



Financial Reporting Council

The Audit Enforcement Procedure

Consultation on proposed amendments

FRC Audit Enforcement
Procedure Consultation July
2021

FRC Audit Enforceme

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8th Floor, 125 London Wall, London EC2Y 5AS

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General information

The Financial Reporting Council (“FRC”) operates the Audit Enforcement Procedure (“AEP”). The FRC has reviewed the AEP and intends to amend it. Through this consultation, the FRC seeks feedback and comment on these proposed amendments.

Consultation details

Consultation opened: 22 July 2021

Respond by: 7 October 2021

Enquiries and responses to:

General Counsel’s Team
The Financial Reporting Council
8th Floor, 125 London Wall
London
EC2Y 5AS

Email: AEPconsultation@frc.org.uk

The FRC would particularly welcome the views of statutory auditors and audit firms and other regulatory bodies, including professional associations.

When responding, please state whether you are responding as an individual or representing the views of an organisation.

Confidentiality and data protection

Information you provide in response to this consultation, including personal information, may be disclosed in accordance with UK legislation (the Freedom of Information Act 2000, the Data Protection Act 2018 and the Environmental Information Regulations 2004).

The FRC’s usual policy is to make responses received to our consultations publicly available. If you want the information that you provide to be treated as confidential please tell us, but be aware that we cannot guarantee confidentiality in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not be regarded by us as a confidentiality request.

We will process your personal data in accordance with all applicable UK and EU data protection laws. Please see our [privacy policy](#).

Introduction

In June 2016, the FRC became the 'competent authority' for audit in the UK under new legislation, which gave effect to the EU Audit Regulation (EU) 537/2014 and the EU Audit Directive 2014/56/EU.

As competent authority, the FRC is responsible for investigations and imposing and enforcing sanctions ('Enforcement Action') in respect of statutory auditors and statutory audit firms ("Respondents"). The FRC, through Executive Counsel, carries out Enforcement Action against Respondents who conduct audits of public interest entities, AIM-listed companies with an average market capitalisation of over € 200 million, and Lloyds Syndicates under the FRC's Audit Enforcement Procedure ("AEP") under which a Respondent may be subject to Enforcement Action if they have breached a Relevant Requirement.

Enforcement Action relating to other categories of statutory audit is delegated by the FRC to the Association of Chartered Certified Accountants, Chartered Accountants Ireland, the Institute of Chartered Accountants in England and Wales and the Institute of Chartered Accountants Scotland under a series of delegation agreements available on the FRC website. The FRC may reclaim and take over any delegated Enforcement Action in certain cases.

The AEP came into force on 17 June 2016. It was developed to implement the FRC's new competent authority enforcement responsibilities, following a consultation on a draft version of the AEP on 23 March 2016. In the FRC's consultation feedback statement published on 17 June 2016, the FRC committed to a post-implementation review of the AEP. The FRC has concluded that review and proposes the amendments to the AEP set out in this consultation document¹.

The proposed amendments reflect the experience of the FRC's Enforcement Division in pursuing Enforcement Action and are intended to ensure a clearer and more effective and robust enforcement process. Many of the amendments are minor, clarificatory or consequential, however the amendments include a number of more significant changes. There is no change to the funding arrangements for Enforcement Action.

The details of these more significant changes are summarised below. The FRC seeks feedback and comment on all proposed amendments. The FRC intends to bring the amended version of the AEP into force on 1 January 2022.

¹ A further version of the AEP came into effect from 1 January 2021. This version reflected amendments made to give effect to various changes in the FRC's governance structure.

Proposed amendments

Part 1 – Interpretation/Glossary

Most of the amendments to Part 1 reflect amendments elsewhere in the AEP, or are minor or clarificatory. For example, the definition of “Statutory Auditor” has been amended to clarify that it applies to relevant persons who met the definition at the time of the conduct that is to be investigated.

Part 2 – Initial Stages

Amended Rule 3 clarifies the powers available to the Case Examiner to determine if there is a question as to whether the Statutory Auditor or Statutory Audit Firm has breached a Relevant Requirement.

