



HM Treasury

The process for imposing monetary penalties for breaches of financial sanctions:

consultation



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1 Introduction

Consultation: background and scope

1.1 When enacted, the Policing and Crime Bill currently going through Parliament will change the legal framework for enforcing the financial sanctions regulations. The changes will provide a more flexible, effective and proportionate set of enforcement measures.

1.2 Among other things, the bill will create a monetary penalty regime for enforcing financial sanctions, which HM Treasury will administer. This will enable the Treasury to issue monetary penalties under civil law.

1.3 The Office of Financial Sanctions Implementation (OFSI) will publish guidance on the circumstances in which it may regard a monetary penalty as suitable, and how it will set the penalty amount.

1.4 This consultation seeks your views on the draft guidance in section 2 because we want to improve the fairness, transparency and effectiveness of the monetary penalty regime.

1.5 The consultation is only about civil monetary penalties. We ask you to comment only on the processes that HM Treasury, through OFSI, will use to decide:

- whether a civil monetary penalty is suitable
- the level of any penalty
- the process of imposing the penalty, including the timescales for the process and the rights of the penalised person or entity
- the circumstances in which OFSI will publish details of the monetary penalties it imposes

1.6 The consultation is not about whether monetary penalties are a suitable way of dealing with financial sanction breaches, which is a matter for Parliament.

Who do the proposals affect?

1.7 The UK's financial sanctions regulations may be enforced against anyone in the UK; against companies and entities present in or dealing with other countries; against foreign nationals dealing with UK persons, companies or entities from their home country; and in situations where there is a connection to the UK (a "UK nexus"). Financial sanctions specifically apply to the individuals, companies and entities ("designated persons") that appear on the consolidated list of targets maintained by the Treasury.

How to respond to the consultation

1.8 Please respond to our questions by using the format in section 3. Our questions are at the end of each of the four parts in section 2.

1.9 Some references to clauses in the bill may need updating when the Parliamentary process is complete. But when writing your response, please use the numbering scheme shown in the draft guidance in this document.

2 Draft guidance

CONSULTATION TEXT BEGINS

Monetary penalties: guidance

2.1 This section gives guidance on the use of monetary penalties by the Office of Financial Sanctions Implementation.

Part 1: Introduction

2.1.1 The Policing and Crime Act 2017 (“the 2017 Act”) creates powers for HM Treasury to impose monetary penalties. The Office of Financial Sanctions Implementation (OFSI), part of the Treasury, applies these powers. This guidance sets out what the powers are, how OFSI will use them, and your rights if a monetary penalty is imposed on you.

2.1.2 We have issued the guidance in line with s.134(1) of the 2017 Act, which states:

The Treasury must issue guidance as to—

(a) the circumstances in which it may consider it appropriate to impose a monetary penalty under section 131 or 133, and

(b) how it will determine the amount of the penalty.

2.1.3 In this guidance you will find:

- an explanation of the powers given to OFSI in the 2017 Act
- a summary of our compliance and enforcement approach
- an overview of how we will assess whether to apply a monetary penalty, and what we will take into account
- an overview of the process that will decide the level of penalty
- an explanation of how we will impose a penalty, including timescales at each stage and your rights of review and appeal¹
- a summary of our approach to publishing information about penalties we have imposed

2.1.4 From time to time OFSI will review this guidance in response to feedback and as we learn from using our powers. The guidance applies from April 2017 and we will next review it in March 2018.

What are financial sanctions?

2.2 Financial sanctions are important in foreign policy and national security. They help to maintain the integrity of and confidence in the UK financial services sector. Generally, they are imposed in order to:

- Coerce a regime, or individuals within a regime, into changing their behaviour or aspects of it (“offending behaviour”), by increasing the cost on them to such an extent that they decide to cease the offending behaviour;

¹ Please see the footnote to 2.12.16 regarding rights of appeal

- Constrain a target by trying to deny them access to key resources needed to continue their offending behaviour, including the financing of terrorism or nuclear proliferation;
- Signal disapproval of a target as a way of stigmatising and potentially isolating them, or as a way of sending broader political messages to international or domestic constituencies;
- Protect the value of assets that have been misappropriated from a country, until they can be repatriated.

