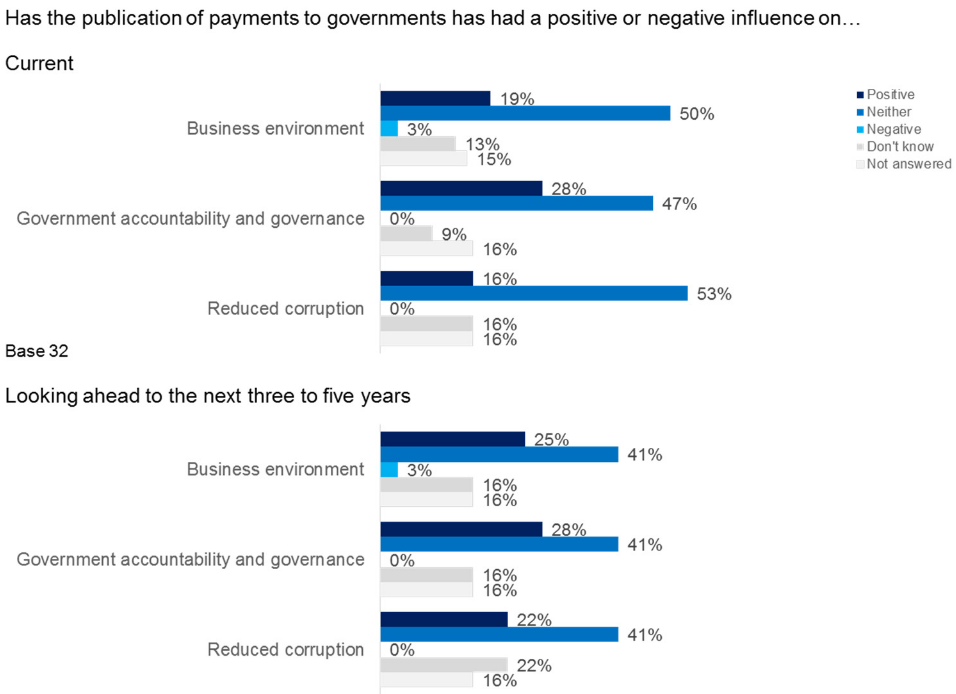
This section considers both the financial and non-financial impacts and benefits of the Regulations from the perspective of participating companies.

Financial impacts

In general, and as may be expected, many companies have yet to realise the positive or negative impacts which the publications of payments to governments could have on the business environment, government accountability and governance, and corruption levels. Many companies noted that neither positive nor negative impacts have been experienced to date. This may be in part due to the early implementation of the regulations, but also that, to date, the main impact on them has probably been the cost of compliance with the Regulations. There are some companies, however, as Chart 8 demonstrates, which do see a positive influence.

Looking ahead to the next three to five years, companies are slightly more positive. Eight companies did think that there would be a positive impact on the business environment and the associated “license to operate” and nine thought there would be a positive impact on good governance and reduced corruption.

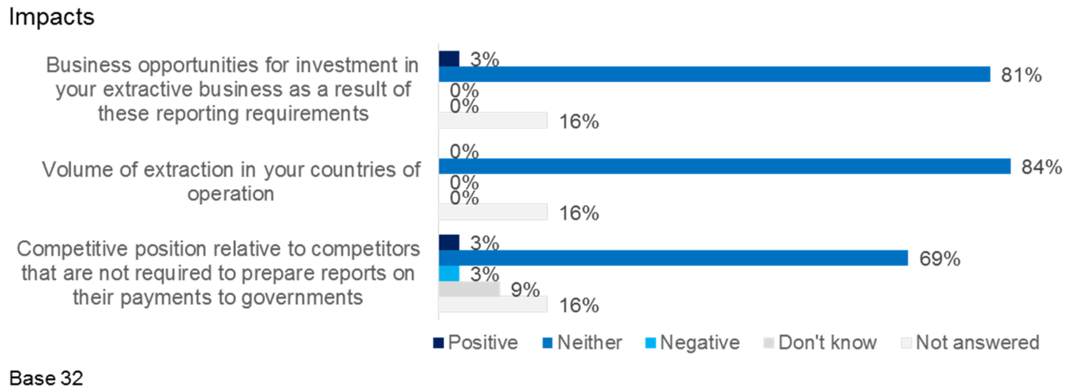
Chart 8: Influence of the reports now and in the future



The majority of companies stated the reporting requirements have had no impact at all on the volume of extraction in countries of operation. Just one company indicated that they have experienced positive impacts on their business opportunities for investment. One company has experienced positive impacts on their position relative to competitors that are not required to prepare reports on their payments to governments.

As previously noted, several companies stated that, after only one full year of reporting, it is too early to comment on the actual or potential benefits associated with the Regulations.

Chart 9: Impact of the Regulations on investment, extraction and competitive position

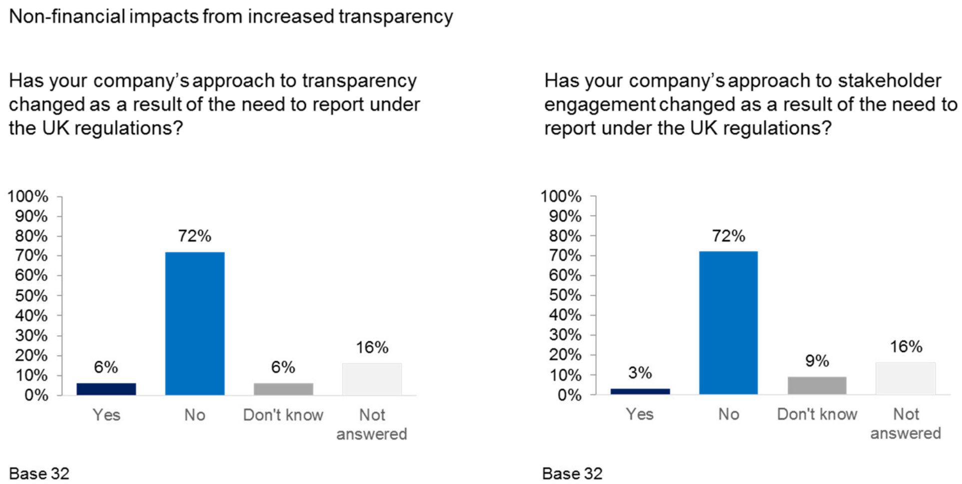


However, looking ahead, companies appear to be slightly more optimistic about the impacts over the next three to five years, with the greater share of companies not expecting any positive or negative impacts in the short to medium term. Over two thirds of companies (69%) indicated that publication of their payments to governments will have no impact on their competitive position with only one company expecting that it would. Five companies estimate there will be a marginal financial benefit and half (50%) don't know if there would be any financial benefits in the future. However, when asked separately, nearly a third (31%) of companies do anticipate a marginal to moderate cost associated with these changes.

Non-financial impacts of reporting

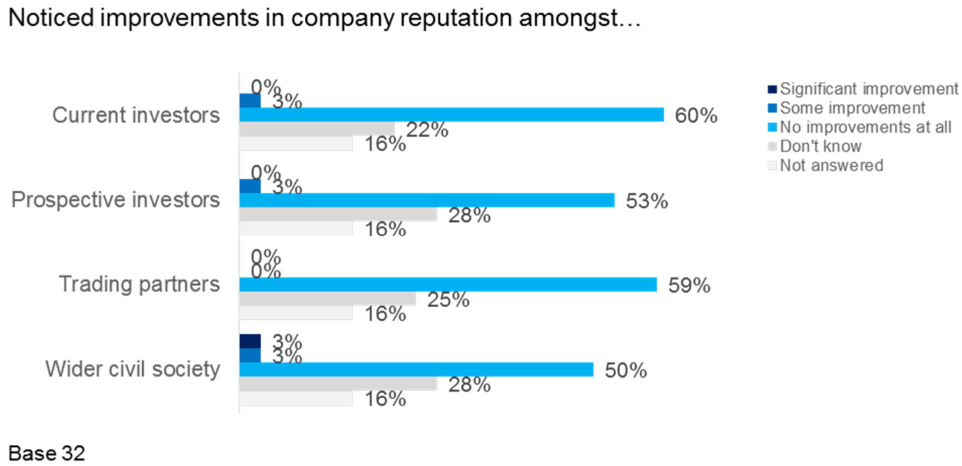
In terms of non-financial benefits, it appears that companies have not changed their approach to either transparency or stakeholder engagement as a result of the Regulations.

Chart 10: Non-financial impacts from increased transparency



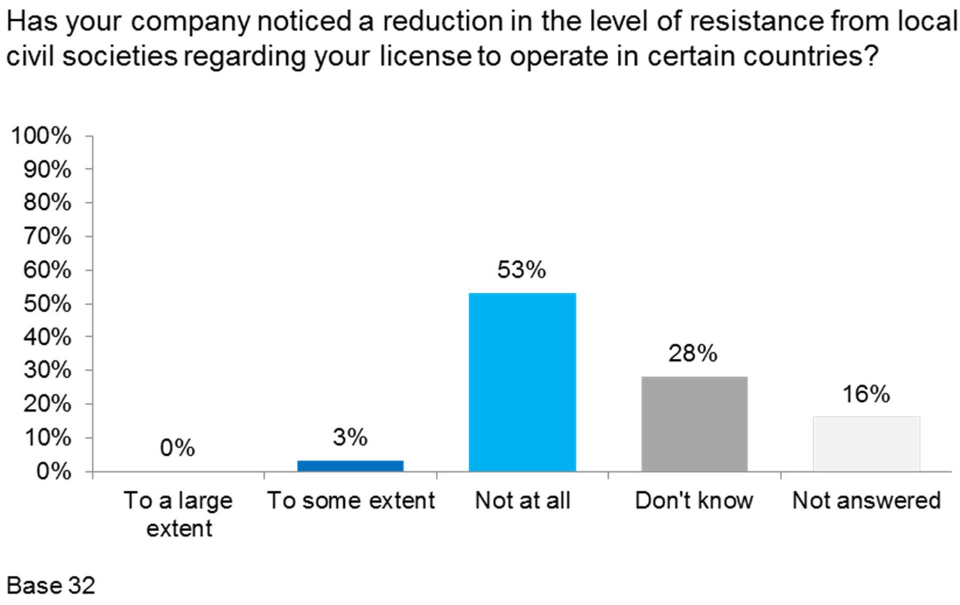
More than half of the companies indicated that their reputation amongst current and prospective investors, trading partners and wider civil society has not improved following the introduction of the Regulations.

Chart 11: Improvements in company reputation



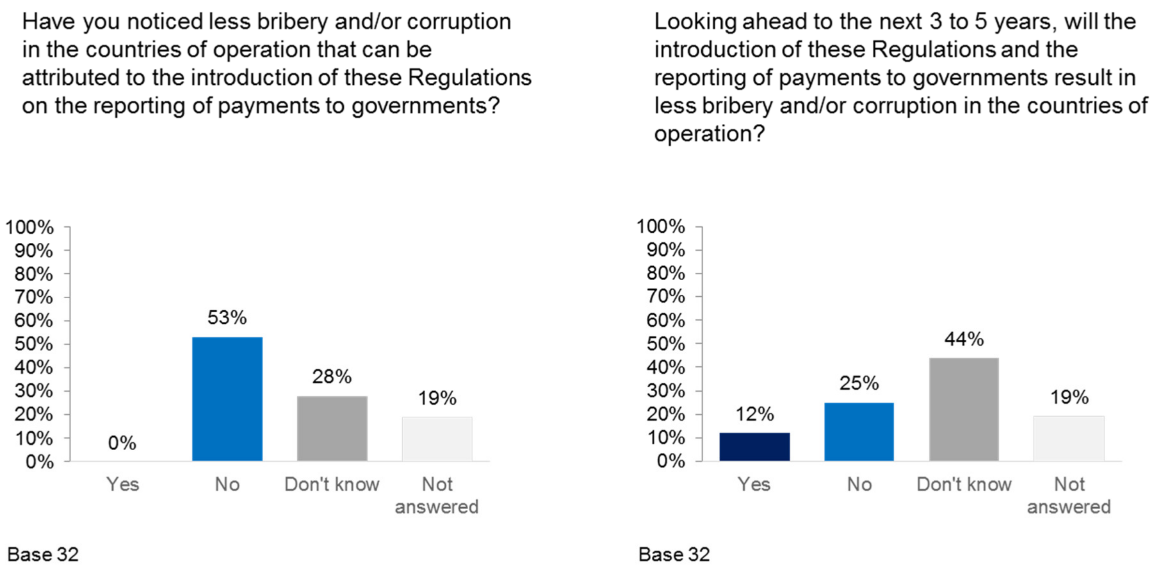
This finding is further complemented by the 53% of companies which have not noticed any reduction in the level of resistance from local civil societies regarding their license to operate in certain countries. In fact, only one company indicated that they had experienced some reduction. These findings suggest that companies have yet to experience tangible benefits associated with the reporting regime. These benefits may yet, however, manifest over time as the reports become used more widely.

