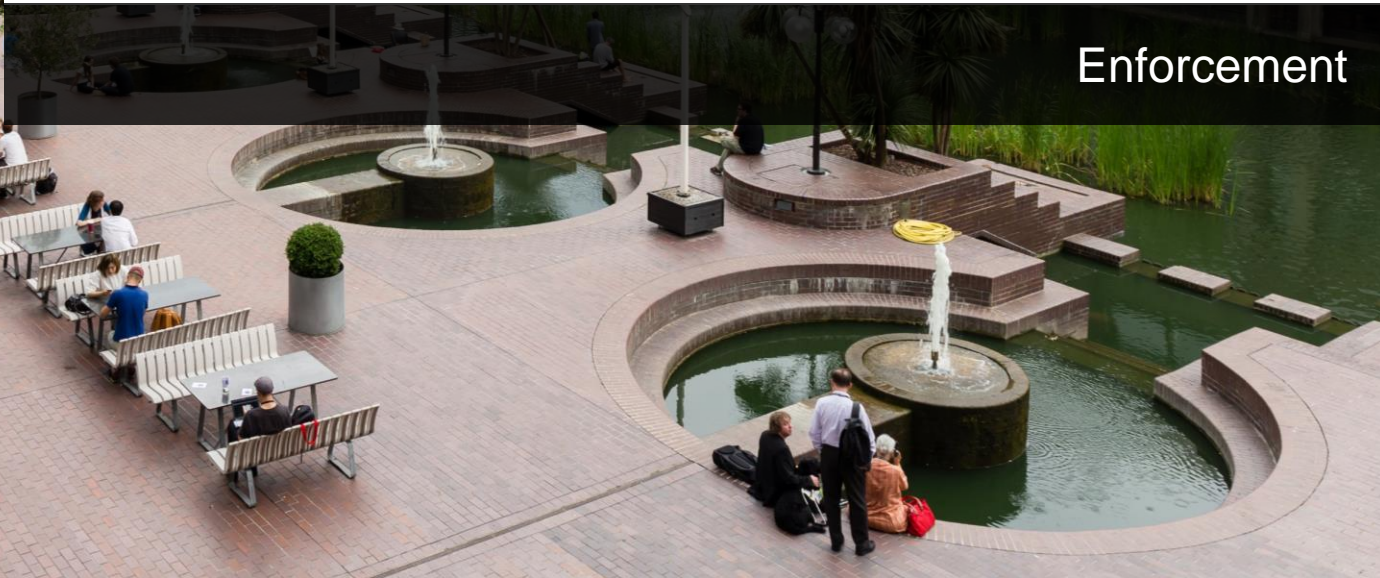




Restoring trust in audit and corporate governance



Enforcement

Restoring trust in audit and corporate governance

- The Department for Business, Energy and Industrial Strategy (BEIS) has published its consultation, 'Restoring trust in audit and corporate governance'.
- This consultation is the next step in the process of reform and a significant milestone towards setting up a new, robust and independent regulator.
- As part of our stakeholder engagement to support BEIS' consultation, we have launched a series of webinars and roundtables so that all stakeholders can engage with and discuss the key themes of the consultation.

Restoring trust in audit and corporate governance

Consultation on the government's proposals

March 2021

Closing date: 8 July 2021

CP 382



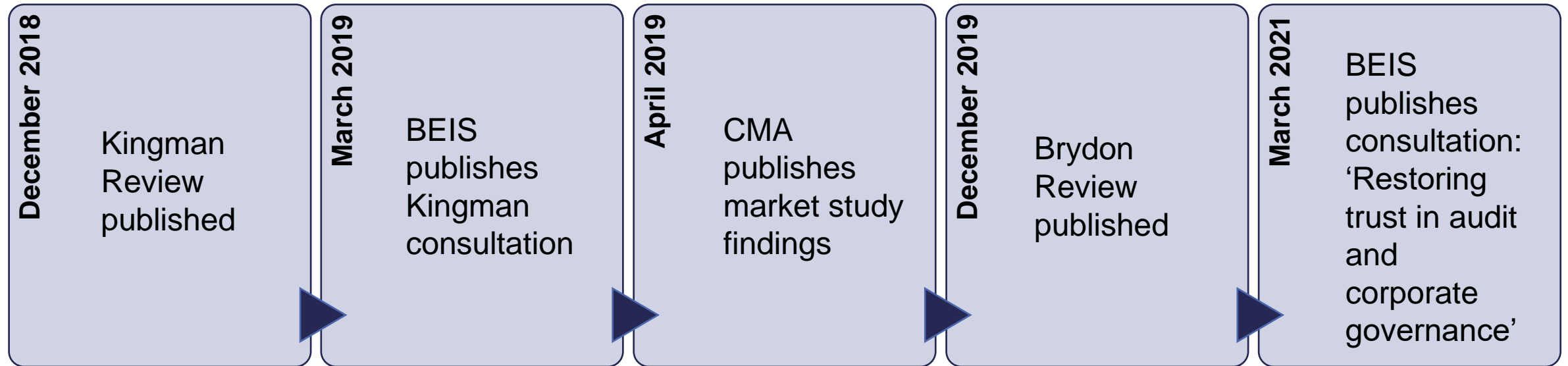
Reform objectives

The proposals aim to:

