



The Bar Council

Bar Council response to the Department for Business, Energy & Industrial Strategy (BEIS) consultation on Requiring Mandatory Climate-Related Financial Disclosure by Publicly Quoted Companies, Large Private Companies and Limited Liability Partnerships

1. This is the response of the General Council of the Bar of England and Wales (the Bar Council) to the BEIS consultation paper on Requiring Mandatory Climate-Related Financial Disclosure by Publicly Quoted Companies, Large Private Companies and Limited Liability Partnerships.¹
2. The Bar Council represents approximately 17,000 barristers in England and Wales. It promotes the Bar's high-quality specialist advocacy and advisory services; fair access to justice for all; the highest standards of ethics, equality and diversity across the profession; and the development of business opportunities for barristers at home and abroad.
3. A strong and independent Bar exists to serve the public and is crucial to the administration of justice. As specialist, independent advocates, barristers enable people to uphold their legal rights and duties, often acting on behalf of the most vulnerable members of society. The Bar makes a vital contribution to the efficient operation of criminal and civil courts. It provides a pool of talented men and women from increasingly diverse backgrounds from which a significant proportion of the judiciary is drawn, on whose independence the Rule of Law and our democratic way of life depend. The Bar Council is the Approved Regulator for the Bar of England and Wales. It discharges its regulatory functions through the independent Bar Standards Board (BSB).

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https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/972422/Consultation_on_BEIS_mandatory_climate-related_disclosure_requirements.pdf

QUESTION 1: Do you agree with our proposed scope for companies and LLPs?

4. Yes.

QUESTION 2: Our proposed scope includes UK registered companies with securities admitted to AIM with more than 500 employees. Do you have any views on expanding this to include other unregulated markets and Multilateral Trading Facilities (MTFs)?

5. We have no strong views either way, as long as it is clear which companies are subject to the regulations.

6. However, we anticipate that any regulation is more clearly applied by reference to the nature of the intended subject company, rather than the mere fact that its securities might be traded in matched deals between buyers and sellers on other exchanges or facilities.

QUESTION 3: Do you agree with the proposal to require climate related financial disclosures for companies and LLPs at the group level?

7. Yes.

8. Unless this was done, the proposed companies and LLPs could reorganise their affairs in order to avoid the application of the regulations (eg by employing the relevant employees elsewhere in the group or through an overseas' subsidiary).

QUESTION 4: Do you agree that the Strategic Report is the best place for the disclosure of climate-related financial information by companies?

9. Yes.

QUESTION 5: Do you have views on whether LLPs should be required to disclose climate-related financial information in the Strategic Report (where applicable), or the Energy and Carbon Report?

10. Given that not all LLPs will prepare a Strategic Report, we would anticipate that such matters are more appropriately addressed in the Energy and Carbon Report.

11. However, we have no strong views either way. The more important point is that the requisite disclosure is clearly provided and that it should not be difficult for investors to locate.

QUESTION 6: Do you agree that requiring disclosure in line with the four pillars of the TCFD recommendations, rather than at the 11 recommendation level is suitable?

12. Yes.

QUESTION 7: Do you agree that information provided in line with the obligations set out above would provide investors, regulators and other stakeholders with sufficient information to assess the climate-related risks and opportunities facing a company or financial institution?

13. No - to the extent addressed in Q.8 below.

QUESTION 8: Do you agree with our proposal that scenario analysis will not be required within a company or LLP's annual report and accounts?

14. We note the suggestion that relevant companies and LLPs will be "encouraged" to provide scenario analysis and that companies that are able to provide scenario analysis should be "encouraged" to continue to do so.

15. Scenario analysis is likely to be a clear and impactful way of reporting on climate-related risks and bringing home possible issues to investors etc. It may be more illustrative of the climate-related risks than carefully-framed statements elsewhere in the report.

16. Unless there is an impetus (beyond "encouragement") to develop or acquire the requisite skills of scenario analysis, companies that do not currently provide scenario analyses are unlikely to develop or expand their capacity to provide these. Moreover, there is no particular reason to suppose that the market will move significantly to develop the relevant skills to assist companies and LLPs in undertaking scenario analysis.

17. Consideration might be given to other options:

1. Requiring scenario analysis by only those UK companies whose transferable securities are traded on a UK regulated market - ie, in all likelihood, the largest UK companies. (These companies are already likely to have sophisticated accounting assistance available to them.)
2. Identifying a future date when all the proposed companies and LLPs will become subject to a need to provide scenario analysis. (This will allow companies and LLPs to prepare for that eventuality and the market to move to develop such skills. This option could be used in conjunction with (1) above, with any requirement for other companies and LLPs being introduced later.)
3. Requiring all the proposed companies and LLPs to provide scenario analysis or, in default thereof, to require the directors/managing partner to provide an explanation in the Strategic Report (or Energy and Carbon Report for LLPs) as to why this has not been reasonably possible. (This requirement is likely to achieve greater use of scenario analysis than simple positive “encouragement”.)

18. Companies or LLPs who can properly claim that climate-related financial disclosures are not material (as referenced in Q.10) ought not to be required to undertake scenario analysis.

QUESTION 9: Would alignment of the scope for climate-related financial disclosures and SECR requirements, such that large unquoted companies and LLPs would be subject to the same reporting requirements under SECR as quoted companies, aid reporting of climate related financial disclosures and simplify reporting procedures? Do you have any views on the continuation of voluntary Scope 3 emissions reporting under SECR requirements?

19. Yes. We accept, as a starting point, that whether or not a company’s securities are quoted has no relation to its environmental impact.

20. We have no views over the reporting of Scope 3 emissions, which appears to be a matter of policy. If companies or LLPs wish to report on such matters voluntarily, we see no reason other than to encourage them to do so.

QUESTION 10: Do you have comments on the proposal to permit non-disclosure if the information is not material and the reasons why climate change is not material are properly explained?

21. Since there may be businesses whose operations have only a minimal climate impact, we agree that such an exception should be introduced. We agree that it should be accompanied by a reasoned explanation of the basis on which the company or LLP has come to that view.

22. While a well-known accounting expression, “materially” necessarily involves a subjective assessment. If it is proposed to provide a more uniform approach, a more objective standard might be employed by which such “materiality” is to be judged.

QUESTION 11: Do you have comments on the proposed timing for these regulations coming in to force?

23. No comment.

QUESTION 12: Do you have any comments regarding the existing enforcement provisions for companies and the BEIS proposal not to impose further provisions?

24. We do not consider that there is any obvious need for further enforcement provisions.

QUESTION 13: Do you have any comments regarding duties and enforcement provisions for LLPs?

25. We do not consider that there is any obvious need for further enforcement provisions.

QUESTION 14: Do you have any comments on the responsibilities of auditors in relation to climate-related financial disclosures?

26. We agree that auditors are likely to have a substantial role in relation to ensuring that climate-related financial disclosures are made.

27. We agree that there is no need to alter the role of auditors in this regard and that any enhancement of that role generally can be addressed, as may be necessary, in the light of the pending consultation on “Restoring trust in audit and corporate governance”.

QUESTION 15: Do you have any comments regarding the proposed enforcement of our disclosure requirements?

28. No comment.

QUESTION 16: Do you have any comments regarding the impact of our proposals on protected groups and/or how any negative effects may be mitigated?

29. No.

QUESTION 17: Do you have any further comments about our proposals?

30. No.

Bar Council²

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For further information please contact

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² Prepared by the Law Reform Committee