Chart 12: Level of resistance from local civil society organisations



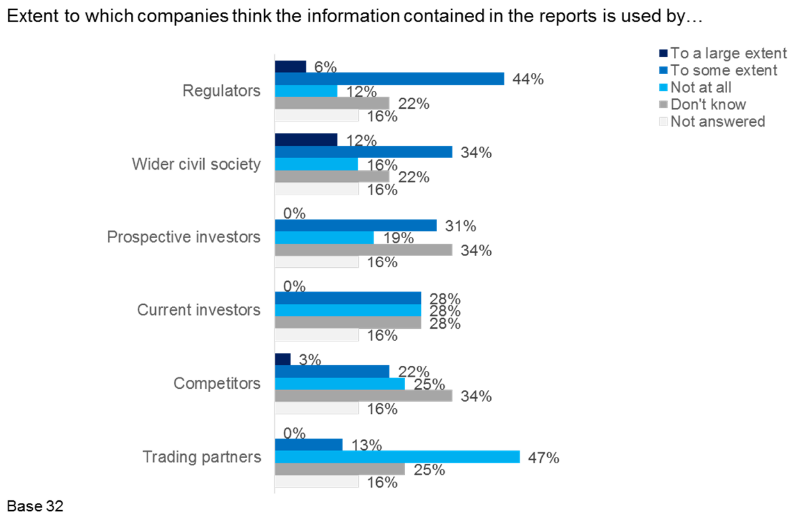
Over half of the participating companies suggested that they had not seen a reduction in bribery and/or corruption in the countries in which they operate. No companies stated that there had been a reduction, but there were a large proportion that were unaware one way or the other. The outlook is slightly more positive in the three to five year timeframe.

Chart 13: Bribery and/or corruption



However, when companies were asked if the reporting of payments to governments made the extractive industry sector more attractive to investors, only four companies agreed. There appears to be some uncertainty around which stakeholders are using the information in the reports and to what extent. A large proportion, nearly a quarter of companies overall, indicated they didn't know who was using the information. Just under half of companies indicated that they think the information is being used to some extent by their stakeholders. As noted earlier, however, there does not seem to be much awareness of the Regulations amongst investors and other stakeholders with the most usage believed to be among regulators and wider civil society.

Chart 14: Use of information by stakeholders



Some companies were, however, interested in understanding how the data is being used.

"The only thing is it would be interesting to see is how often this data is being accessed because there's a number of additional reporting requirements which are being introduced now. Is it just NGOs accessing the data?"

"It would be interesting to see how the Government use the information. What conclusions have they come to and what's the use of it".

"Investors do not appear to have shown any interest in the content in the reports"

The future of reporting

Companies appear to be more optimistic on the potential benefits of the reporting regime in reducing bribery and/or corruption than have been realised to date. Supporting commentary indicates they have yet to realise business benefits, viewing the submissions as a reporting obligation and an administrative burden rather than a business benefit. In light of this and the efforts required to report, over half of companies (59%) think that the regulations should not be extended to require the publication of additional information to cover other business activities, for example commodities trading.

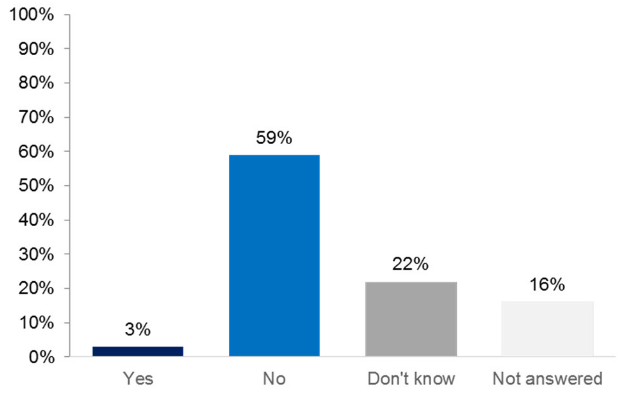
Respondents were keen that there should be an appropriate balance between the time taken to collate and report on the information and the potential benefits which will accrue over time.

"Purely because we've been unintentionally caught, the Regulations don't give any benefit to us so I see no reason to extend them".

Nineteen companies thought that the scope of the Regulations should not be extended, as illustrated below. Seven companies stated 'don't know'.

Chart 15: Scope of the Regulations

Does your company think that the Regulations should be extended to require the publication of additional information or to cover other business activities, for example commodity trading?



Base 32

Comments suggested that there would likely be resistance to extending the scope of the Regulations from companies:

"The UK regulations are a complete and accurate enactment of the EU Accounting and Transparency Directives and therefore no scope increases are needed."

"We would be cautious about imposing additional mandatory reporting requirements unless there are very clear benefits which justify the additional time and cost involved in the reporting, especially in an area which partly relates to effective communication and engagement with relevant stakeholders, where more voluntary reporting can be prepared in a more flexible way which is tailored to the interests and needs to particular stakeholder groups in particular countries. If the benefits are considered to justify additional mandatory reporting requirements, there would presumably be a case for requiring the additional reporting of all companies, rather than just some additional specific sectors (e.g. commodity trading)."

"I don't believe it adds that much value and there are so many reporting requirements now (e.g. BEPS) it is taking time away from internal work which would provide more useful information for the company."

One respondent did think however that some more contextual information on specific tax regimes would be useful.

"The reporting of these payments can be taken out of context, therefore additional information regarding the tax regimes in the countries that we operate in would aid the understanding of civil society groups that look to understand the benefit the countries get from the extractive industries."

Companies also took the opportunity to provide further challenges that they have been experiencing as a result of compliance with the Regulations and the increasing administrative burden of increased disclosures in general.

"My challenge is the scope of reports, the report-creep at the moment, it's not just this initiative. In the last couple of years, there's a lot of new reporting requirements for companies. There's a number of additional disclosure requirements. It's the accumulation of those".

"Having EITI and Reports on Payments to Government being almost identical but not results in unnecessary duplication of effort"

Some companies were obviously keen that the limitations of reporting on Joint Ventures are also taken into account:

"We strongly believe that it is unnecessary and unhelpful for non-operating parties to be required to report a proportionate share of the payments made by operators. Such a requirement would result in a new level of risk for reporting entities as they'd be required to commit to payment amounts and dates over which they have little control. Companies would become reliant on information provided by other parties and could not be sure of its accuracy."

Further additional comments from companies related to:

- The need for the UK Government to protect the competitive position of UK companies by maintaining alignment with the EU accounting directive and Canadian regime.
- The collection of data relating to payments by an unrelated company (i.e. an operator of a joint venture) would add considerably to the reporting burden and be problematic in relation to validating the legitimacy of payment information that is not based on the company's own financial systems.
- The need for the regulations to remain focused on payments made by controlled entities.

Summary

In the main, companies in extractive industries do not actively capture the cost of compliance with the new Regulations. Companies also struggled to provide actual or estimated costs as these tended to be absorbed into business as usual costs. There were great variations in the costs that were provided, driven by a number of factors including size, number of countries of operation and the number of payment types. Companies tended to report that the administration of the data collection and reporting process had been added to existing job roles.

The main implementation challenges for companies related to determining reportable payments and the collection of the data. Multiple filing requirements and the early implementation of the Regulations (compared to the rest of the EU) were not perceived to be major issues, though several companies did note the need to keep a level playing field with other jurisdictions.

The submission process to Companies House and the FCA is not viewed favourably at present. Companies made several suggestions to make the overall process more synchronised and user friendly.

Companies have yet to realise the positive or negative impacts which the publications of payments to governments were intended to have on the business environment, government accountability and governance, and corruption levels. There was some positive evidence though that these benefits may start to emerge in three to five years' time, with several companies stating that they expect there to be a positive impact on the business environment, government accountability and reduced corruption in the longer term.

Companies also struggled to identify any benefits that have accrued to them from the Regulations. This may be because of the timing of the review (after one year of reporting for many), but also that companies tend to have a range of compliance obligations in terms of reporting and many tended to view the requirement to report on payments to governments as an additional administrative obligation. There appears to be some uncertainty around which stakeholders are using the information in the reports and to what extent.

Finally, companies did not generally see a need to expand the Regulations, highlighting the range of reporting requirements already in existence and the consequent administrative burdens. This view could well be exacerbated by a lack of information as to which stakeholders are using the reports and for what purposes.

CSO views on the Reports on Payments to Government Regulations

Introduction

This section of the report focuses on the themes emerging from 11 interviews conducted with Civil Society Organisations (CSOs), nominated by the Publish What You Pay coalition which has campaigned for these disclosures for many years. The interviews explored the value of the reports to CSOs, the ways in which they used the reports, the benefits and potential benefits of the reports, and any additional information that could be usefully included in the reports.

Overall, the CSOs that participated in this research welcomed the introduction of the reporting requirements as “a huge step forward” and praised the UK Government for taking a lead on promoting transparency through reporting. The following paragraphs outline their response to the regulations in more detail.

This section is structured as follows:

- The value of the reports
- Using the reports
- Impact of the reports
- The information provided
- Reporting mechanisms
- Monitoring compliance
- The future of reporting
- Conclusions

The value of the reports

All the participating CSOs found the reports very valuable as a mechanism to achieving the regulatory objective of holding governments and companies to account and to help ensure that companies are providing adequate value to the communities in which they operate.

There was a recognition that several companies had, prior to the introduction of the regulations, made voluntary disclosures about the taxes and other payments they made to governments. However, the benefits of mandatory reporting over and above that required by the Extractive Industries Transparency Initiative were thought to include the provision of data which are more timely, more comprehensive and more universal in nature.

While there has only been one full year of reporting data available to CSOs at the time of the interviews, with 91 reports in the 2015 financial year and 67 reports in 2016 at the time of this research, there was a general consensus that the reporting environment had changed dramatically:

"That's a lot of reporting, a lot of disclosure. […] it's a huge step forward for all those that want to see broad-based human development, worthwhile, sustainable sharing of resources and wealth globally. It's a major achievement that we now have these reports". Miles Litvinoff, Co-ordinator, Publish Way You Pay UK.

"Mandatory reporting allows a light to be shone on something that civil society organisations have had questions on for many years." Claire Woodside, Director, Publish What You Pay Canada

"As a representative of a number of groups of civil society groups in France and also working with citizens living in resource-rich countries [this information] is extremely valuable." Quentin Parrinello, Oxfam France and Publish What You Pay France.

"The regulations are part of a 'laudable aim' of improving transparency in resource rich and developing countries and improving government and business accountability. In developing countries, a lack of oversight and transparency 'goes hand in hand' with mismanagement and corruption, which these regulations have the potential to help overcome" Joe Williams, Senior Advocacy Officer, Natural Resource Governance Institute.

There was a view, however, that there was still work to be done to raise awareness of the reports, especially in developing countries where there might be a greater risk of corruption. This awareness raising is required at both the CSO and the citizen level if the full potential benefits of the reports are to be realised. The majority of CSO respondents believed that the true value of the reports would emerge over time. There was also a general desire to see countries such as Australia, South Africa and the USA implement regulatory requirements to report.

Using the reports

Since the introduction of mandatory reporting, the role of many of the organisations that participated in this research had obviously changed from campaigning for the regulations to working with the information provided and data analysis, at a company, a project and a country level. CSOs stated that they reviewed the reports from the perspective of compliance in both the “letter and the spirit of the law”.

The CSOs did however did still embrace an advocacy role for their organisations as they have identified certain issues with the current regime that they believe need to be addressed. However, there was a general agreement that working with the data was still at an early stage, given that there has only been one full year of reporting during our fieldwork period. It was thought that usage of the reports would only increase over time.

“The power of the reports is growing as we learn how to use them… And over time, I think we will see stakeholders, such as governments, increasingly using the data”. Claire Woodside, Director, Publish What You Pay Canada.

Some of the ways in which the reports are being used are presented below.

Sharing across PWYP networks

CSOs highlighted how they monitor the publication of the reports in real time and then share the availability of reports across the CSO network, nationally and internationally so that their colleagues are aware that the information is accessible and have a sense of the quality of the information provided. Several CSOs reported that they had helped organise communities of activists in developing countries to help analyse and use the data to hold their governments to account. Much of their initial work has been focused on raising awareness of the reports and how grassroots community groups may start using the data.

Data analytics

Several respondents cited large-scale data analytics projects that attempt to harness and distil the information in a useful way. For example, the One Foundation described a data-driven project to gain a global perspective on payment flows. This analytics capability allows CSOs to ask a series of questions. Examples were given of operations in Niger and Angola where in one instance an unexplained amount was thought to total $100m, as revealed by this new analytics project.

Monitoring company payments

The reports are monitored for timeliness, quality and compliance on a company by company basis. CSOs often engage with companies directly if reports are late, if the data appears incomplete or if there are any quality issues. In a few cases, where the omission has been deemed to be significant, companies have been reported to the FCA by the CSOs. It was acknowledged that this is not always the fault of the individual company but could be due to ambiguities in the Regulations. Some CSOs suggested that the reports helped civil society to understand how companies were structured, how they operated and how payments are structured. Several also commented that the reports helped illuminate the ways in which companies were structured for general tax purposes.