- Restore public trust in the way that the UK's largest companies are run and scrutinised
- Ensure that the UK's most significant corporate entities are governed responsibly
- Empower investors, creditors, workers and other stakeholders by giving them access to reliable and meaningful information on a company's performance
- Keep the UK's legal frameworks for major businesses at the forefront of international best practice

The journey so far

A timeline of key events



Key engagement themes

We are focusing on six key themes across our engagement and today will be focusing on:

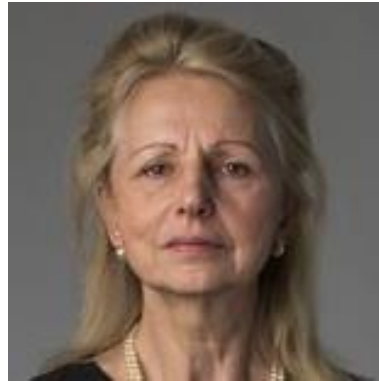


Speakers



Rachel Atkinson

Head of Public
Affairs



Elizabeth Barrett

Executive Counsel &
Executive Director of
Enforcement



David Johnson

Senior Lawyer,
Enforcement

Enforcement

Enforcement – directors

Enforcement – accountants



Enforcement in relation to company directors

What is this section about:

- The FRC Review recommended that there should be an effective enforcement regime that holds directors of PIEs to account for their duties in relation to corporate reporting and audits.
- The Government considers that strengthening the existing enforcement mechanisms (i.e. via the FCA) would not be sufficiently comprehensive and effective.
- The Government considers that ARGA should be given effective powers in respect of directors' duties relating to corporate reporting and audit that can be exercised, whether or not a director is an accountant.

- Therefore, the Government intends to legislate to provide ARGA with the necessary powers to investigate and sanction breaches of corporate reporting and audit-related responsibilities by all PIE directors.
 - All directors of companies which are PIEs to be in scope.
 - Where appropriate, the scope of the regulator's enforcement powers apply to PIEs which are not companies, such as Limited Liability Partnerships (LLPs)
- The Government's intention is that the regulator's new enforcement powers will apply to regulatory obligations imposed on directors in relation to existing statutory duties relating to corporate reporting and company audits.
- The FRC Review recommended that the responsibility for director disqualifications should remain with the Insolvency Service.
- ARGA's use of such powers will need to be coordinated with other regulators to avoid an overly complex regime for businesses.

What are the proposals?

Enforcement – directors

The Consultation looks at the relationship with existing enforcement regimes and notes that:

- This new enforcement regime for PIE directors would not replace existing arrangements for taking action against company directors.
- The responsibility for bringing directors disqualification proceedings should remain with the Insolvency Service.
- The Government is committed to avoid duplication and ARGA powers will work in tandem with those held by the FCA as well as those held by other agencies including the Serious Fraud Office.
- ARGA will carry out the standard-setting, supervision, monitoring and enforcement activities to ensure high standards of audit, and also in relation to corporate reporting where such matters do not fall within the remit of the FCA.
- A Memorandum of Understanding between ARGA and the FCA will be concluded and published to set out the framework for coordination and cooperation.

Enforcement – directors

The FRC Review recommended this regime should follow similar principles to the audit enforcement regime.

- Where new statutory duties for directors are introduced into the regulatory regime for which the regulator is responsible, it should be able to enforce those duties under this regime.
- The Government proposes to give the regulator the power to impose more detailed requirements as to how certain statutory duties relating to corporate reporting and audit are to be met by directors.
- The Government is considering whether directors of PIEs ought to be required more specifically to meet certain behavioural standards in the way they carry out their duties relating to corporate reporting and audit.

Enforcement – directors

Sanctions

The consultation considers new investigation and enforcement powers, giving the regulator powers to gather information and carry out investigations to establish whether a director has breached a relevant requirement, and to impose sanctions in cases where a breach is found to have occurred.

The regime would provide a graduated range of civil sanctions that could be applied by the regulator where a breach was proven.

The civil standard of proof ‘on the balance of probabilities’ would apply when deciding disputed facts.

The regulator would be required to apply sanctions in a proportionate manner according to the seriousness of the breach and risk posed by the director’s conduct.



Enforcement in relation to accountants

What is this section about:

- The FRC Review found that the regulator's enforcement powers under the current voluntary arrangements lack effectiveness relative to its powers in relation to statutory auditors which are underpinned by legislation.
- The FRC Review recommended that the regulator is given new powers similar to the investigatory and sanctioning powers which are exercisable by the regulator in relation to statutory auditors.
- The Government agrees and intends to introduce legislation giving the regulator powers to take enforcement action in relation to accountants. This will include the powers for the regulator to obtain information from the accountant, their employer and where applicable their client.

