

November 25, 2020

# In Global First, the United Kingdom Moves Toward Mandatory Climate-related Disclosures by 2025

*This client alert, part of a series focused on ESG disclosure and regulatory developments, should be read together with our ESG Lexicon, available [here](#), which provides definitions of some of the key terms used in ESG reports, disclosures and regulations.*

## Key Takeaways

- ▶ *On November 9, 2020, the United Kingdom became the first country to move towards mandatory climate-related disclosures when it announced its intention to require such disclosures across seven key sectors of the UK economy (including listed commercial companies, UK-registered large private companies, banks, insurance companies and pension schemes) by 2025.*
- ▶ *The UK Government has concluded that mandatory climate-related disclosures should be aligned with the recommendations of the Taskforce on Climate-related Financial Disclosures (TCFD). The announcement represents a departure from the traditional comply-or-explain approach of the UK Financial Reporting Council.*
- ▶ *Beyond the TCFD, UK regulators and government officials also believe that international standards would help establish a high level of comparability across jurisdictions, leading them to strongly support the International Financial Reporting Standards (IFRS) Foundation's proposal to create a new, global Sustainability Standards Board.*

## Executive Summary

On November 9, 2020, a UK taskforce chaired by HM Treasury and made up of UK regulators and government officials (the "Taskforce") published the Interim Report of the UK's Joint Government-Regulator TCFD Taskforce (the "Interim Report"), along with a roadmap to achieving its recommendations (the "Roadmap").<sup>1</sup> The Interim Report concluded that the United Kingdom should move towards mandatory TCFD-aligned disclosures across all sectors of the UK economy over the next five years. The Roadmap presents a five-year timeline of planned or potential regulatory actions or legislative measures across seven categories of organizations: listed commercial companies; UK-registered large private companies; banks and building societies; insurance companies; asset managers; life insurers and regulated pension

schemes; and occupational pension schemes. The UK Government expects a significant portion of mandatory requirements to be in place by 2023.

## The Context

As the financial impacts of climate change have become a growing concern for governments and regulators around the world, new initiatives have emphasized a systematic approach to climate-related disclosures to ensure that complete, comparable and decision-useful information is available across the economy. One of the most significant initiatives in this regard was the Financial Stability Board's establishment in 2015 of the TCFD to "develop voluntary, consistent climate-related financial disclosures that would be useful to investors, lenders and insurance underwriters in understanding material risks." The TCFD published its final recommendations for climate-related disclosures in 2017 (for an overview of the TCFD, see our prior alert [here](#)). The UK Government was one of the first countries to formally endorse the TCFD recommendations, and has taken a number of steps since to advance TCFD-aligned disclosures in the United Kingdom. For example, in April 2019, the Bank of England's Prudential Regulation Authority (the "PRA") issued a Supervisory Statement, "Enhancing banks' and insurers' approaches to managing the financial risks from climate change,"<sup>2</sup> in which the PRA made clear that it expected banks and insurers to reflect the "distinctive elements of the financial risks from climate change" in their disclosures.<sup>3</sup> A few months later, the UK Government announced that as part of its Green Finance Strategy, all listed issuers and large asset owners would be required to make disclosures in line with the TCFD's recommendations by 2022.<sup>4</sup> In March 2020, the Financial Conduct Authority ("FCA") published proposals requiring premium-listed companies to make new climate-related disclosures on a comply-or-explain basis,<sup>5</sup> which it recently announced will be introduced from January 1, 2021.<sup>6</sup>

Notwithstanding PRA and FCA pronouncements, the Taskforce has concluded in its Interim Report that many organizations have not made sufficient progress towards the adoption of the TCFD's recommendations, and that the most progress has been made in sectors where regulatory action has already been taken (such as by banks and insurers).<sup>7</sup> Moreover, the Taskforce suggested that the COVID-19 pandemic has highlighted the need to "prepare the UK economy to meet tomorrow's challenges" and foster a recovery that will reduce risk and increase the UK's resilience to the threat posed by climate change." For these reasons, the Taskforce determined that the UK Government's current voluntary approach to climate-related financial disclosures may be insufficient, and that it should move towards a mandatory regime.