Part 3 – Investigation

New Rules 12 and 13 have been included to provide for the scope of an investigation to be amended where related breaches of Relevant Requirements are suspected, rather than for a new investigation to be opened. This will further facilitate the proper and thorough investigation of suspected breaches of Relevant Requirements.

Revised Rules 16-17 will facilitate prompt investigations by removing the previous requirement for Executive Counsel to prepare an Initial Investigation Report at the conclusion of an investigation. Executive Counsel will instead prepare an Investigation Report, and the Respondent will have the opportunity to make written representations on its contents. This will facilitate prompt conclusions of investigations by reducing the administrative burden on Executive Counsel.

New Rules 19-20 make explicit Executive Counsel’s discretion to pursue Enforcement Action against a Respondent when Executive Counsel has found that the Respondent breached a Relevant Requirement. New Rules 23-28 provide that, following a decision by Executive Counsel to pursue Enforcement Action, that an independent person (“Independent Reviewer”) must approve the issue of a Final Decision Notice after a Proposed Decision Notice has been agreed by the parties. These amendments will ensure that sanctions imposed will be proportionate and fair. Where the Independent Reviewer does not approve the issue of a Final Decision Notice, Executive Counsel may either issue a revised Proposed Decision Notice or refer the matter to the Tribunal.

The Enforcement Committee stage was introduced in the AEP at Part 4 to assist the expeditious conclusion of cases by offering an administrative step of a non-executive committee without or before a Tribunal hearing. The FRC notes that no case has yet reached the Enforcement Committee stage, as in all cases concluded to date the Respondents have agreed with the Decision Notice issued by Executive Counsel. The introduction of the requirement for an Independent Reviewer to approve a Proposed Decision Notice provides a suitable degree of independent oversight following the conclusion of an investigation. In light of that, the FRC considers that there is no longer a need for this additional stage and accordingly intends to abolish the Enforcement Committee stage.

New Rules 30-31 provide Executive Counsel with a new power to refer a case directly to the Tribunal. This reflects the proposed abolition of the Enforcement Committee stage.

Part 4 – The Tribunal

New Rule 34 clarifies the requirement for Executive Counsel to serve a document at the beginning of the Tribunal stage of proceedings which sets out the particulars of the case against the Respondent, along with any supporting factual evidence.

New Rule 52 has been introduced to permit the Tribunal to treat a finding or court-approved statement of fact made by other bodies or officers as prima facie evidence of that fact in the Tribunal’s proceedings, allowing for the efficient disposal of issues.

contd./Proposed amendments

Revised Rule 73 has been amended to make express provision for closing submissions at the end of a Tribunal hearing.

New Rules 75-78 provide that a Tribunal shall issue separate Final Decision Notices in respect of liability and sanction, removing an impediment to the transparency of earlier publication of liability findings.

Part 5 – Interim Orders

These amendments clarify and detail the procedure to be adopted for Interim Order proceedings. The Rules address the grounds for making an Interim Order, the timing of any hearings (whether ex parte or on notice) and the basis of any challenge by a Respondent to an Order.

Part 6 – Settlement

This new Part provides an express power for Executive Counsel to agree a settlement agreement (i.e conclude enforcement proceedings by agreeing a sanction or sanctions) with a Respondent.

Any such agreement will be subject to oversight by an independent person, the Independent Reviewer, before it is approved. This new power will ensure that appropriate and proportionate case management decisions can be taken that reflect the dynamic nature of enforcement proceedings.

Executive Counsel will retain the ability to continue to pursue Enforcement Action where settlement discussions do not prove fruitful.

Part 7 – Appeal

Rule 112 has been amended to provide Executive Counsel with the same rights of appeal as a Respondent.

Rule 113 has been amended to provide that the time period for appealing a Tribunal's decision on liability is extended to 28 days after the issuing of a Final Decision Notice in respect of sanctions imposed.

Rule 117 has been amended to rationalise the available grounds of appeal for appeals to the Appeal Tribunal.

