**Non-financial reporting review: simpler corporate reporting**

**28 June 2024**



## Introduction

1. The views set out in this response have been prepared by a Joint Working Party of the Company Law Committees of the City of London Law Society (**CLLS**) and the Law Society of England and Wales (the **Law Society**).
2. The CLLS represents approximately 17,000 City lawyers through individual and corporate membership, including some of the largest international law firms in the world. These law firms advise a variety of clients from multinational companies and financial institutions to Government departments, often in relation to complex, multijurisdictional legal issues. The CLLS responds to a variety of consultations on issues of importance to its members through its 21 specialist committees.
3. The Law Society is the professional body for solicitors in England and Wales, representing over 170,000 registered legal practitioners. It represents the profession to Parliament, Government and regulatory bodies in both the domestic and European arena and has a public interest in the reform of the law.
4. The Joint Working Party is made up of senior and specialist corporate lawyers from both the CLLS and the Law Society who have a particular focus on issues relating to company law and corporate governance.

## FOR FURTHER INFORMATION PLEASE CONTACT:

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**Response**

1. In our response to the Department for Business & Trade’s Smarter Regulation Non-Financial Reporting Review Call for Evidence in August 2023 (**Call for Evidence**), we agreed that it is useful to review the UK’s framework for non-financial reporting (**NFR**) to ensure that it remains fit for purpose and delivers decision-useful information to the market. We are therefore pleased to see the proposals in the Non-financial reporting review: simpler corporate reporting consultation (May 2024) (**Consultation**), which we agree will help to achieve those aims.
2. As set out in the answers to the questions below, we agree with the proposals set out in the Consultation as being a proportionate way of reducing reporting burdens on medium-sized companies.
3. We note that the Consultation states that the Government will consider whether any amendment to other NFR thresholds and the ineligibility criteria relating to medium-sized companies is appropriate in due course. As set out in our August 2023 response, we believe that there is further scope to simplify the thresholds and qualification provisions relating to NFR. Many of these overlap in some way but are calculated and apply in different ways and to different entities, which can make it difficult and confusing to work out what requirements apply to each particular entity. This leads to unnecessary complexity and additional costs for companies as they seek to determine whether they are in-scope with regard to the relevant thresholds and criteria.
4. We would welcome the opportunity to collaborate further with the Department for Business & Trade as the NFR project progresses and assist at subsequent stages of the project.

**Q1 Do you agree or disagree with the uplift of the employee threshold from 250 to 500 employees for ‘medium-sized’ companies? Please explain your answer.**

1. We agree with the uplift of the employee threshold from 250 to 500 employees for ‘medium-sized’ companies. This would align the Companies Act employee threshold with the assumption set out in the Better Regulation framework that companies with 50 to 499 employees should be exempted from new regulatory measures. This would help ensure consistency with any new requirements and ensure that the reporting regime for medium-sized companies is proportionate and does not operate as a disincentive to the establishment of UK companies.
2. Setting aside the disclosures in the Strategic Report, which are discussed in the answer to questions 2 and 3, the disclosures that large-sized companies will be required to make, but which medium-sized companies are not required to, are reporting on payment practices and performance (not an annual report disclosure but tied to the thresholds set out in section 465 of the Companies Act 2006) and some detailed information relating to fees for non-audit services.
3. Given the limited scope of these disclosures (and the limited number of companies impacted, estimated to be around 2,000), we think that it is proportionate for companies with fewer than 500 employees, but which otherwise meet the relevant thresholds, not to be required to make these disclosures.
4. We note that the Consultation response states that the Government does not propose to change the threshold for Streamlined Energy and Carbon Reporting (**SECR**) until it has undertaken a full analysis of how this would impact carbon budgets. The SECR threshold is based on companies that exceed the medium-sized company thresholds (so large companies currently). If the proposed changes to the monetary and employee thresholds are implemented, this will result in some large companies that are re-categorised as medium-sized under the Companies Act continuing to comply with SECR requirements, which were originally intended for large companies only.
5. Other reporting obligations which are also based on companies exceeding some or all of the medium-sized company thresholds are: slavery and human trafficking statements (companies with turnover of not less than £36m), and gender pay gap reporting (companies with 250 or more employees). Although these are not annual report disclosures, the disclosure requirements were intended to apply to companies that met at least one of the relevant thresholds. The proposed change to employee numbers (and monetary thresholds) would again result in companies that have been re-categorised as medium-sized having to continue to make certain other disclosures that were originally intended only to apply to larger companies.
6. The aim of the Call for Evidence, involving both increases in the monetary thresholds (to take account of inflation) and the increase in employee size thresholds proposed by the Consultation is, in general, to reduce complexity in the UK’s NFR. However, by retaining the existing large company thresholds for the separate reporting regimes outlined above, the changes proposed by the Consultation may in fact increase complexity in some respects. We therefore recommend that the Government consider carefully whether there should be any changes to the thresholds listed in paragraphs 13 and 14 above with a view to minimising unintended new complexity in the NFR.
7. We also note that once the proposal to remove various disclosure requirements from the Directors’ Report has been effected (as set out in the bullet point list in the final section of the ‘Introduction’ to the Consultation), the disclosures that medium-sized private companies will be required to make in their Directors’ Report, but which small-sized private companies are not required to make, are:
* the amount the directors recommend should be paid by way of dividend; and
* in many cases, the statement on disclosures provided to auditors (this disclosure is required to be made by all companies unless they are exempt from the requirements of Part 16 Companies Act 2006 as to the audit of accounts and choose to take advantage of that exemption; certain small-sized companies have a specific exemption, whereas medium-sized companies are generally only exempt where they qualify for the subsidiary audit exemption).
1. We would highlight that this list does not align with the list in the Annex to the Consultation. The reason for this is that many of the Director’s Report disclosures listed in the Annex are also required to be made by small-sized companies. By way of contrast, micro-entities are not required to produce a Directors’ Report. We would encourage the Government to look again at this with a view to reducing further the burden on smaller-sized companies.