2.2.1 The most common types of financial sanctions currently in use or used in recent years are:

- Targeted asset freezes, which are usually applied to named individuals, entities and bodies, restricting their access to funds and economic resources.
- Restrictions on a wide variety of financial markets and services. These can apply to named individuals, entities and bodies, to specified groups or to entire sectors. To date they have taken the form of investment bans; restrictions on access to capital markets; directions to cease banking relationships and activities; requirements to notify or seek authorisation before certain payments are made or received; and restrictions on provision of financial, insurance, brokering, advisory services or other financial assistance.
- Directions to cease all business of a specified type with a specific person, group, sector or country.

2.2.2 You can find guidance on financial sanctions on the OFSI gov.uk page, here:

<https://www.gov.uk/government/publications/financial-sanctions-faqs>

2.2.3 You can also find a full list of financial sanctions regimes currently in force in the UK, here:

<https://www.gov.uk/government/publications/financial-sanctions-consolidated-list-of-targets>

2.2.4 This guidance refers to “designated persons”. This means anyone (an individual or a company) who is subject to financial sanctions and appears on HM Treasury’s consolidated list of targets.

Powers given to OFSI to impose penalties for financial sanctions offences

2.3 The powers to impose a monetary penalty, and the limits on the level of penalty, are created at s.131 of the 2017 Act:

131 Power to impose monetary penalties

(1) The Treasury may impose a monetary penalty on a person if it is satisfied, on the balance of probabilities, that—

(a) the person has breached a prohibition, or failed to comply with an obligation, that is imposed by or under financial sanctions legislation,

and

(b) the person knew, or had reasonable cause to suspect, that the person was in breach of the prohibition or (as the case may be) had failed to comply with the obligation.

(2) *The amount of the penalty is to be such amount as the Treasury may determine but it may not exceed the permitted maximum.*

(3) *In a case where the breach or failure relates to particular funds or economic resources and it is possible to estimate the value of the funds or economic resources, the permitted maximum is the greater of—*

(a) *£1,000,000, and*

(b) *50% of the estimated value of the funds or resources.*

(4) *In any other case, the permitted maximum is £1,000,000.*

2.3.1 The decision to impose a penalty rests with OFSI. The 2017 Act enables OFSI's decision making to be reviewed, first by a Minister of the Crown and then by appeal² (for any reason) to the Upper Tribunal.

2.3.2 Other clauses in the 2017 Act are relevant to this guidance; we discuss them in the part of the guidance to which they relate. The full text of the legislation will be available at www.legislation.gov.uk

What do “breached a prohibition” or “failed to comply with an obligation” mean?

2.4 OFSI provides guidance on prohibitions in section 3 of our **Financial Sanctions: Guidance**, which you can find here:

<https://www.gov.uk/government/publications/financial-sanctions-faqs>

2.4.1 Please read that guidance for a fuller explanation if you need one; do not rely solely on this summary.

Summary

- You are prohibited from carrying out certain activities or behaving in a certain way if financial sanctions apply. This will depend on the exact terms of the EU or UK legislation which imposes the financial sanction in the given situation.
- To understand exactly what is prohibited, you should always refer to the up-to-date version of the law imposing the specific financial sanctions that apply in your case to understand exactly what is prohibited. OFSI construes prohibitions widely, as do Member States.
- Where the financial sanction takes the form of an asset freeze, it is generally prohibited to:
 - Deal with the funds or economic resources belonging to or owned, held or controlled by a designated person,
 - Make funds or economic resources available, directly or indirectly, to, or for the benefit of, a designated person, or
 - Engage in actions that directly or indirectly circumvent the financial sanctions.
- Financial sanctions also contain some positive obligations which apply to regulated financial services providers. For example, they are required to notify HM Treasury if they have dealings with a designated person, or if they suspect that financial

² Please see footnote to 2.12.16 regarding rights of appeal

sanctions are being breached. Failure to comply with such an obligation is an offence.