Holding governments to account

CSOs also described the ways in which the reports are used to hold governments to account. PWYP UK has started contacting the governments of countries where there may be a risk of corruption in conjunction with other members of the coalition to verify the payment amounts reported by companies.

"At the very least we are showing the governments that there are civil society members in those countries who are aware of what the companies are reporting and are expecting the government will verify that those are the correct amounts as civil society have a right to know". Miles Litvinoff, Co-ordinator, Publish Way You Pay UK.

Table 3: Use of reports

Specific examples of how the Reports are used	
Uganda	CSOs identified and queried a discrepancy of $14m in payments between the reports of an oil company and the annual accounts of the Bank of Uganda.
Niger	Questions were raised over the value of uranium contracts to the Niger government. The reports have allowed PWYP to engage with both the relevant company and the governments on the issue.
Uganda	Reports have been used to raise questions on payments that had not been included in government reports
Zimbabwe	The reports are being used to educate community leaders and councillors on the value of revenues from platinum and diamond mining. Workshops have been held to train local activists on interpreting the data.
USA	CSOs are campaigning for US companies to disclose so that they are subject to the same requirements as their Russian and European counterparts.
Philippines and Indonesia	PWYP is publishing reporting information online and creating an electronic community. It has created a phone app in Indonesia to share the data.
Australia	Reports data contributed to a royalties debate in the media over oil pricing.
Tanzania	Reports referenced in debates between government and companies on contracting values.

One of the key challenges is making sure that the information reaches the communities and citizens that need it most. To this end, PWYP has implemented a Data Extractors Programme to support communities and activists in the interpretation of the data. One of the CSOs described their role as “infomediaries”, between the data and the grass roots in developing countries.

Overall, CSOs agreed that they were at an early stage of exploiting the information but much work had already been done.

The impact of the reports

CSOs believed that the fact that companies now recognised that they had a legal obligation to report payments to government is an evident major impact. Several noted that many companies also realise they have a moral as well as a legal obligation, citing, for example, those companies that are represented on the UK Extractive Industry Transparency Initiative.

“Good, progressive companies who look beyond their immediate bottom line and who want to be good global citizens, increasingly recognise that it is right that citizens can access information about the resources that belong to them and their countries”. Miles Litvinoff, Co-ordinator, Publish Way You Pay UK.

One of the biggest impacts to date was identified as the impact on civil society. CSOs thought that analysts and community activists on the ground have been greatly empowered by the ability to access the information, analyse it and hold governments and companies to account.

“This will be road to the other impacts, such as civil unrest… the potential to prevent civil unrest is immense. It won’t be the only solution, but it will be part of the solution. The same goes for better governance, bribery…”

The Regulations’ impact in terms of deterring corruption was thought to be considerable. There was a general consensus that the reporting is a powerful deterrent to corruption as companies and governments are now aware that payments are open to scrutiny, especially in non-EITI countries. It was also recognised that the impact on corruption is hard to quantify, given its very nature.

“Corruption prevention is hard to document and while it is or can be assumed that the reporting will deter corruption and bribery, this is hard to document and prove. However, the reporting encourages payments to be recorded properly and will hopefully dissuade corruption payments”. Claire Woodside, Director, Publish What You Pay Canada.

One of the key benefits is a certain level of ‘mind set change’ around deterrence with regard to corruption. While it’s hard to quantify deterrence, the very fact that this information is out there, and companies and governments are aware that there is more *scrutiny, will hopefully have an impact on the way in which companies and governments do business."* Joe Williams, Senior Advocacy Officer, Natural Resource Governance Institute

The regulations are also expected to help reduce civil unrest by improving the infrastructure and social development in resource-rich countries through improved governance but again this is viewed as a long-term consequence of the new reporting regime.

CSOs agreed that, while it was early days in the implementation process, the potential impacts of mandatory reporting will be very significant. There was a clear view that the value of the reports would increase over time as more time-series data becomes available and analysts would be able to track payments throughout the project lifecycle, including whether projects are actually producing the revenues promised at the prospecting stage. One CSO respondent thought it could be decades before the benefits are fully evident.

There was a general view that it was too early to consider the impact on governments in developing countries and that this will take time. It was thought that much would depend on implementation in the USA and whether it continued to lag behind Canada, the European Union and Norway.

Benefits were identified for a range of stakeholders, including governments in developing countries and the companies themselves.

Governments

The example of Zimbabwe was cited by several CSOs, noting that reforming elements of the Government had invited civil society to work with them in analysing the data in order to help combat corruption. Nigeria was also provided as another example where forces of reform have also been assisted by mandatory reporting. Overall, it was thought that governments would benefit from increased trust from their people.

Other potential benefits for governments included:

- Reduced civil unrest and improved rule of law
- Better and fairer deals with companies, based on "fair value"
- Better and more transparent flows of funding
- Enhanced reputation of home countries, with the UK Government being seen as a leader on the transparency agenda
- Better information sharing across government, rather than data being held by the minister for oil or equivalent, and increased transparency

- Ultimately, increased prosperity and life chances for the citizens of resource-rich countries, especially in areas such as health, education and diversifying the economy when natural resources are exhausted.

- Overall, confidence in the government

Citizens

It was generally believed that the main impact on citizens, in addition to better governance as outlined above, was empowerment. Several respondents indicated that access to information is a human right and that the Regulations provide them with the information they need to hold their governments to account.

Companies

Several CSOs stated that the Regulations gave extractive industries a “social license” to operate as citizens of developing, resource-rich, countries could see that they were paying a fair price for their access to operate. It was also thought to enhance their global reputation and create a more level playing field for competing businesses. The legislation was thought to reduce suspicion and increase trust in the companies in their countries of operation, hence the voluntary reporting undertaken by some companies prior to the introduction of the regulations.

For some CSO stakeholders, the legislation provides a mechanism to protect companies from bribery attempts and helps enhance their brand. Both the US and the Canada representatives of Publish What You Pay cited the role of Canadian mining companies in lobbying for the legislation there in recognition of the need to increase trust and transparency in the industry.

“Citizens are less likely to blame the companies if the data is out there and the data is fair”. Miles Litvinoff, Co-ordinator, Publish Way You Pay UK.

“It takes [companies] out of the corruption equation”. Tafadzwa Kuvheya, National Co-ordinator, Publish What You Pay South Africa.

“In Nigeria, we found seven oil and gas companies reporting under the UK regulations and equivalent regimes in Europe and Canada. All seven have made payments to the Niger Delta Development Commission under a law that was introduced five or six years ago. These regulations allow companies to prove they are meeting their socioeconomic obligations within the region beyond their tax and royalty contributions”. Joe Williams, Senior Advocacy Officer, Natural Resource Governance Institute.

Other benefits to companies included a more stable operating environment, with examples such as the security costs of operating in Nigeria and the associated risks of kidnapping and other threats, and civil unrest in Libya, provided by CSO participants as illustrations of the difficult contexts in which companies often operate.

Investors

CSOs state that investors are likely to welcome as much information as possible to help them assess risk in the companies in which they invest. They did note however the EU engagement with investors was not as targeted as in the US, when the Accounting Directive was being developed. Reporting payments to governments was thought to provide greater insight into the governance of the reporting companies and ultimately the long-term profitability of the companies, which is increasingly being linked to sustainability. Investors in the USA in particular were thought to use the reports in their risk analysis.

The issue of reputational risk for investors was also raised, with the perception that investors would, as would be expected, want to be associated with companies that had a strong reputation for ethical behaviour. Again, it was thought that the benefits to investors would increase over time as more trend data becomes available.

Country-specific examples

PWYP South Africa

PWYP South Africa described the reports as very useful to CSOs in South Africa, given that it is one of the larger hubs for European companies. While PWYP campaigns for mandatory reporting in South Africa, it is able to use the data provided by UK listed companies to provide more transparency in the extractive industries there. The organisation, which is relatively new, is currently training communities to access and analyse the reports. It is focusing on holding both the South African government and companies to account, to assess whether companies are providing fair value to South Africa.

Tunisia

It was highlighted that the oil sector in Tunisia has been controversial in the past, with many Tunisians questioning why their country is not as equally prosperous as their oil-rich neighbours. This has led to protests in some areas of the country. It has been reported that the reports have helped the Tunisian government which did not previously have reliable information on oil revenues to forecast revenues more effectively. CSOs are also using this data to train activists on holding their Government to account. Some participants suggested that there has been a “multiplier” effect from the regulations, whereby, in Tunisia for example, the Government has become more “pro-transparency”, taking steps to becoming full members of EITI for example. It was also suggested that more transparency was helping ease relations between communities in Tunisia and companies as the latter are better placed to demonstrate their value to the local economy.

Nigeria

One of the big benefits of mandatory reporting was thought to be the facilitation of data modelling, particularly at the project level. The reports have been used in Nigeria to train CSOs to analyse operations and companies, looking at the difference between what the Government is receiving and what it should be receiving. It is hoped that mandatory disclosures will help misreporting as well as the diversion of funds. CSOs in Nigeria have been working with companies to consider the importance of the reports for empowering its citizens.

The information provided

There was a clear view that both quality and quantity are important in terms of the data provided, as well as timeliness of the reporting. Some CSO respondents noted a variation in quality of reporting between companies, with some attributing this, as noted above, to a misinterpretation of the regulations. Some respondents noted a certain ambiguity in the Regulations that they would like the UK Government to clarify.

In general, CSOs believed that more guidance was required to improve the comparability of reports by different companies, particularly around the level of detail required. Some noted, for example, that some companies listed “fees” with no further explanation of why these fees have been paid.

“Companies are using their own accounting rules to define certain payment categories. For example, one company may identify a payment as a tax in their own accounting practices while another company may identify the same sort of payment as a royalty in their accounting practices. This is an example of a lack of a clearly framed structure about how these payments should be recorded.” Quentin Parrinello, Oxfam France and Publish What You Pay France.

Other reported issues include:

- **Joint Ventures (JVs):** all the CSOs that participated highlighted the issue of joint ventures, noting that these arrangements are very common in extractive industries and that many non-operating joint venture participants did not report production entitlements even though these could represent sizeable payments to governments. There was a view that this was often at the discretion of companies. One participant suggested that non-reported JV payments in Angola, for example, amounted to $1.2 billion, and this represented a large gap in the data. It was also thought to understate the companies’ economic contribution to the country. CSOs thought that companies should report on JVs using a proportionality-based approach. It was also recognised that some companies do report JVs. PWYP identified seven companies reporting under the UK Regulations that explicitly stated that they did not report on JVs. There was a view that this is a major weakness in the reporting and that the Regulations should be strengthened to account for this. Overall, it was suggested that JV payments should be reported on a proportional basis and the operator and all partners should be identified.

- **Over-aggregation of projects:** participants also consistently mentioned the over-aggregation of projects. CSOs cited examples of multiple, distinct projects in disparate regions being reported as one, for example the Gulf of Mexico, Alaska or Western Australia, even if there were different agreements or royalty terms. One stated that this practice deprives civil society of the "granular" disclosure of data that it requires and that it mitigates against the stated policy aims of the UK Government. The example was given of a company operating in the Democratic Republic of Congo that aggregated two JV projects despite having different partners and different levels of profitability. This was also attributed to a weakness in the wording of the legislation. It was suggested that the definition of a project should be based on being geographically and operationally integrated and with similar contractual terms, and that clear guidance should be provided on this definition, with the wording in the legislation tightened. *"Companies can only aggregate their project payments when those projects are fully geographically or operationally integrated and have substantially similar agreement terms"*. Jana Morgan, Director, Publish What You Pay United States. Participants also thought that there was also an issue around the under-reporting of projects.

- **Level of government:** most CSOs also highlighted that there is often insufficient detail about the level of government (national or regional) or the specific department which was the recipient of the payment, for their purposes. The majority of the CSO participants stated that there should be more detail provided around the specific government entity and whether this related to the national or regional level. One respondent also noted gaps in reporting of entities or vagueness in terms of the level of government.

- **Payments in kind:** respondents also highlighted payments in kind as an issue, particularly around production entitlements. It was suggested that the value and volume of any payments in kind should be provided so that civil society could assess whether a fair value has been provided. It was also thought that the publication of volumes would also help track the end destination of any payments in oil, gas or minerals.

- **Conflation of commodities:** some respondents stated that it should be made clear that different commodities (i.e. oil or gas) should not be conflated but reported separately and in full for greater clarity.

It was also noted that the UK and EU definition is narrower than in Canada, with taxes limited to income, profits and production, whereas Canada also includes property taxes for example. It was suggested that the definition could be amended to all taxes "other than consumption taxes and personal income taxes".

Additional information

When prompted to suggest the additional information which should be included in the reporting requirements, CSOs tended to suggest proportional JV reporting and fully aggregated project reporting as noted above.

Other requirements suggested:

- **Category gap reporting:** some respondents stated that companies should report any payments that are made by state-owned entities to them. This was viewed as a particular issue in Angola, Nigeria and Kazakhstan.

- **Payments for transportation and export:** these are included in EITI reporting so some CSOs stated that these should also be included in mandatory reporting.

