

UK GOVERNMENT IMPOSES MANDATORY CLIMATE-RELATED FINANCIAL DISCLOSURE ON LARGE UK BUSINESSES

The Department for Business, Energy and Industrial Strategy (BEIS) has announced that it will impose mandatory climate-related financial disclosure duties on large UK businesses in a [Response to its March 2021 Consultation](#) (Response). Below we have set out a brief rundown on BEIS' decision and its implementation.

Who will it apply to?

The new disclosure duties will apply, as originally proposed, to:

- UK companies currently required to produce a non-financial information statement pursuant to section 414CA of the Companies Act 2006, being traded companies (i.e. UK companies with transferable securities admitted to trading on a UK regulated market), banking companies, authorised insurance companies or companies carrying on insurance market activity (otherwise known as public interest entities);
- UK companies with securities admitted to trading on AIM; and
- Other UK "high turnover" companies i.e., a company with turnover in the relevant financial year of more than £500m or a parent company where in the relevant financial year the group headed by that parent company had an aggregate turnover of more than £500m net,

in each of the three above cases which are not small or medium-sized companies and have on average more than 500 employees in the relevant financial year (which for a parent company is calculated with reference to the aggregate number of employees in the group headed by that parent company). If the relevant company prepares a group strategic report, the non-financial information statement to be included in the report must be a consolidated statement relating to all the undertakings included in the consolidation; and

- Certain large LLPs (and groups headed by an LLP) with more than 500 employees and turnover of more than £500m in the relevant financial year.

The new requirements are being introduced for companies and groups via regulations which amend sections 414C, 414CA and 414CB Companies Act 2006, and so the exemption for subsidiary companies which are included in a UK parent company's group strategic report and consolidated non-financial

Key issues

- New mandatory requirements on Public Interest Entities, and certain other large companies and LLPs, to report on climate-related risks and opportunities
- Disclosure content will broadly follow TCFD requirements including *scenario analysis*, but not Scope 3 emissions, at this stage
- Requirements will come into force for financial years beginning on or after 6 April 2022

information statement apply. However, since Brexit, there is no exemption for a UK subsidiary of an EEA parent company which may lead to some reporting overlap as discussed below.

What has to be disclosed?

The information required to be disclosed is the largely same as that in the 11 Task-force on Climate-related Financial Disclosure (TCFD) Recommendations. This covers matters concerning governance of climate risks and opportunities, business *strategy, risk management and metrics and targets*. In a significant change of heart (and as we recommended in our response to the Consultation), BEIS has decided to require businesses to incorporate scenario analysis into their reporting (i.e. consideration of the resilience of their business model and strategy based on different climate scenarios). BEIS has also sensibly decided to base the required disclosures more closely on the 11 TCFD recommendations than it had originally proposed.

BEIS has pushed back a decision on whether reporting on Scope 3 (value chain) emissions should be made compulsory, saying "officials will also now consider [this] in due course". It seems that it may be some time before Scope 3 emissions disclosure becomes mandatory in the UK.

Businesses will be able to omit information required under the strategy and metrics and targets aspects '*where the information is not necessary for an understanding of the company's business*', as long as they provide a clear and reasonable explanation. Although in many cases this exemption might be similar to a 'materiality' assessment (e.g. as included in the TCFD recommendations), this might not always be the case, and it is hoped that that guidance anticipated from BEIS will clarify how this provision should operate.

For a full list of the topics for disclosure see the Annex to this Briefing.

Where will the information be disclosed?

Disclosures will need to be made in a rebranded "Non-Financial and Sustainability Statement" (NFSS) and located in the strategic report (or in the Energy and Carbon Report for LLPs that do not prepare a strategic report).

If mandatory Scope 3 emissions reporting were to be implemented, this would be through the related Streamlined Energy and Carbon Reporting Framework (SECR) rather than under the proposed NFSS. For more information on the SECR, see our [June 2020 briefing](#).

What happens next?

[Draft Regulations](#) to implement the changes for companies have been laid before Parliament. Analogous amending provisions for LLPs will be published once those regulations have been approved. The requirements would then come into force on 6 April 2022 for financial years beginning on or after that date. The new framework would then be reviewed in 2023.

The Draft Regulations provide for the Government to issue guidance on reporting. It will be essential that the BEIS guidance is available well before 6 April 2022 to help businesses gear up for the new requirements.