- When OFSI has licensed an activity, the licence may be subject to conditions and reporting requirements. It is an offence not to abide by them or not to take any actions that the licence requires. This is because the licence does not authorise any activity incompatible with its conditions.
- OFSI also has information-requesting powers. Depending on the legislation concerned, these may include powers to establish the extent of funds and economic resources owned, held or controlled by or on behalf of a designated person; to monitor compliance or detect evasion; or to obtain evidence of the commission of an offence. It is an offence not to comply with a requirement to provide information or an OFSI request for information.

2.4.2 All financial sanctions offences come within the scope of OFSI’s powers to impose monetary penalties.

On whom may a penalty be imposed?

2.4.3 Section 131(1) says the Treasury may impose a penalty on “a person”. This includes both a legal person (a body) and a natural person. Section 133(1) of the Act says:

If a monetary penalty is payable under section 131 by a body, the Treasury may also impose a monetary penalty on an officer of the body if it is satisfied, on the balance of probabilities, that the breach or failure in respect of which the monetary penalty is payable by the body—

(a) took place with the consent or connivance of the officer, or

(b) was attributable to any neglect on the part of the officer.

Section 133(2) sets out who may be considered an “officer” in this context.

Consultation Question1

Do these introductory sections give you enough information to understand the scope of the law on monetary penalties? What else would be useful?

Part 2: Our compliance and enforcement approach

2.5 How OFSI assesses breaches when deciding whether to impose a monetary penalty is informed by our overall approach to financial sanctions compliance. This approach covers the whole lifecycle of compliance. So we take a holistic approach to ensuring compliance with the regime, rather than simply waiting until the law is broken and responding to the breach.

2.5.1 Our approach is summarised by our compliance and enforcement model: **promote, enable, respond, change**:

- We will **promote** compliance, publicising financial sanctions and engaging with the private sector.

An effective compliance approach promotes compliance by reaching the right audiences, through multiple channels, with messages they respond to.

- We will **enable** compliance by making it easier to comply, and providing customers with guidance and alerts to help them discharge their own compliance responsibilities.

An effective compliance approach enables cost-effective compliance, makes it easy to comply and minimises by design the opportunities for non-compliance.

- We will **respond** to non-compliance by intervening to disrupt attempted breaches and by tackling breaches effectively.

An effective compliance approach responds to non-compliance consistently, proportionately, transparently and effectively, taking into account the full facts of the case, and learns from experience to continuously improve our response.

- We do these things to **change** behaviour, directly preventing future non-compliance by the individual and more widely through the impact of compliance and enforcement action.

2.5.2 Having an overall strategic approach helps us design our operational policies and processes in a consistent way. It also enables us to test how well they meet our strategic objectives.

2.5.3 This approach informs how we assess cases and decide monetary penalties (**respond**), ensuring that our processes maintain the credibility of financial sanctions by enforcing them proportionately and effectively. It also informs how we will publish details of penalties we impose (**promote**). Doing so deters future non-compliance in the penalised individual. It also enables others to learn from the case and shows that we will act robustly against serious breaches (**change**).

2.5.4 We have built our case-assessment and penalty-decision processes in this context. Operating them effectively will mean we provide a better service for the private sector and help ensure that financial sanctions are properly understood, implemented and enforced. The next two parts give guidance on these processes.

Consultation Question 2

What are your views on OFSI's compliance and enforcement approach?

Consultation Question 3

Is there anything else you would expect a compliance model to tackle?

Part 3: Case assessment

2.6 This section gives only a summary of how OFSI assesses potential breaches of financial sanctions regulations. To provide more detail would help persons who intend to evade or circumvent the law by allowing them to structure a breach so that it would not be discovered or would be treated less seriously if it was.

2.6.1 The steps we could take in response to a breach include:

- issuing enforcement correspondence requiring better compliance practices

- referring regulated professionals or bodies to the relevant professional body or regulator
- imposing a monetary penalty
- referring the case for criminal investigation and potential prosecution

Overview

2.7 Section 131(1) of the 2017 Act says:

(1) The Treasury may impose a monetary penalty on a person if it is satisfied, on the balance of probabilities, that—

(a) the person has breached a prohibition, or failed to comply with an obligation, that is imposed by or under financial sanctions legislation,

and

(b) the person knew, or had reasonable cause to suspect, that the person was in breach of the prohibition or (as the case may be) had failed to comply with the obligation.