## A Roadmap Towards Mandatory Climate-related Disclosures

After making the case for mandatory TCFD-aligned disclosures, the Taskforce's Interim Report presents the Roadmap to achieve this goal. The Roadmap sets forth a timeline proposing regulatory and legislative measures that would implement ESG disclosure requirements over the next five years across the seven categories of organizations discussed above. In addition to this overarching timeline (as illustrated below), the Roadmap includes seven other, more detailed timelines for each particular organizational category. These seven timelines indicate how and when regulatory/legislative and supervisory measures will be phased in within that sector, and include the proposed timing for additional consultations that may lead to further legislative and regulatory measures.

In addition to the phased implementation indicated by the Roadmap's timelines, the Taskforce recommends proportionate implementation: that each sectoral regulator (such as the FCA or PRA) consider thresholds for the implementation of disclosures within each category of organizations, since the benefits of mandatory disclosures increase with an organization's size, and the costs of mandatory disclosures are greater for smaller organizations.

The Taskforce will continue to monitor the progress of its cross-sectoral implementation strategy and will provide an update on progress in 2022 as part of the Green Finance Strategy’s planned formal review.<sup>8</sup>

**Timeline of Planned or Potential Regulatory Actions or Legislative Measures by Sector**

2021	2022	2023	2024–2025
<ul style="list-style-type: none"> <li>▶ Occupational pension schemes (&gt;£5bn)<sup>(a)</sup></li> <li>▶ Banks, building societies and insurance companies<sup>(b)</sup></li> <li>▶ Commercial companies with a premium listing<sup>(c)</sup></li> </ul>	<ul style="list-style-type: none"> <li>▶ Occupational pension schemes (&gt;£1bn)<sup>(a)</sup></li> <li>▶ Largest UK-authorized asset managers, life insurers and regulated pension providers<sup>(d)</sup></li> <li>▶ UK-registered companies<sup>(e)</sup></li> <li>▶ Wider scope of listed companies<sup>(f)</sup></li> </ul>	<ul style="list-style-type: none"> <li>▶ Other UK-authorized asset managers, life insurers and regulated pension providers<sup>(d)</sup></li> </ul>	<ul style="list-style-type: none"> <li>▶ Other occupational pension schemes (subject to review)<sup>(a)</sup></li> <li>▶ Potential further refinements across categories, including in response to evolving best practice</li> </ul>

- (a) Regulated by the UK Department for Works & Pensions and The Pensions Regulator.
- (b) Regulated by the PRA.
- (c) Regulated by the FCA. Premium-listed companies are companies whose shares are admitted to the premium segment of the Official List of the FCA and trade on the Main Board of the London Stock Exchange. Proposed modifications to the UK Companies Act 2006 may apply to certain UK-registered listed companies.
- (d) Regulated by the FCA.
- (e) Regulated by the UK Department for Business, Energy & Industrial Strategy. These are companies organized in the UK and subject to the UK Companies Act 2006. This category is expected to cover large private companies as well as listed companies.
- (f) Regulated by the FCA. Scope to be determined, but likely to include companies with a standard listing. Disclosures for listed open-/closed-ended investment companies will be considered together with the disclosure requirements for asset managers.

**Ensuring International Comparability of Disclosures**

The Taskforce noted that while the TCFD has helped establish a framework for disclosures, it is not a standard setting body. The Taskforce stated that in order to “achieve a high level of comparability across jurisdictions, consistent disclosures are required,” and noted further that “if arrived at sufficiently quickly, this would optimally be achieved through international standards for climate-related and other sustainability disclosures.” For this reason, the Taskforce “strongly supports” the International Financial Reporting Standards (IFRS) Foundation’s proposal to create a new, global Sustainability Standards Board,<sup>9</sup> as well as a complementary initiative by five voluntary standard-setting bodies (for more on this initiative, see our recent client alert [here](#)).