- **Social payments:** some CSOs noted that some governments (i.e. Angola) required companies to make "social payments" to, for example, training programmes. It was suggested that sometimes it was difficult to ascertain whether these programmes existed or not. State security payments were also cited by CSOs.

- **Contextual information:** CSOs wish to see more contextual information or project-specific data such as project status (exploration, development, production), length of operations and the scale of the extraction to help them determine the value of the project. CSOs also thought that the partner organisations should be listed in joint ventures, alongside the main operator.

- **Basis of preparation information:** one CSO suggested that the xml file submitted to Companies House should have an extra tab on which companies could record the basis of preparation information. Another suggested that there should be more detailed and explanatory narrative around what constitutes a tax or a royalty in the reports.

- **Corporate structure:** some respondents requested more clarity around corporate structure.

- **Commodity trading:** CSOs also wanted to see commodity trading included in the scope of the regulations. "*An absolutely massive black hole is the lack of transparency around payments related to commodities trading… these payments are often the largest payments that are made to governments (in countries such as Angola, Iraq, Libya and Nigeria) so not having these transactions in the reporting regime is a huge gap".* - Joe Williams, Senior Advocacy Officer, Natural Resource Governance Institute. The omission of commodity trading was viewed by CSOs as the main payment gap.

Scope

In terms of scope, CSOs would like to see AIM-listed companies covered as well as companies listed in crown dependencies in overseas territories, for example the Guernsey and Channel Islands Stock Exchanges.

"There have been concerns about the transparency of AIM, this would be a way of reassuring investors, the market and the public". Miles Litvinoff, Co-ordinator, Publish Way You Pay UK.

One CSO called for more contract transparency, citing the UK Government as having a strong tradition in this with the publication of North Sea licenses, as well as information on beneficial ownership to counter corruption. He believed that there was a need for a wider exploration of international tax issues and the impact for developing countries. Another CSO suggested that some non-extractive companies such as companies that build pipelines should be included in the scope of the regulations.

Reporting mechanisms

CSOs generally welcomed the fact that the reports were made publically available through the Companies House website and the Financial Conduct Authority (via Morningstar), as this was not always the case in other jurisdictions, such as France. The system in Canada was cited as a good example with an alphabetical listing of companies which have reported.

There was a consensus that the reports should be both human- and machine-readable. CSOs appreciated both the pdf/html and csv formats and stated that both were required for their analysis.

Reactions to the Companies House portal was generally positive, while accessing the reports from FCA is thought to be more challenging as it is not possible to track when reports have been submitted. The FCA's National Storage Mechanism was not thought to be particularly user-friendly, but the new FCA open data approach was welcomed. There were, however, some issues reported with the Schema on the FCA website.

There was also thought to be a lack of guidance for companies, with several CSOs suggesting that companies reporting in Canada received more support. There were some concerns that the instructions on both sites could be confusing for companies with some companies uploading different information to each site.

Other suggestions for improvement include:

- Annual and alphabetic indexing
- Full list of all companies listed
- Ability to search by country
- Improved linkages between Companies House and the FCA, with perhaps a joint index page or cross-references on the relevant web pages.

Monitoring compliance

Several CSOs stated that they believe that there is insufficient monitoring of both the quality and timeliness of the reports by the Government, and that resources should be allocated so that monitoring and enforcing activity could be undertaken. It was suggested that not all companies reported as required, with some reporting late, some not at all and some publishing the report on their website

The regime in Canada was cited as an example of good practice, with several CSOs stating that if reports are not clear or of good quality they are returned to companies. According to PWYP Canada, this is done by means of a mini-checklist when the reports are submitted.

The future of reporting

There was agreement amongst all participating CSOs that the UK Government has demonstrated real leadership on the transparency agenda and should continue to champion disclosures. All CSO respondents welcomed the reports and wanted the legislation to stay in place and be strengthened, with all suggesting that the benefits of the reports will only grow over time.

Summary

Overall, the response from the CSOs, all of whom are members of the PWYP coalition, towards the Regulations and indeed the leadership of the UK Government in this area was very positive. All recognised that reporting is at an early stage and that CSOs are only at the beginning of learning how best to use the new data and to educate the citizens of the societies in which oil, gas and mining companies operate. All enumerated the benefits to Governments, companies, citizens and civil society. They did, however, indicate several areas where they would like to see more information made available. These areas were consistent across all CSOs and their membership of PWYP.

The issue of monitoring the reports was also raised, with Canada being cited as an example of good practice. From a technical point of view, CSOs, like the relevant companies, noted the technical issues with accessing the reports on the Companies House and FCA websites, but welcomed the fact that, unlike in other jurisdictions, the reports are made publically available.

This publication available from www.gov.uk/beis

Contact us if you have any enquiries about this publication, including requests for alternative formats, at:

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Title: The Reports on Payments to Governments Regulations 2014 ("The Regulations")	Post Implementation Review
PIR No: BEIS024(PIR)-18-BF	**Date:** 15/02/2018
Original IA/RPC No: IA BISBE777	**Type of regulation:** EU
Lead department or agency: Department for Business, Energy and Industrial Strategy (BEIS)	**Type of review:** Statutory
Other departments or agencies: Click here to enter text.	**Date measure came into force:** 01/12/2014
	Recommendation: Keep
Contact for enquiries: **John Conway**	**RPC Opinion: Green**

1. What were the policy objectives of the measure?

The Regulations (which implement Chapter 10 of the EU Accounting Directive) require certain entities that are active in the extractive industry or the logging of primary forests to disclose on an annual basis the details of payments made to governments regarding any activity involved in the extraction process (exploration, development etc.). This initiative is intended to bring greater transparency and accountability to revenue flows to governments of resource rich countries. Chapter 10 is linked to a global standard of extractive sector transparency based on mandatory disclosure of payments to governments worldwide that has also been implemented in Canada and Norway, and compliments the voluntary Extractive Industries Transparency Initiative.

2. What evidence has informed the PIR?

The review has mainly been informed by survey work conducted by an external body to assess the costs and benefits accrued by reporting entities, civil society organisations and other parties with an interest in the Regulations. We have also analysed the written submissions sent to inform the review, and revisited the costs and benefits estimates of original IA (IA BISBEE777) and the assumptions that underpinned them.

3. To what extent have the policy objectives been achieved?

Companies appear to have yet to realise the positive or negative impacts which the publication of payments to Governments might bring. They did not report any substantial costs associated with this reporting. Overall the response of Civil Society Organisations (CSO) was positive and enumerated the benefits to citizens and Governments. However, all recognised that reporting was at an early stage (reporting requirements apply to financial years on or after January 2015) and that more time is needed to learn how to use the data and for it to have a wider impact on investors and Governments.

Sign-off for Post Implementation Review: Chief economist/Head of Analysis and Minister

I have read the PIR and I am satisfied that it represents a fair and proportionate assessment of the impact of the measure.

Signed: Andrew Griffiths Date: 11/05/2018

Further information sheet

Please provide additional evidence in subsequent sheets, as required.

4. What were the original assumptions? Original cost estimates[1] were based on a small number of responses that were extrapolated across the industry using various assumptions about the allocation of reporting costs between companies and their subsidiaries. It was assumed that this reduced the accuracy of these estimates, but it was recognised that this method improved upon the methodology used in the EU Chapter 10 impact assessment, in which the costs reported by four multinational companies were used to calculate a cost per entity which was then extrapolated across the industry.
5. Were there any unintended consequences? No unintended consequences were identified.
6. Has the evidence identified any opportunities for reducing the burden on business? There is some evidence that submissions process to Companies House could be streamlined. Companies House has been informed and will look at improvements that can be made to the software and accompanying guidance.
7. For EU measures, how does the UK's implementation compare with that in other EU member states in terms of costs to business? The UK implemented the reporting requirements in advance of EU member states as part of a G7 commitment[2] on corporate transparency. The findings of the review will contribute to a later review of Chapter 10 of the Accounting Directive by the European Commission[3]. At this stage it is too early to make a comparison with costs in EU member states as estimates of the costs arising from EU implementation of Chapter 10 are not yet available.

[1] IA BISBEE777 estimated that the costs to business for the first year of implementation would be £19.7 million and that the Regulations would impose a total cost £69.8 million over an assessment period of 10 years.
[2] Lough Erne 2013
[3] The Commission's review is expected in 2019.

Introduction

1. The Reports on Payments to Governments Regulations 2014 ("the Regulations") came into force on 1st December 2014[4]. The Regulations implement chapter 10 of Directive 2013/34/EU on the annual financial statements, consolidated financial statements, and related reports of certain types of undertakings. Chapter 10 requires certain undertakings active in the extractive or primary logging industries to make and publish reports on payments made to governments. The Transparency Directive (2004/109/EC), as amended by Directive 2013/50/EU, extended the reporting obligation set out in Chapter 10 of the Accounting Directive to companies active in the extractive industries with securities admitted to trading on a regulated market. This means that those companies that are listed in the UK (but not necessarily UK-incorporated) also have to comply with the requirements in the Directive. The FCA amended its rules for listing to ensure that those companies listing in the UK would be required to make the same information available.
2. Therefore the Regulations apply to all large companies[5] and any public interest entity companies[6] registered in the UK which are active in the extractive industries – that is those companies engaged in the extraction of oil, mineral and gas and the logging of primary forests. For the purposes of the Regulations, public interest entities are companies whose securities are publicly traded on a government regulated stock exchange[7]. In practice, this means that the majority of these companies (53%) report to both the FCA and Companies House.
3. The Regulations came into force in the UK on 1st December, 2014 – a year ahead of other EU nations. This was in line with the UK Government's commitment to quickly implement reporting of payments to governments by the extractive industries affirmed at a G7 summit in 2014. Therefore the Regulations apply to financial years beginning on or after 1st January 2015.
4. On 28 March 2014, the Government launched a consultation on proposals relating to the implementation of Chapter 10 of the new Accounting Directive 2013/34/EU. This also asked for comments on Article 6 of the Transparency Directive 2004/109/EC by

[4] The Reports on Payments to Governments Regulations 2014 extend to the whole of the United Kingdom, reflecting the extent of the Companies Act 2006 (c.46) ("the Act").

[5] Large company is defined in Regulation 10 of The Reports on Payments to Governments Regulations 2014.

[6] Public interest entities are treated as large companies for the purposes of the Accounting Directive (as referred to in Article 2 (1) of Directive 2013/34/EU). Therefore, all UK-registered extractives companies which are listed in the UK fall within scope of the requirement to report payments to governments, regardless of their size. References to "large extractives companies" in this document should be taken to include all UK-registered extractives companies which are listed in the UK, as well as those unlisted companies that meet the size threshold as large.

[7] As defined in Regulation 2 of The Reports on Payments to Governments Regulations 2014.

an amending Directive 2013/50/EU. The consultation informed an impact assessment for this regulation in 2014[8] (hereafter, 'the IA'), which estimated that the costs to business for the first year of implementation would be £19.7 million and that the Regulations would impose a total cost £69.8 million[9]. This PIR draws on the IA as well as research conducted by an external body.

Policy Background

5. Natural resources, such as oil, gas and minerals, provide substantial income to developing countries. However many of these countries, despite often presiding over large reserves of resources, still remain some of the poorest countries around the world. One of the reasons for this could be because governments of resource-rich countries fail to appropriately handle the large payments that they receive from companies in the extractives sector.
6. Increased transparency surrounding the payments made by extractives entities is believed to ameliorate this issue. The intended effect of this is two-fold. Firstly, citizens of these countries have an improved ability to hold their governments to account; and secondly UK extractive entities and their investors should benefit from a more transparent operating environment and an improved ability to accurately assess the associated risks.
7. Chapter 10 of the EU Accounting Directive addresses these issues. It requires extractive entities to produce an annual report that details the payments made to governments regarding any activity involved in the extraction process (exploration, development etc.).
8. The UK's implementation of Chapter 10 sits alongside its active participation, since 2014, in the Extractive Industries Transparency Initiative (EITI), a global standard promoting good governance of oil, gas and mineral resources. On the basis of voluntary company participation, the EITI Standard examines information along the extractive industry value chain from the point of extraction, to how the revenue makes its way through the government, to how it contributes to the economy. EITI complements Chapter 10 in the sense that it focuses on the domestic revenues arising from the activities of UK registered companies. While company size is not a determinant for inclusion, UK EITI has chosen to mirror Chapter 10's monetary threshold as the benchmark for identifying those companies which are within scope for reporting.

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[8] IA N° BISBEE777 – Implementation of Chapter 10 of the EU Accounting Directive (2013/34/EU).

[9] This represents the total present value of costs to business over a period of assessment of 10 years as estimated in 2014.

Policy Objectives

Rationale for Intervention

9. The IA considered that there was an **economic efficiency** rationale for intervention to help developing countries address the government failures in their own administrations. The IA concluded that even though this economic inefficiency originated outside UK jurisdiction, the benefits of addressing this failure were likely to have economic benefits to UK and were therefore in scope in terms of the Green Book

10. For instance, if the Directive effectively inspired greater transparency, less information asymmetry and less corruption, UK extractive companies would benefit from the improved operating environment. With greater political and economic stability in the countries in which they operate, UK extractive companies would be able to produce more consistently and at a lower cost than under the status quo. Also UK investors would be able to make improved investment decisions.