**Q2 Do you agree or disagree with exempting medium-sized private companies from having to prepare a Strategic Report? Please explain your answer.**

1. We think that it is proportionate to exempt medium-sized companies from having to prepare and publish a Strategic Report. The effect of this change would be that medium-sized companies would no longer be required to publish the information listed below:
* fair review of the company’s business, principal risks and uncertainties facing the business;
* analysis of development performance of business and position at end of financial year;
* analysis using financial key performance indicators (KPIs); and
* explanation of amounts in the annual accounts.
1. In addition, we note that should the proposal to implement the change to the medium-sized company employee threshold be implemented, the estimated 2,000 large companies that will be recategorized as medium-sized will no longer be required to disclose non-financial KPIs or make a section 172(1) statement.
2. Although this information is, on its face, potentially useful to investors, in our experience, shareholders of medium-sized private companies will often have other means of accessing relevant information, which would usually go beyond, or be different to, that listed above. For example, this might be via informal relationships with management for a family-owned company or via an investment agreement with prescribed information rights for outside investors. In our experience, shareholders (in particular, sophisticated outside investors) are more likely to obtain and make use of information obtained through these means and, as a result, we agree that they may get limited benefit from the Strategic Report. In addition to more extensive information being shared with investors, information is likely to be shared with investors more regularly and on a timelier basis, given that private companies have a nine-month period to file their accounts at Companies House. Further, wholly-owned subsidiaries are likely to have internal reporting requirements and other group policies and procedures in place which govern these matters. These subsidiaries may also be included in a consolidated group Strategic Report and so relevant information will be available to investors higher up in the structure in the group Strategic Report.
3. Customers and suppliers are likely to seek information on an ad hoc basis by requesting information directly from the company on specific issues that are of concern to them. This information is likely to be different from that disclosed in the Strategic Report under the Companies Act 2006.
4. We note that the Consultation estimates that this proposed change will result in a £150 million saving to medium-sized companies, which is significant both in monetary terms and in the time saving that it represents; medium-sized companies will have more time to focus on running their businesses rather than complying with reporting requirements, which may not always produce decision-useful information for investors and other stakeholders at the time that they need it. We therefore think that it strikes an appropriate balance in terms of the cost-benefit analysis, ensuring that the usefulness of the information is proportionate to the cost on medium-sized companies of producing this information.

**Q3 Please provide any evidence you have regarding the usefulness of the information medium-sized private companies provide to their shareholders or other stakeholders in their Strategic Reports.**

1. As stated in the answer to question 2, in our experience, investors, customers, suppliers and other stakeholders are increasingly likely to conduct their own due diligence on companies. The sort of information that they would be seeking would frequently be different to (or more extensive than) that set out in the Strategic Report. We do not believe that there would be any material detriment for investors or external stakeholders as a consequence of exempting medium-sized companies from producing Strategic Reports.