- The FRC Review recommended that the Accountancy Scheme be replaced with a new statutory regime under which the regulator could take action against accountants for breaches of certain requirements that apply to them without having to demonstrate that there had been misconduct.
- Government agrees that the misconduct test should be replaced and that the regulator should instead take enforcement action in respect of breaches of specific requirements which apply to accountants.
- The Government's intention is to restrict the regulator's new enforcement powers to accountants and accountancy firms who are members of one of the chartered professional accountancy bodies.
- However, the scope of the new enforcement powers will be kept under review to ensure that no significant enforcement gap develops in the future.
- Therefore, the legislation taking forward the new enforcement powers should allow flexibility for the scope to be appropriately extended in the future.

What are the proposals?

Enforcement – accountants

The flexibility for scope extension in the future may be achieved in two ways:

- Option 1: by giving the Secretary of State a power to compel persons providing accountancy services to public interest entities to be a member of a professional accountancy body.
- Option 2: by extending the regulator's powers to those providing certain accountancy services to public interest entities.

Enforcement - accountants

Code of ethics

- The FRC Review recommended that the regulator should be able to take enforcement action in relation to accountants of public interest entities whenever they have breached existing requirements including 'legislative requirements, financial reporting standards and professional ethical standards'.
- The Government proposes to give the regulator the power to establish a standardised code of ethics with which members of the chartered bodies (either individuals or firms) would be required to comply and which would be enforceable by the regulator using its new powers.
- Chartered bodies would be able to add additional ethical requirements specific to their membership which would be enforceable by them.
- The new code of ethics would aim to standardise the variations between the core elements of each ethical standard, based on the International Code of Ethics for Professional Accountants so that consistent standards apply across the profession.

Enforcement – accountants

Scope – in relation to work on PIEs

- The FRC Review recommended that the new enforcement powers be restricted to accountants providing services to public interest entities.
- The Government considers that it would be undesirable to restrict the scope of the regulator's powers in that way and proposes that the regulator's powers should apply to breaches of the code of ethics in public interest cases regardless of whether the individual or firm is engaged by a public interest entity.

Enforcement – accountants

Sanctions

The Government proposes to give the regulator powers to gather information and carry out investigations to establish whether an individual or firm has breached the required standards, and to impose sanctions in cases where a breach is found to have occurred.

The regime would provide a graduated range of civil sanctions that could be applied by the regulator where a breach is proven.

The Government would expect the regulator to apply sanctions in a proportionate manner according to the seriousness of the breach and risk posed by the conduct in question.

The Government considers that the sanctions available to the regulator under the existing voluntary arrangements are broadly appropriate, noting the findings of the 2017 independent review of the FRC's Sanctions that those arrangements provided for a 'fair and effective range of sanctions'.



Any questions?

What's next?

The next steps in the process

Webinars and roundtables

Details of all other webinars and roundtables across the six workstreams can be found on [our website](#)

Roundtables on enforcement

For companies and boards: Monday 26th April, 15:00 – 16:30

For investors: Wednesday 5th May, 10:00 – 11:30

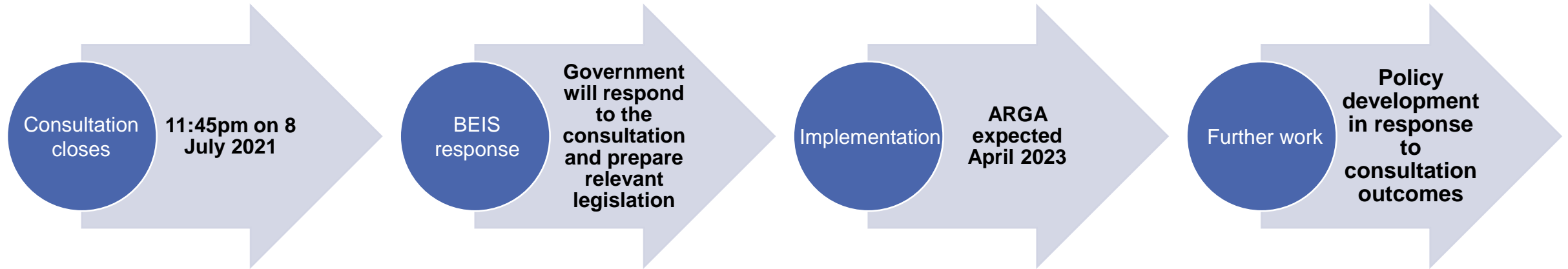
For all other interested parties: Wednesday 19th May, 14:30 – 16:00

For lawyers: Thursday 20th May, 10:30 – 12:00

For auditors, audit firms & professional bodies: Monday 24th May, 15:00 – 16:30

To register for roundtables, please email stakeholderengagement@frc.org.uk.

Next steps



Responses can be submitted either via the [gov.uk](https://www.gov.uk) website, or by email to audit.consultation@beis.gov.uk.



Thank you