11. Furthermore, greater transparency around extractive companies would reduce the **information asymmetry** between investors and extractive companies, thereby ensuring a more efficient allocation of capital. Moreover, if investors were more able to make effective investment decisions, capital would be more efficiently allocated, to the benefit of the companies with the greatest growth prospects.

12. Knowledge of a company and its operating environment is important in helping those who engage with a company to more accurately assess the risk of company transactions, and therefore their own engagement with them. Not knowing a company's full profile means that there is a greater inherent risk of investors making sub optimal investments. This makes economic transactions/activity less attractive[10] and hence less likely to go ahead or, in the event they do go ahead, they do so at a higher cost or lower level of investment. For instance, Easley and O'Hara (2004)[11] found that companies which kept a greater proportion of their information private require a greater compensating return for the lack of transparency, i.e. they face a higher cost of capital. This is a common finding in the economic literature[12].

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[10] Furthermore, considering adverse selection, if the share of 'bad' companies exceeds a certain threshold, the market will cease to exist as 'good' companies are driven out of business.

[11] Easley, D. and O'Hara, M. (2004) 'Information and the Cost of Capital' The Journal of Finance, Vol. 59, No 4.

[12] 17 See Barry, C., and S. J. Brown (1985) "Differential Information and Security Market Equilibrium." Journal of Financial and Quantitative Analysis 20, no. 4: 407-22 for a model, which demonstrates that securities with relatively little information are of a higher systemic risk. See Merton, R. (1987) "A Simple Model of Capital Market Equilibrium with Incomplete Information." Journal of Finance 42, no. 3: 483-510. Finds that in a model where investors are not aware of all stocks available i.e. suffer from incomplete information, the equilibrium value of each company is always lower.

13. In addition, when corporate information is not readily available, other parties must incur greater costs from conducting due diligence to mitigate this risk. They must, for instance, actively seek to 'profile' the company and also write, complete and monitor contracts[13]. Therefore, a lack of information would increase transaction costs, which can serve as a serious barrier to entry in the market, discouraging economic activity and potentially harming growth.

14. There was also a strong political/societal rationale to intervene on **international equity** grounds to assist disadvantaged people in developing countries by increasing accountability and therefore promoting good governance. Increasing good governance was likely to lead to improved social outcomes[14]. Although the benefits associated with international equity accrue outside the UK (so are not strictly counted under Green Book guidance) this forms a major part of government's rationale for intervention.

15. The IA did not assume that the international equity benefits would be immediate, or that they would be easy to measure nor that they would occur in isolation – they would need to be part of wider initiatives (improved reporting will only bring benefits when there is an active and influential audience). Therefore the PIR draws on the views of CSO and some companies to assess whether the wider benefits can be realised over time.

Chapter 10 and Transparency Standards

16. The aim of Chapter 10 was to raise global standards of transparency in the extractives sector by requiring companies to report publicly the payments they make to governments in all their countries of operation.

17. Chapter 10 was intended to achieve this objective by improving accountability and global comparability in a way that would reduce the space for corruption and other illicit activities, and ensure that citizens benefit appropriately from the extraction of their natural resources.

18. It was also expected to bring benefits to UK extractives companies by improving their operating environments, as well as to UK investors by improving their ability to assess risk and make more effective investment decisions. As such, Chapter 10 supported the Government's ambition for strong extractives reporting requirements and

[13] Nonetheless, knowledge is always imperfect to some extent: as noted by Miller and Whitford (2002)18 without all-encompassing contracts, which account for every eventuality, some element of trust is implicit in every business contract.

[14] Khan (2010) Governance, Growth and Development

represented a significant contribution to the development of a global standard for transparency in these industries.

19. The key requirements introduced by Chapter 10 were:

- Large EU registered extractives companies (mining, oil, gas and forestry) must report the payments they make to governments in all of their countries of operation.
- Reports must be prepared on an annual basis, and must:
  i. Be prepared on the basis of individual projects
  ii. Include all payments made in money or in kind, whether made as a single payment or a series of related payments, totalling €100,000 (approx. £84,000) or more.
  iii. Disclose the total amount of payments made to each level of government, including national, regional and local governments, and state owned organisations.
  iv. Disclose the total amount per type of payment. Types of payment covered are: production entitlements; taxes levied on the income; production or profits of companies (excluding taxes levied on consumption such as value added, personal income taxes or sales taxes); royalties; dividends; signature, discovery and production bonuses; licence fees, rental fees, entry fees and other considerations for licences and/or concessions; and payments for infrastructure improvements.

20. There were no exemptions to reporting, even where companies are operating in countries that prohibit disclosure in criminal law. It was felt that providing exemptions in these cases would diminish the effectiveness of the reporting requirements in the Directive and would provide an incentive for corrupt countries to implement such laws. Furthermore, we do not have any convincing evidence that any criminal prohibitions on the reporting of payments to governments exist in other countries, or that disclosure of such information would result in any legal action or loss of business.

Methodology

Overview

21. To inform this post-implementation review, the Department for Business, Energy and Industrial Strategy (BEIS) commissioned PricewaterhouseCoopers (PwC) to undertake a full review of the impact of the new reporting regime on business, civil society, and investors. The research underpinning this review was conducted after the first year of reporting and specifically assessed the cost borne by companies in scope, and the

benefits that accrue to these companies, their respective investors, and any Civil Society Organisations (CSOs) that have a particular interest in this legislation. To this end, the approach to the research and the questions it should answer were outlined by BEIS and used as the basis of the wider research design by PWC. Responses were collected from groups in scope via telephone interviews, an interactive pdf form, and in some cases, face to face interviews, between August and October 2017.

22. Written submissions from stakeholder groups and other interested parties (catalogued in *Appendix C*) were also considered in the development of this review.

23. The IA originally estimated that 251 companies would be in scope, however only 91 companies submitted reports to Companies House, the Financial Conduct Authority (FCA), or both. This significant difference in the estimated number of companies in scope could be in part attributed to the fact that the IA did not fully account for the complexity of ownership structures (group structures) in determining the number of reporting entities[15]; and the possibility that not all companies in scope will necessarily have made payments to Governments during the period considered in the research. Of the 91 companies identified as having reported, 32 participated in the PWC research – a response rate of 35%, which is considered satisfactory for the purposes of this review.

24. The set of respondents from whom data was collected is considered to be representative of a wide cross-section of stakeholders in scope of the regulation and provides a wide enough base on which to review the impact of the regulation:

    - There was representation from each of the primary reporting segments (22% reporting to Companies House; 25% to the FCA; and 53% to both). Respondent companies also represent a broad distribution of organisations by both revenue and employee size (see *Figure 1*). It must be noted that due to significant variations in scale and scope across the distribution[16], there is considerable variability in costs of compliance and administrative burden for companies in scope.

    - Interviews were conducted with the following CSOs nominated by the Publish What You Pay coalition (PWYP):

        - The Natural Resource Governance Institute

[15] Companies were counted separately as global ultimate owners (GUOs), subsidiaries with UK parents, subsidiaries with EU parents, and subsidiaries with non-EU parents. It was assumed in the IA that GUOs and subsidiaries with UK parents will report for themselves, and that UK subsidiaries of UK or EU companies will incur the cost of data collection, but not final reporting.

[16] The proportion of companies with less than 500 employees matches the proportion with greater than 50,000 employees; and about one fifth of companies have revenue greater than £10 billion but there is a long tail of smaller companies, one third of which have revenues of less than £500 million.

- Global Witness
- Publish What You Pay International Secretariat
- OXFAM France
- Zimbabwe Environmental Law Association
- Publish What You Pay Canada
- The ONE Campaign
- Publish What You Pay South Africa
- Publish What You Pay US

Invitations were also sent to non-PWYP groups, but none of these participated in the research. The FCA and Companies House were also interviewed for their views on the costs of the reporting system and potential areas for improvement.

Methodological Challenges

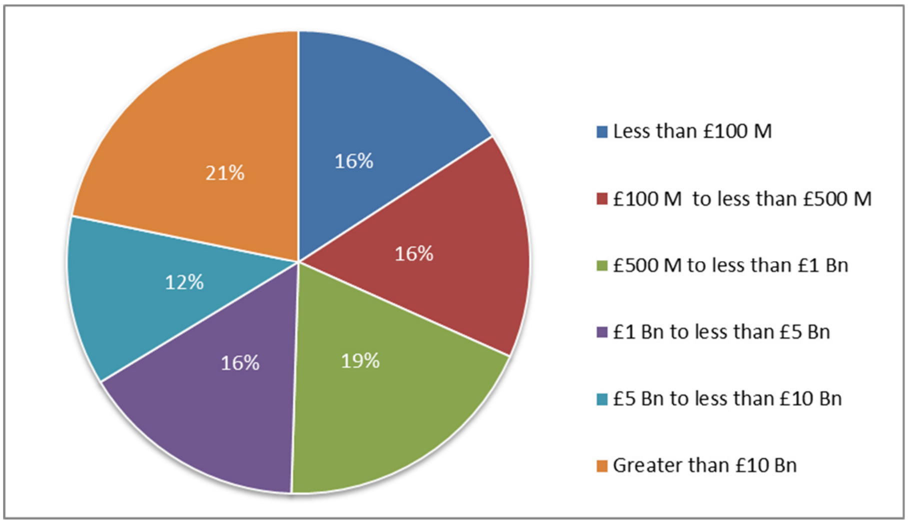
25. Challenges faced in collecting evidence derived primarily from the timing of the research relative to the introduction of the Regulations, and to the difference in focus of the participating groups, and the relatively small sample size.

    - The consensus among respondents was that not enough time had elapsed since the introduction of the regulation to allow for a thorough assessment of its direct benefits. The view from CSOs was that benefits would become more apparent over time as reporting became a more embedded activity.
    - The views of investors were not separately addressed in the research as investors were largely unwilling to participate. This is most likely due to the fact that the Regulations did not apply until January 2015 and there is still relatively low awareness among investors. CSOs were of the general view that this too would change positively over time.
    - About one third of businesses subject to the reporting requirement of the Regulations viewed it less as a regime with significant present and future benefits and more as an additional administrative burden. Further, this burden tended to be absorbed into business-as-usual costs, thus making it difficult to identify isolated costs for the purpose of this review. The response rate, though higher than expectations for the industry, could have also been limited by this fact, since some companies that do not actively capture compliance

costs may have felt that they would not be able to make any significant contribution to the research.

- The range of CSOs participating in the research was relatively narrow, as all CSO responses came from organisations associated with the PWYP coalition.
- There were differences in the focus and purpose of different participating groups: PWYP focuses specifically on this reporting issue, while businesses face competing demands for their time and are thus less focused on these Regulations.
- The numbers in scope are relatively small, and therefore, whilst 32 out of 91 companies (35%) can be considered a substantial response rate, it is not a large enough number to allow for any sub-analysis since there are wide variations in size and scope of operations (and hence, compliance costs) from one company to the next within the respondent sample.

Figure 1: Size Distribution of Participating Companies (By Revenue)



Monetised and Non-Monetised Costs and Benefits of the Regulation

Costs to Companies in Scope

26. The costs imposed by the Regulations were considered in the IA to take the form of transition and ongoing costs, but were estimated separately for companies that produced final reports for themselves and those that prepared these reports both for themselves and their subsidiaries. The research used for this review has not used this approach in collecting cost data and instead has looked overall at three types of cost that apply to companies in scope: costs of compliance; external costs; and wider cost impacts.

i. Costs of Compliance

27. Of the 32 participating companies, 84% indicated that they did not actively capture compliance costs. The findings of this PIR therefore rely largely on both estimated and actual one-off and recurring costs. 15 companies provided actual or estimated costs for one-off impacts, and 15 provided for recurring costs (though these are not the same 15 companies in both cases). Estimated and actual costs are aggregated in the table that follows (*Table 1*) under the assumption that estimated and actual costs are likely to be equivalent.

Table 1: Costs of Compliance

Costs of Compliance by Company Size			
Company Size	**Small**	**Medium**	**Large**
One-off costs	£700 - £30,000 (9 companies)	£25,000 (1 company)	£4,000 - £5,230,000 (5 companies)
Recurring costs	£500 - £25,000 (8 companies)	£12,000 - £100,100 (2 companies)	£5,000 - £1,200,000 (5 companies)
Total Estimated Costs	**£167,900**	**£137,100**	**£8,589,000**

Companies in scope have widely varying profiles based on size, scale, type of operations, and number of countries in which they operate. The degree of reporting required and thus the costs of complying with the reporting regime are therefore similarly varied, thus implying that an average cost per business of complying with the Regulations will be meaningless for individual businesses (the drivers of compliance costs are presented in *Table 2* below).

28. There is (as can be deduced from *Table 2*) some correlation between company size and costs and further, Companies with a lower reporting burden (having operations across fewer countries) also reported lower costs than those with a higher reporting burden.