Final Comments

Obligated businesses with financial years starting on or soon after 6 April 2022 may have to work quickly to implement monitoring and reporting frameworks

in time for the beginning of their 2022/2023 financial year. Since the new disclosure obligations are not subject to a comply or explain proviso, this will give added urgency to their preparations.

It is welcome that BEIS has decided to look further at how the climate-related financial disclosure will work alongside SECR reporting (and with the recently announced plans for a UK Sustainable Disclosure Requirements), and this will be subject to separate consultation. However, concerns were also raised by us and other respondents to the March 2021 consultation about the overlap between the FCA's Listing Rules on TCFD disclosure and the proposals contained in the March 2021 Consultation – i.e. premium listed entities would be covered by both sets of rules - and since then the FCA has decided to extend its TCFD Listing Rules requirement to standard listed companies and issuers of debt and debt like instruments further increasing the overlap. Given BEIS' decision to more closely reflect the TCFD recommendations in the Draft Regulations, this overlap may be less problematic, but there are still areas of divergence (e.g. in relation to materiality and the comply or explain basis of reporting). The response says little about the overlap with Listing Rules and it is hoped that the BEIS guidance, and FCA guidance, will clarify how listed entities covered by both rules should proceed.

Furthermore, we commented on the need to ensure BEIS's proposals did not create additional overlap in view of the EU's proposed Corporate Sustainability Reporting Directive (CSRD) which could result in UK subsidiaries of EU-based groups with equity shares admitted to the FCA's Official List having to report (or provide information for reporting) under three different sets of TCFD-based regimes (See our [July 2021 briefing](#) for additional commentary on this including likely areas of reporting overlap). The Response does not mention the CSRD proposal, but we hope that BEIS will keep the impacts for multi-jurisdictional businesses groups in mind as the CSRD progresses, and as TCFD-related reporting proposals emerge in other jurisdictions.

Businesses affected by these new requirements should begin to consider, if they have not already, their approach to preparing for climate-related financial disclosure and how it links to reporting that they already undertake.

Recent guidance which may assist companies in preparing their TCFD disclosures includes the [FRC's Financial Reporting Lab's report on developing practice](#): and the [LSE's climate reporting guidance](#).

ANNEX

Full list of climate topics for disclosure under the Draft Regulations

- (a) a description of the company’s governance arrangements in relation to assessing and managing climate-related risks and opportunities;
- (b) a description of how the company identifies, assesses, and manages climate-related risks and opportunities;
- (c) a description of how processes for identifying, assessing, and managing climate-related risks are integrated into the company’s overall risk management process;
- (d) a description of—
 - (i) the principal climate-related risks and opportunities arising in connection with the company’s operations, and
 - (ii) the time periods by reference to which those risks and opportunities are assessed;
- (e) a description of the actual and potential impacts of the principal climate-related risks and opportunities on the company’s business model and strategy;
- (f) an analysis of the resilience of the company’s business model and strategy, taking into consideration different climate-related scenarios;
- (g) a description of the targets used by the company to manage climate-related risks and to realise climate-related opportunities and of performance against those targets; and
- (h) a description of the key performance indicators used to assess progress against targets used to manage climate-related risks and realise climate-related opportunities and of the calculations on which those key performance indicators are based.

CONTACTS



Nigel Howorth
Partner, Environment &
Planning

T +20 7006 4076
E nigel.howorth
@cliffordchance.com



Michael Coxall
Knowledge Director,
Environment & Planning

T +20 7006 4315
E michael.coxall
@cliffordchance.com



Anneke Theelen
Senior Associate

T +20 7006 3045
E Anneke.theelen
@cliffordchance.com



Melissa Fogarty
Partner

T +20 7006 4699
E melissa.fogarty
@cliffordchance.com



Daud Khan
Partner

T +20 7006 6069
E daud.khan
@cliffordchance.com



Clare Burgess
Partner

T +20 7006 1727
E clare.burgess
@cliffordchance.com



Juliet McKean
Knowledge Director

T +20 7006 4577
E Juliet.mckean
@cliffordchance.com



Kate Norgett
Knowledge Director

T +20 7006 2923
E kate.norgett
@cliffordchance.com



Jessica Walker
Knowledge Director

T +20 7006 2880
E Jessica.walker
@cliffordchance.com

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www.cliffordchance.com

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London, E14 5JJ

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