Other amendments in this Part are minor, clarificatory or consequential only.

Part 8 – Reconsideration

Other amendments in this Part are minor, clarificatory or consequential only.

Parts 9-11 – Sanctions, Costs and General

Where a Notice of Closure is issued to a Respondent, revised Rules 148 and 149 remove the requirement to notify, and provide reasons to, any co-Respondents and introduce a new requirement to provide the Notice of Closure to the affected Respondent's supervisory body. In respect of Notices of Closure issued pursuant to Rule 146, it is inappropriate to notify Respondents of matters relating to co-Respondents. In respect of Notices of Closure issued pursuant to Rules 147, Respondents will be aware of the status of proceedings in respect of their co-Respondents and formal notification requirements are unnecessary.

contd./Proposed amendments

Revised Rule 136(d) removes the upper limit of a temporary prohibition on a Respondent from carrying out Statutory Audits or signing an audit report, which was previously set at three years. The powers to impose conditions under Rule 96(k) and to accept undertakings under Rule 97 of the current version of the AEP have been removed.

New Rule 142 clarifies that a Tribunal may award costs in respect of the Tribunal's administrative expenses. This will ensure that the Tribunal can recoup the costs of its expenses in holding hearings.

New Rules 153 to 160 make provision for Joint Tribunals. Joint Tribunals will be capable of dealing with cases that arise under the AEP as underpinned by the statutory framework for statutory audit regulation and other non-statutory disciplinary schemes operated by the FRC by arrangement with the accountancy and actuarial professional membership bodies (the Accountancy Scheme and the Actuarial Scheme).

This change is designed to enable one Tribunal to hear cases arising from the same factual circumstances that engage those different FRC procedures. There is a different standard under the Schemes (Misconduct) for a Respondent to be liable to sanction than under the AEP (breach of a Relevant Requirement), and Joint Tribunals shall apply these different standards as appropriate.

New Rules 165-166 make express provision in respect of the confidentiality safeguarded by s1224A Companies Act of non-public information gathered by the FRC under the AEP.

New Rules 169-170 set out the provisions necessary to set out when the amended AEP will come into force, and how it will apply to ongoing and new matters. The amended provisions seek to ensure that "live" matters can proceed under the new AEP, without prejudice to Respondents.

Consultation questions

1. Do you have any comments on the changes to the AEP set out above? Please respond by reference to specific Rule numbers of the amended AEP.
2. Do you agree with the proposed amendments to the AEP? Please respond by reference to specific Rule numbers of the amended AEP.
3. Do you have any general comments on the amended AEP?

Preliminary impact assessment

A full impact assessment has not been produced for this consultation as no, or no significant, impact on the private, voluntary or public sector is foreseen.

The amendments proposed to the AEP will ensure a clearer and more effective and robust enforcement process. Many of the amendments are minor, clarificatory or consequential only. Any significant amendments go only to the procedure used to pursue Enforcement Action, and do not extend the FRC's scope to pursue Enforcement Action.

In light of the above, no significant impact on the private, voluntary or public sector is foreseen, however we welcome comments.

Groups affected by this consultation

During the initial development of this consultation, the FRC has given due consideration to the impact it will have on different groups. The FRC does not consider that the proposals in this consultation highlight any specific issues in relation to:

- Age;
- Disability;
- Gender Reassignment;
- Marriage and Civil Partnership;
- Pregnancy and maternity;
- Race;
- Religion or belief;
- Sex; or
- Sexual orientation.

We will take account of the evidence gathered through this consultation in developing final policy proposals and any potential impacts on the protected characteristics.

Next steps

This consultation will run from 22 July 2021 to 7 October 2021.

The FRC will carefully consider all submissions received in response to this consultation before finalising its policy approach. At that point the FRC will also consider any consequential changes to the AEP supporting policies and procedures

Appendix

1. Revised Audit Enforcement Procedure.



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**Financial
Reporting Council**
8th Floor
125 London Wall
London EC2Y 5AS
+44 (0)20 7492 2300
www.frc.org.uk