Table 2: Drivers of Compliance Costs (Ordered By Impact)

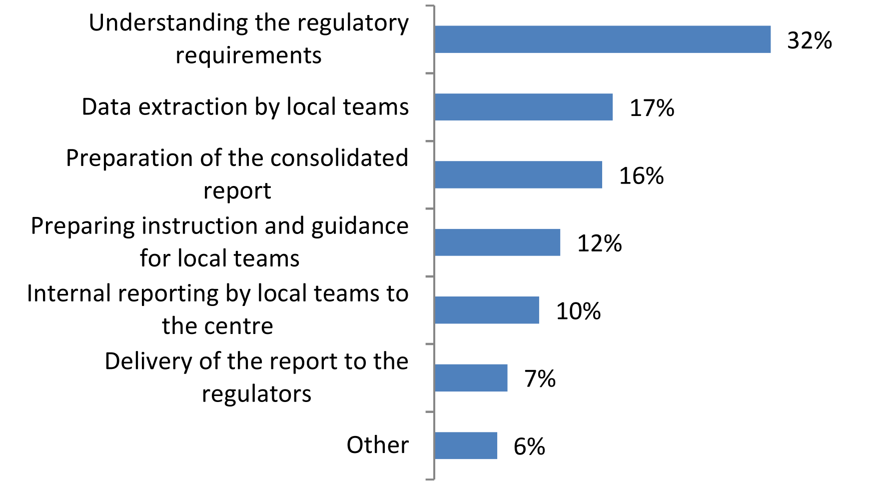
Impact	Factor
1	Number of payment types
2	Number of projects on which they report
3	Number of countries in which they report
4	Number of Government payees
5	Scale of payments
6	Types of country
7	The size of projects on which they report

29. Most companies were unable to provide specific costs associated with internal reporting activities (by grade, time, and total internal salary costs). Those who were able to provide some indication of those costs noted that they were not borne as separate costs since these reporting activities were added to existing roles and hence absorbed into business-as-usual (therefore not imposing any additional burden).

30. Largely, companies leveraged existing staff to capture and report the flow of payment to governments. 90% indicated that they have adjusted their ways of working in order to gather information on payments and compile the final report. This is largely in keeping with the expectations outlined in the IA.

31. *Figure 2* shows the percentage of the cost of compliance allocated to reporting activities for the first year of reporting and confirms the assertion in the IA that familiarisation costs will contribute significantly to overall transition costs faced by companies. Unlike with the IA however, data collected for this PIR does not include any sub-analysis on how these costs are distributed between parents and subsidiaries.

Figure 2: Percentage of costs related to different reporting activities



Base: 19 (from 32 respondents)

32. Assuming that the size distribution of the 15 companies reporting costs of compliance (in *Table 1*) is representative of the size distribution for all companies in scope, the estimated aggregate cost of compliance for all companies in scope is £52.5 million[17].

33. This estimate is significantly larger than that produced in the IA (£19.7 million). This is most likely due to the fact that in the IA, costs were aggregated based on the separate filing activities of subsidiaries and their parent companies, based on data extrapolated from four companies. This small sample may not have covered the largest companies

[17] Since the totals in *Table 1* represent ≈ $^1/_6$ of the total number of companies, under the assumption that the size distribution of the remaining ≈ $^5/_6$ is the same, the aggregate costs for all companies in scope will be ~ 6 times the totals displayed for each size grouping in *Table 1*.

in the distribution and may have also underestimated costs to subsidiaries, thereby underestimating the overall impact.

ii. External Costs

34. Almost one third of respondent companies indicated that they had not incurred any external costs as a result of this regulation.

35. Those that did report external costs reported the following types and ranges:

- External legal fees: £1,000 - £10,000
- Advisory fees: £500 - £2,500
- Assurance fees: £6,000 – £280,000

36. Similar to the costs of compliance, these external costs tend to vary significantly by company profile (as outlined above). Granular cost data is not available on a company by company basis, and as such, extrapolating an average external cost per company or total for all companies in scope is not possible.

37. It should be noted that these costs were not accounted for in the IA.

iii. Wider Impacts

a) Cost of Early Implementation and Competitive Disadvantage

38. Most companies (72%) indicated that the early implementation of the regulation in the UK (relative to the rest of the EU) did not impose additional costs. Only two companies (6%) indicated that they did incur some costs due to the timing of implementation, but they were however unable to provide any idea of the magnitude of these costs.

39. While the IA indicated the potential for inadvertent disclosure of confidential business data, it also correctly noted (as per the findings of this review) that companies may not face any damaging loss of competitiveness as a result.

40. The only concerns about competitive disadvantage were voiced within the context of the timing of implementation and not the existence of the Regulations itself. Some companies indicated that due to early implementation, UK companies in general were put at a relative disadvantage to their peer companies that were not subject to similar reporting requirements. No indication of the degree of that disadvantage or its potential costs were provided.

41. Beyond early implementation concerns, no further issues regarding competitive disadvantage were flagged. 69% of companies (22 out of 32) indicated that they expect the disclosure of the payments to government to have no impact on their competitive position over the next 3 to 5 years, while only 3% (1 company) indicated that they did.

b) Costs Arising from the Lack of an Exemptions Clause (Legal Conflicts due to Disclosures)

42. In the main, companies have not reported experiencing any problems related to the reporting activities required by this regulation in countries with laws that prohibit the disclosure of payment information. Close to 50% indicated that they had no issues in any of the countries in which they made payments.

43. Some companies have indicated that in some cases, there was a need to assess any conflict of law around disclosure in different jurisdictions, and to manage relationships in host countries.

44. Whilst two-thirds of the companies stated that they faced no resistance or concerns from governments about payment disclosures, a quarter reported that they did, which required negotiations with those governments. In these cases, companies incurred some costs in terms of the time required to alleviate potential conflicts but specific details about these costs were not provided.

Benefits to Companies in Scope, Investors, and Citizens of Host Countries

45. The IA outlined expected benefits to UK companies within the context of improved governance, widened economic opportunities, increased political stability, and reduced corruption. These benefits were expected to take the form of increased productivity, reduced costs from conflicts, reduced risk, greater profitability (and hence greater dividends for shareholders), better reputations, and a wider social license to operate.

46. Further, the IA considered the publication of payments to governments to allow investors easier access to information with which could more effectively model cash-flows, assess political risks and acquisition costs, increase their managerial effectiveness, and ultimately, materially and substantially improve their investment decision-making.

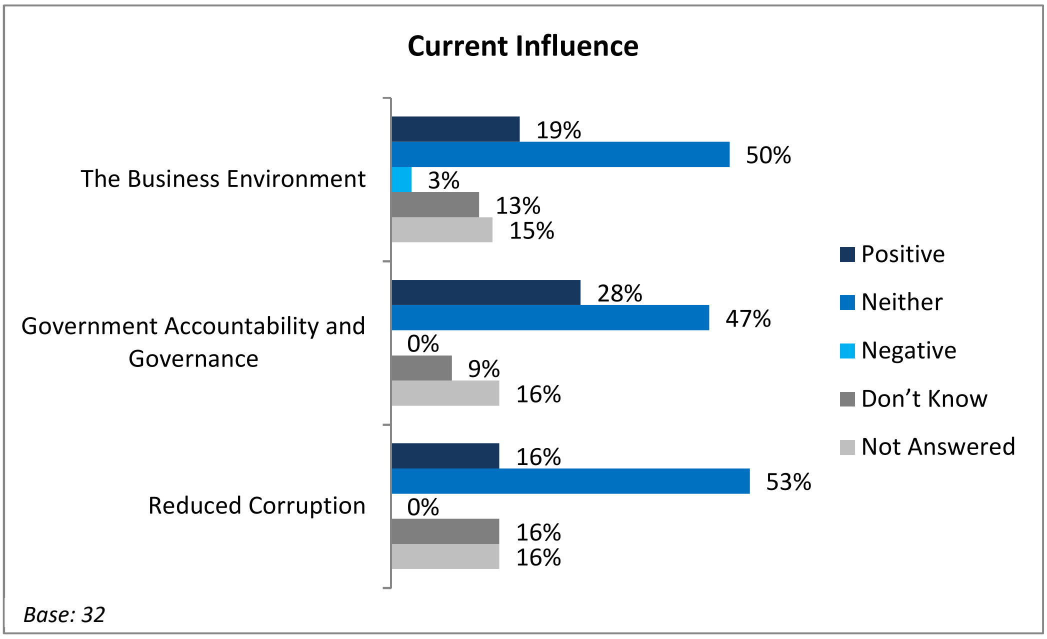
47. Due to the relatively short time period between the implementation of the Regulations and the research conducted for this review, many companies and their investors are yet to realise any of these positive impacts. Despite this, the current and expected benefits to companies and the citizens of host countries are discussed below. As outlined in the methodology, among investors in particular, there remains low awareness of the Regulations (and the reports produced in compliance with them), and so no direct input from investors is included in the descriptions that follow.

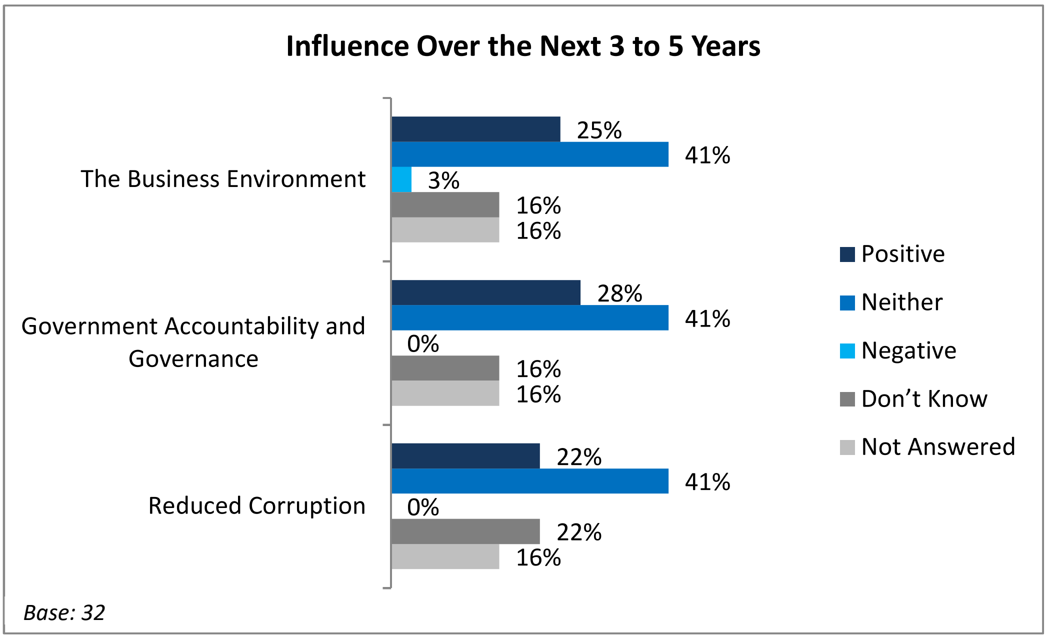
i. Financial Benefits to Companies in Scope

48. Whilst currently there are no clear signs of the positive impact of these Regulations, some companies have indicated that they expect an overall positive influence from

the Regulations on the business environment, government accountability and governance, and corruption levels over the next 3 to 5 years (*see Figure 3*).

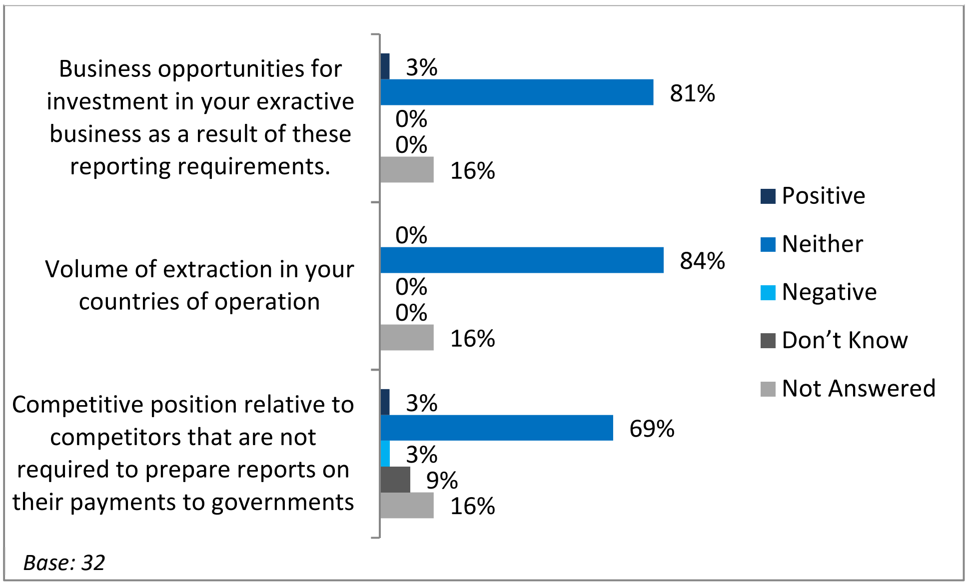
Figure 3: Companies' views of the Current and Expected Influence of the Regulations





49. With regard to increases in the volume of extraction undertaken by companies, one company indicated that they had experienced positive impacts on their investment opportunities, and one company had experienced a positive impact on their competitive position relative to their peer-companies that are not required to report. Most companies reported no improvement in this area (*see Figure 4*).