## Looking Ahead

The announcement by HM Treasury of the United Kingdom's move towards mandatory disclosures came in the same week that the U.S. Federal Reserve (i) applied to join the Network of Central Banks and Supervisors for Greening the Financial System and (ii) examined climate change risks in its twice-yearly financial stability report for the first time (for more on these developments, see our recent client alert [here](#)). Attention to the financial impacts of climate change may be reaching a tipping point in 2020, in which more stringent regulation can be expected going forward. Moreover, given President-elect Biden's position on climate change,<sup>10</sup> US disclosure requirements on climate change risks could also shift in 2021 (for more on the current U.S. regulatory framework for ESG disclosures, see our prior client alert [here](#)). Companies around the world, and particularly those with international footprints across multiple jurisdictions, should closely monitor regulatory developments with respect to climate change disclosures, familiarize themselves with the TCFD recommendations and the IFRS Foundation's proposal, and develop a strategy for potential shifts from voluntary climate-related disclosure regimes to mandatory ones.

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This memorandum is not intended to provide legal advice, and no legal or business decision should be based on its content. Questions concerning issues addressed in this memorandum should be directed to:

Mark S. Bergman  
+44-20-7367-1601

[mbergman@paulweiss.com](mailto:mbergman@paulweiss.com)

Ariel J. Deckelbaum  
+1-212-373-3546

[ajdeckelbaum@paulweiss.com](mailto:ajdeckelbaum@paulweiss.com)

Brad S. Karp  
+1-212-373-3316

[bkarp@paulweiss.com](mailto:bkarp@paulweiss.com)

Elizabeth M. Sacksteder  
+1-212-373-3505

[esacksteder@paulweiss.com](mailto:esacksteder@paulweiss.com)

Scott P. Grader  
+1-212-373-3284

[sgrader@paulweiss.com](mailto:sgrader@paulweiss.com)

Frances F. Mi  
+212-373-3185

[fmi@paulweiss.com](mailto:fmi@paulweiss.com)

William J. O'Brien  
+1-212-373-3404

[wobrien@paulweiss.com](mailto:wobrien@paulweiss.com)

David G. Curran  
Chief Sustainability/  
ESG Officer  
+1-212-373-2558

[dcurran@paulweiss.com](mailto:dcurran@paulweiss.com)

*Sustainability & ESG Associate Sofia D. Martos contributed to this Client Memorandum.*

<sup>1</sup> The Taskforce was established as part of the UK's 2019 "Green Finance Strategy." HM Treasury, "Interim Report of the UK's Joint Government-Regulator TCFD Taskforce" (November 2020), available [here](#); HM Treasury, "A Roadmap towards mandatory climate-related disclosures" (November 2020), available [here](#).

<sup>2</sup> Bank of England Prudential Regulation Authority, "Supervisory Statement 3/19 (SS3/19): Enhancing banks' and insurers' approaches to managing the financial risks from climate change" (April 2019), available [here](#).

<sup>3</sup> *Id.*

<sup>4</sup> HM Treasury, "Interim Report."

<sup>5</sup> Financial Conduct Authority, Press Release, "FCA announces proposals to improve climate-related disclosures by listed companies" (March 6, 2020), available [here](#). The proposed rule required commercial companies with a UK premium listing to "state whether they comply with the recommendations of the Financial Stability Board's Taskforce on Climate-related Financial Disclosures (TCFD) and to

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explain any non-compliance.” Financial Conduct Authority, “CP20/3: Proposals to enhance climate-related disclosures by listed issuers and clarification of existing disclosure obligations” (March 6, 2020), available [here](#).

- <sup>6</sup> Financial Conduct Authority, Speech by Nikhil Rathi, “Green Horizon Summit: Rising to the Climate Challenge” (November 9, 2020), available [here](#).
- <sup>7</sup> *Id.*
- <sup>8</sup> HM Government, “Green Finance Strategy: Transforming Finance for a Greener Future” (July 2019), available [here](#).
- <sup>9</sup> The IFRS Foundation published a “Consultation Paper on Sustainability Reporting” in September 2020 (with comments to be received by December 31, 2020), available [here](#). The consultation paper notes that “demand is growing for international coordination of an agreed set of sustainability-reporting standards. International standardisation assists in providing a level playing field for companies that prepare reports and international comparability for investors.” On November 10, the UK government and UK financial regulators welcomed publication of the consultation paper.
- <sup>10</sup> President-elect Biden has pledged to both rejoin the Paris climate accord on his first day in office and to advance a \$2 trillion green stimulus package to help reduce emissions.