Figure 4: Impact of the Regulations on Investment, the Volume of Extraction, and Competitive Position

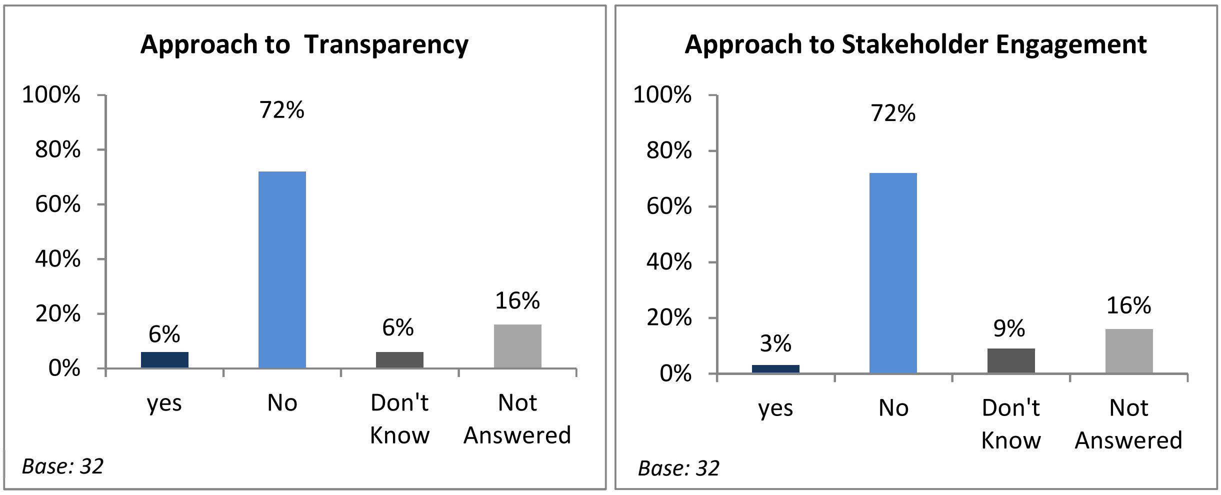


50. 16% of companies (5 out of 32) estimated a marginal future financial benefit, while half of companies remain uncertain about these future impacts, and almost one third anticipate a marginal to moderate future cost (based on responses from respective groups of companies when asked separately about expected outcomes).

ii. Non-Financial Benefits to Companies in Scope

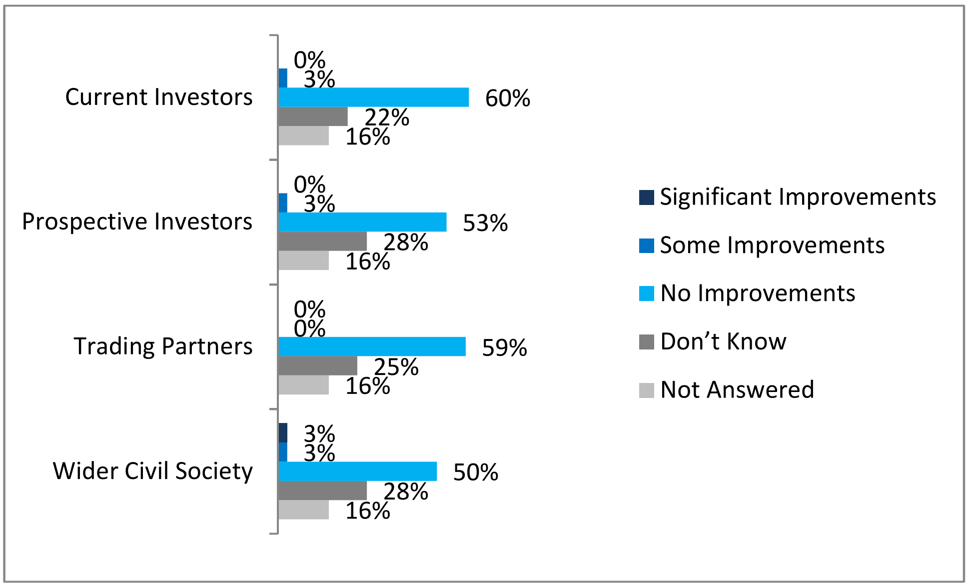
51. From the research it is apparent that companies have not changed their approach to either transparency or stakeholder engagement (*see Figure 5*): out of 32 companies, 72% of companies indicated that the regulation has not changed their approach to transparency, while only 6% indicated that it did; and 72% of companies indicated that they have not changed their approach to stakeholder engagement, while only 3% indicated that they did.

Figure 5: Impact of the Regulations on Companies' Approach to Transparency and Stakeholder Engagement



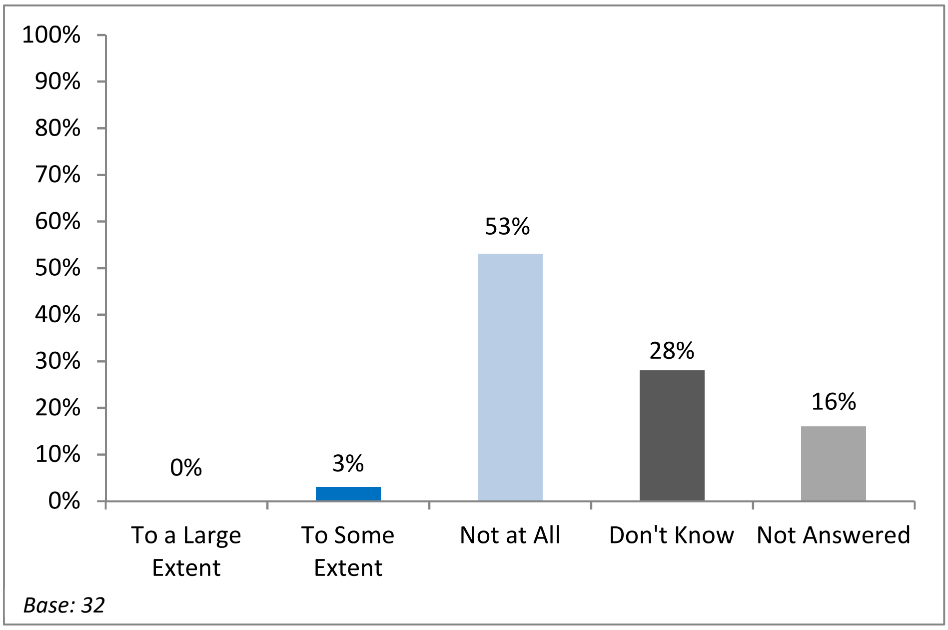
52. On average, more than 50% of companies indicated that they experienced no improvement in their reputation amongst investors, trading partners, and the wider society as a result of the regulation (*see Figure 6*).

Figure 6: Impact of the Regulations on Improving Company Reputation



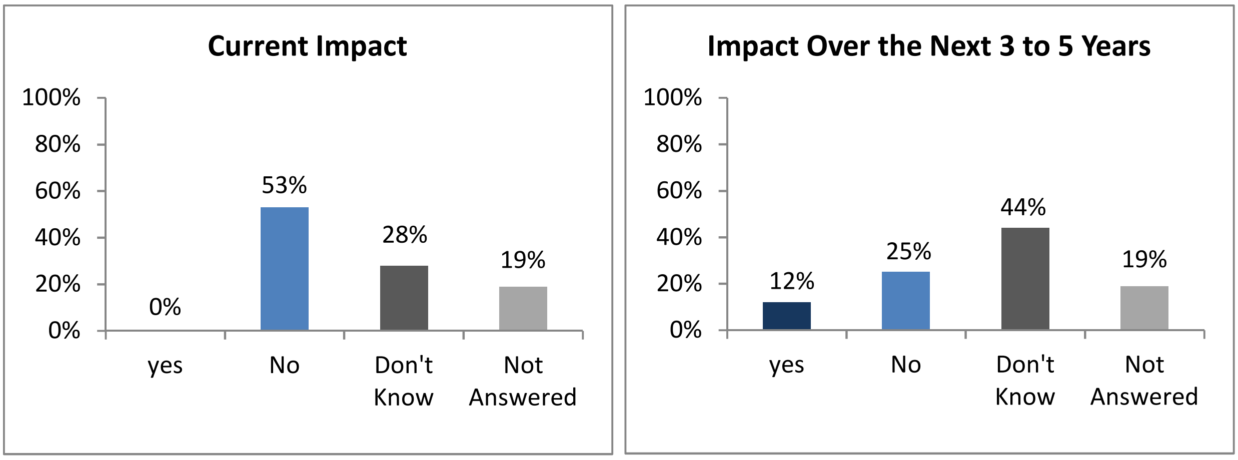
53. 53% of companies indicated that there has not been any reduction in resistance from civil society organisations to the granting of licenses for their operation. Only 3% indicated that they benefitted from lower resistance to licensing of extractive operations (*see Figure 7*).

Figure 7: Impact of the Regulations on Reducing Resistance from CSOs to the Granting of Operating Licenses



54. 53% of companies indicated that, up to the time the research was conducted, they had not noticed any reduction in bribery and corruption in the countries in which they operate. Respondents were more optimistic about the 3-5 year outlook: 12% of companies expect decreased corruption, and only 25% expect no change in this regard (*see Figure 8*).

Figure 8: Companies' Views of the Current and Expected Impact of the Regulations in Reducing Bribery and/or Corruption



55. Only four companies (12.5%) felt that the reporting of payments to government made the extractive industry more attractive to investors. Generally, there remains at this stage, some uncertainty among companies about who is using the information in the reports. This is no doubt largely due to the fact that there is still low awareness of the regulation amongst investors and other stakeholders.

iii. *Benefits to the Citizens of Host Countries and the Civil Society Organisation Perspective*

56. From the IA, benefits to the citizens of resource rich countries – in the form of reduced corruption and the surety that payments made to governments are invested in its citizens – were expected to result from the wider availability of information and the resulting accountability it forces upon government.

57. In general, CSOs found the reports to be a highly valuable tool in empowering citizens to hold governments and companies to account. They have identified a significant impact of the Regulations in reducing corruption since companies and governments are now aware that payments are open to scrutiny, and are of the view that in the long term, this transparency will reduce levels of civil unrest since it could lead to improved infrastructure and social development through improved governance (*see Appendix A for some country examples*).

58. Not only do the Regulations allow governments to be held to account by their citizens, but governments of resource-rich countries also benefit from the Regulations, as noted in the examples of Nigeria and Zimbabwe, where reforming elements of government have invited civil society to work with them in analysing data from mandatory reporting in order to fight corruption.

59. CSOs are of the view that other potential benefits to governments will include:
    - Improved rule of law and reduced civil unrest
    - Better, fairer deals with companies based on 'fair value'
    - More efficient and transparent flows of funding
    - Enhanced reputation of extractive company home countries
    - Increased transparency and information sharing across government.

60. These benefits could translate into improvements in health, education, and the wider allocation of resources, and ultimately, to confidence in government and increased prosperity and quality of life for the citizens of host countries.

61. CSOs indicated that mandatory reporting has led to the provision of information that is more timely, comprehensive, and universal in nature. The general view is that the reporting environment has changed significantly as a result.

62. As a result of it being still early on in the post-implementation period, they expect the true value of reporting to emerge over time as more time-series data becomes available, thus allowing analysts to track payments throughout project lifecycles, including whether projects are actually producing the revenues promised at the prospecting stage.

63. Compared to companies, there is greater clarity about how the reports are used amongst CSOs. These uses are summarised below, and specific examples are presented in *Appendix B*.

- *Sharing data across the PWYP network*

  CSOs monitor the publication of the reports and share their availability with organisations across their national and international networks. Initial work has focused on how awareness can be raised across grassroots communities in host countries and how they may start using the data to hold their governments to account.

- *Data analytics*

  The data is used across the CSO network in large-scale analytical projects. This has allowed CSOs to ask questions of both governments and companies within the industry. Examples were given of Niger and Angola, where the data analytics was able to reveal instances of underpayment to Government.

- *Monitoring company payments*

  The reports are used across the CSO network to monitor the timeliness and quality of the information in the reports. This allows CSOs to engage directly with companies to deal with any issues they may uncover with their report (such as missing data, late filing, or quality concerns). CSOs reported that this also helped them to develop a better understanding of how companies and their payments are structured.

- *Holding governments to account*

  Reports are used to identify and contact governments of countries where they suspect a risk of corruption (for example to verify company payments are as they are filed).

64. Though largely positive in their outlook on the Regulations, CSOs did highlight the following issues:

- There was some inconsistency in the quality of reporting that could be attributed to misinterpretation of the regulations.
- Some companies did not report on joint venture operations and many joint venture participants did not report production entitlements – weaknesses that could lead to significant data gaps.
- There were instances in which multiple distinct projects were reported as single projects (over-aggregation).

- For CSO purposes, the level of government in receipt of the payments is not made clear in the reports, making it difficult to track the movement of those payments.
- Details on payment-in-kind are not required in the reports. The view of CSO's is that such detail would allow them to assess whether fair value has been provided and to track the end destination of payments.
- It was not made clear in the Regulations that different commodities should be reported separately and not conflated.

Small and Micro Business Assessment (SaMBA)

65. By the size definitions stated in the Regulations, micro-sized companies are not in scope, but small companies are (provided they are listed and satisfy the payment threshold criteria).
66. For this research, 9 small companies (out of a total of 15 companies overall) have reported estimated or actual one-off costs, and 8 small companies (out of a total of 15 companies overall) have reported estimated or actual recurring costs.
67. We have found no evidence that these small companies face (or will face) a disproportionately high financial or non-financial burden from this mandatory reporting requirement. As noted earlier, costs of compliance and external costs vary by company profile, which implies that small companies will face costs commensurate with their size and scale of operations.

Enforcement and Compliance

68. The Directive does not make provision for exemptions from reporting. The Regulations create an enforcement regime that is based on similar penalties already used within the Companies Act 2006 for company reporting. However, the government decided that a late filing penalty regime, along the lines of that applied to accounts, was inappropriate for extractive reporting[18] and that it is more appropriate to look at penalties that are applied for failure to file other company information on the register. Therefore the regime for reports by extractive companies includes criminal offences, which may be punished by fines.

[18] It would also have arguably been unworkable. Late filing penalties for accounts can safely be issued against a company because we know that they were due to file accounts and when they were supposed to file them by. This is not the case for an extractives report as we are not certain whether or not a company must file such a report in any given year. Just because a company has filed such a report in a previous year does not mean that it will necessarily need to do so for the following year.

69. These requirements are consistent with other Companies Act requirements, for example failure to notify of a new director or failure to update a statement of capital. The register contains this information so that third parties can make informed decisions about the company.

70. Enforcement is the responsibility of Companies House, and generally, this would be in response to a complaint that a report had not been filed (an issue that CSOs would be expected to raise[19]). The procedure would work along the following lines.

71. Once informed of the failure of a company to file, Companies House would contact the company to query this situation and to confirm that one of the following applies[20]:

    i. A report return is not necessary as no reportable payments were made.

    ii. A report is necessary and will be filed within 28 days.

    iii. A report has been filed in another Member State by the parent company.

    iv. An equivalent report has been filed (prepared under an EU recognised equivalent reporting requirement).

72. The Regulations require a response to the above within a set period, and the reply to the request from Companies House will be published on the CH website. This would discourage further questions from other parties if the company had filed elsewhere, or will show where a report was necessary but had not been provided.

73. Eligible companies are relatively high profile which would mean that the reputational costs of non-compliance would generally outweigh any benefits. The reports are monitored for timeliness, quality and compliance on a company by company basis. CSOs can engage with companies directly if reports are late, if the data appears incomplete, or if there are any quality issues. In a few cases, where the omission has been deemed to be significant, companies have been reported to the FCA by the CSOs. It was acknowledged that infringements are not always the fault of the individual company but could be due to ambiguities in the Regulations.

74. In their responses, several CSOs indicated that they believe that there is insufficient monitoring of both the quality and timeliness of the reports by the Government, and that resources should be allocated so that monitoring and enforcing activity could be undertaken. It was suggested that not all companies reported as required, with some reporting late, some not at all, and some publishing the report on their website, but the specific details and overall number of these companies were not provided.

[19] During the development of the mechanism to file extractive reports CH worked very closely with both the industry and representatives of civil society, and the expectation in those discussions was that civil society would scrutinise these reports and raise any issues with CH.

[20] The details of this procedure are set out in full in the Regulations.

75. Our analysis indicates that relevant companies have largely complied with the Regulations. The report found that concerns that reporting could lead to difficulties with the law and authorities in the countries in which they operate have not been realised.

76. The submission process does present challenges for companies, particularly those reporting through Companies House. Overall, 11 companies (out of 25) who submitted reports to Companies House stated that the submission process was difficult. This is in contrast with the FCA, where 12 companies said the submission process was easy (of the 24 interviewed who submit reports to the FCA). Common themes were the lack of guidance for the industry, the complexity of the processes involved, and technical difficulties with the Schema.

77. There was also some concern about the appearance of the reports, given that these reports are publically available. The companies that are subject to these regulations are accustomed to presenting their corporate information in a very visually appealing way which does not equate with the appearance of the Schemas. The reason for these difficulties is likely to be because the Companies House software is designed to be compatible with systems used by listed companies.

Conclusions and Next Steps

78. The Department received 16 submissions that were strongly supportive of the objectives of the regulations (*see Appendix C*). These included submissions from US and UK politicians as well as CSO representatives as well as an oil and gas exploration and production firm, and a fund management company. Many expressed the view that the regulations supported a global standard on the transparency of payments to Government and improved the investor environment.

79. The general view among companies and CSOs is that given the timing of the Regulations, the full benefits were unlikely to be realised at the time of the research that informed this review – after only one year of reporting (the first reports were not published until 2016). Both companies and CSOs have however indicated that they expect that benefits of the Regulations to investors, governments, companies, and civil society would accrue over the medium to long term. CSOs, while noting that they are still in the early stages of learning how best to use the reports, were able to provide some examples of countries in which the reports were already being put to uses that benefitted governments and citizens, and highlighted the leadership shown by the UK in creating these positive outcomes.

80. The main implementation challenges for companies related to determining reportable payments, data collection for the reports, and the submission of the reports. Multiple filing requirements (based on the geographic spread of some companies' operations)

and the early implementation of the Regulations relative to other EU Member States were not perceived to be major challenges, though several companies did note that there may be a need to keep a level playing field with other jurisdictions.

81. Guidance on the submission of reports is available from both the FCA and Companies House. In the case of Companies House, industry and civil society representatives contributed to the development of guidance for filing and outputting/distributing the information. However some of the responses indicate that that there might be a need for some revision, in particular to the Companies House guidance that will overcome identified software issues. This has been drawn to the attention of companies House, who will consider the issue further.

82. The majority of companies did not support expansion of the Regulations, as it would add to the burden of reporting – a view that is possibly exacerbated by the fact that at this stage, companies are largely unaware of how (and by whom) reports are used. However some CSOs felt that there was a case for strengthening the reach of the requirements by re-defining some of the disclosures (*see Appendix C*).

83. It can therefore be concluded that the Regulations should remain as is on the grounds that:

    - The policy is on course to achieve its objectives and key success criteria have been met in terms of greater levels of transparency, compliance levels and avoidance of unnecessary costs to business. Furthermore, the research indicates that this type of reporting does not disadvantage company business interests, including their relationships with governments.
    - Compliance levels are sufficient to support the achievement of its objectives.
    - There is every indication that in the medium to long term, the benefits of the regulations would outweigh the costs imposed by it.
    - Government intervention is still required, since if the Regulations are withdrawn, the UK would be at risk of significant reputational damage, and would undermine much of the good work already done in encouraging transparency and accountability in the extractives industry. Furthermore the UK would be walking away from a high-profile policy commitment.

84. The conclusions in this review are based on early findings, and further company reporting and experience of the requirements is necessary before any final conclusions of the effectiveness of this reporting regime can be drawn. At this stage, therefore, amendment of the Regulations is not suggested.

Appendix

A) Benefits of Mandatory Reporting under Reports on Payments to Government Regulations (Country-specific Examples)

PWYP South Africa

PWYP South Africa described the reports as very useful to CSOs in South Africa, given that it is one of the larger hubs for European companies. While PWYP campaigns for mandatory reporting in South Africa, it is able to use the data provided by UK listed companies to provide more transparency in the extractive industries there. The organisation, which is relatively new, is currently training communities to access and analyse the reports. It is focusing on holding both the South African government and companies to account, to assess whether companies are providing fair value to South Africa.

Tunisia

It was highlighted that the oil sector in Tunisia has been controversial in the past, with many Tunisians questioning why their country is not as equally prosperous as their oil-rich neighbours. This has led to protests in some areas of the country. It has been reported that the reports have helped the Tunisian government, which did not previously have reliable information on oil revenues, to forecast revenues more effectively. CSOs are also using this data to train activists on holding their Government to account. Some participants suggested that there has been a "multiplier" effect from the Regulations, whereby, in Tunisia for example, the Government has become more "pro-transparency", taking steps to becoming full members of EITI for example. It was also suggested that more transparency was helping ease relations between communities in Tunisia and companies, as the latter are better placed to demonstrate their value to the local economy.

Nigeria

One of the big benefits of mandatory reporting was thought to be the facilitation of data modelling, particularly at the project level. The reports have been used in Nigeria to train CSOs to analyse operations and companies, looking at the difference between what the Government is receiving and what it should be receiving. It is hoped that mandatory disclosures will help misreporting as well as the diversion of funds. CSOs in Nigeria have been working with companies to consider the importance of the reports for empowering its citizens.

B) *Uses of Mandatory Reporting under Reports on Payments to Government Regulations (Country-specific Examples)*

Country	Use of the Reports
Uganda	CSOs identified and queried a discrepancy of $14 million in payments between the reports of an oil company and the annual accounts of the Bank of Uganda.
Niger	Questions were raised over the value of uranium contracts to the Niger government. The reports have allowed PWYP to engage with both the relevant company and the Government on the issue.
Uganda	Reports have been used to raise questions on payments that had not been included in government reports.
Zimbabwe	The reports are being used to educate community leaders and councillors on the value of revenues from platinum and diamond mining. Workshops have been held to train local activists on interpreting the data.
USA	CSOs are campaigning for US companies to disclose so that they are subject to the same requirements as their Russian and European counterparts.
Philippines and Indonesia	PWYP is publishing reporting information online and creating an electronic community. It has created a phone app in Indonesia to share the data
Australia	Reports data contributed to a royalties debate in the media over oil pricing.

C) Submissions received from interested parties

Submission	Received From	Date	Summary
1	Ecumenical Council for Corporate Responsibility (ECCR)	31/10/2017	Response issued to the Church of England Ethical Investment Advisory Group (EIAG) Consultation on Ethical Policy on Extractive Industries (June 2016) related to the ethical considerations that should guide the operation of the extractive sector in countries that have weak governance, or are fragile states, conflict, or post-conflict zones. This submission also includes the ECCR chair's letter to Charles Holliday, Chair of Shell Group, in relation to corruption relating to the transfer of the OPL 245 oil block.
2	Sen. Ben Cardin, United States	06/11/2017	Commendation and Support.
3	OXFAM France - Quentin Parinello	07/11/2017	Voiced support for a change in the perimeter covered by the regulations to include AIM listed extractive companies, and offered the OXFAM France report on findings for French regulations for review.
4	George Soros	13/11/2017	Commendation and Support.
5	Arlene McCarthy	14/11/2017	Commendation and Support.
6	Liontrust Investment Partners	14/11/2017	Commendation and Support.
7	Jo Swinson MP	15/11/2017	Jo Swinson was Minister for Employment Relations and Consumer Affairs and oversaw the UK regulations coming into force in 2014. Ms Swinson comments that, “It was crucial at the time for the UK to deliver on its commitment…to advance global standards of transparency in the extractive sector”, she adds that, “the comprehensive payment reports now being published by UK-regulated oil, gas and mining companies” are delivering “substantial public benefit”.
8	Kosmos Energy	15/11/2017	Commendation and support (including the disclosure of payments to Governments at project level).

Submission	Received From	Date	Summary
9	Columbia Center on Sustainable Investment	17/11/2017	CCSI submission to the US Securities and Exchange Commission, which covers its findings on the materiality of payment disclosure such as required through these regulations, along with references to investor feedback that higlights the need for adoption of a global payment transparency standard.
10	Publish What You Pay (PWYP) UK	17/11/2017	In a detailed response (including brief case studies), PWYP stressed their support of the Regulations, but identified areas that needed considerable improvement. The organisation made 12 recommendations on areas of improvement, and highlighted issues including the aggregation of projects, clarifying in-kind payments, accessibility of reports, and tax disaggregation and definition.
11	Rt. Hon. Caroline Flint MP	20/11/2017	Commendation and Support.
12	Global Witness	20/11/2017	Request for the inclusion of further disclosure requirements related to climate risk in the regulations to ensure UK is able to keep the commitments of the Climate Change Act and its pledges to the Paris Climate Agreement while addressing concerns about the financial impact of climate change.
13	Publish What You Pay (PWYP) UK	23/11/2017	Summary of the PWYP news item ("*Transparency champions and civil society call on UK to maintain momentum on oil and mining disclosures* ") discussing the review of the regulations and outlining some of the submissions made to the government in November 2017.
14	Natural Resource Governance Institute	*/01/2018	NRGI briefing on generating government revenue from the sale of oil and gas and the continued need for improved commodity trading transparency.