2.7.1 “Balance of probabilities” is the civil standard of proof and means it is more likely than not that an event has happened. So we will not be seeking to prove the facts beyond reasonable doubt (the criminal standard), but to make a judgement on whether it is more likely than not that there has been a breach.

2.7.2 “Reasonable cause to suspect” is a higher standard. It covers situations where the relevant person does not have clear confirmation of an event, but they are aware of something that can prompt them to think it may have happened. It does not cover merely the theoretical possibility that an event might have happened.

Establishing whether there is a breach and “knowledge” or “reasonable suspicion”

2.7.3 OFSI will seek to establish whether there is a breach of a prohibition or a failure to comply with an obligation. If there is not, we will close the case. We see a few cases like this, often where individuals have taken a cautious approach to their responsibilities or may be confusing responsibilities under different national sanctions regimes.

2.7.4 To come within our enforcement of sanctions, there has to be a UK connection. The breach does not have to occur within UK borders – a “UK nexus” could be created by such things as a UK company working overseas, an international transaction clearing or transiting through the UK, action by a local subsidiary of a UK parent company, or financial products or insurance bought on UK markets but held or used overseas. We will consider the facts to see whether they come within our authority.

2.7.5 If we come across breaches of financial sanctions in another jurisdiction, we may use our information-sharing powers to pass details to relevant authorities if this is appropriate and possible under UK law.

2.7.6 If we conclude that the person did not know they were in breach, or did not have reasonable cause to suspect they were in breach, we cannot impose a monetary penalty. However, we may be able to take other action short of a penalty that would respond effectively to the matter.

2.7.7 If we can impose a penalty, we will not automatically do so. We treat each suspected breach on its own merits. We assess the facts to decide on an outcome that is fair, proportionate and best enforces the regime.

Being fair and proportionate in our assessment

2.7.8 OFSI will assess each case fairly and proportionately, basing our approach on the facts. We take a number of factors into account. We weigh each factor by referring to our strategy, policy, guidance and processes, and to the facts of the case. We may also seek legal advice, and advice from our law-enforcement partners.

2.7.9 This ensures we do not rigidly follow process for its own sake, thus avoiding outcomes that are inappropriate to the facts. It also ensures that our recommendation is not simply an opinion or unguided by what the government wants to achieve by enforcement action.

2.7.10 To ensure our response is proportionate, we will decide how serious the breach is. Broadly, the more aggravating factors we see, the more likely we are to regard it as a serious case and – assuming one of the tests at s.131 (1) (b) is met – impose a monetary penalty.

2.7.11 Mitigating factors may reduce a penalty we impose or lead us not to take enforcement action. However, with some breaches we will always impose a penalty or refer the matter for criminal investigation; these are set out at **section 2.8**.

2.7.12 OFSI senior management, review each assessment, quality-assure it, and decide how to progress the case.

2.7.13 OFSI will refer cases to the National Crime Agency (NCA) if we think they warrant criminal investigation. We will decide this on the facts of each case. Broadly, the more serious a case seems, the more likely we are to refer it. NCA then takes over. The case rests with NCA until it decides to seek a criminal prosecution or refer the case back to us to action.

Case factors

2.8 OFSI will take several factors into account that will aggravate or mitigate. These include the following:

Direct provision of funds or economic resources to a designated person

- Individuals subject to financial sanctions (“designated persons”) should be aware that financial sanctions apply to them. To enable others to know which individuals and companies are targets of financial sanctions, OFSI maintains a consolidated list of persons to whom financial sanctions apply. It is available on the gov.uk website, here:

<https://www.gov.uk/government/publications/financial-sanctions-consolidated-list-of-targets>

- The list enables anyone to know whether an individual they are dealing with is a designated person. We will therefore treat a case that directly and openly involves a designated person more seriously than one that is a breach of financial sanctions but does not make funds or economic resources available to a designated person. We will normally impose a monetary penalty if the case is not prosecuted criminally.

Circumvention of sanctions

- In the context of financial sanctions, circumvention means:
 - deliberately arranging or structuring affairs to avoid triggering financial sanctions

alerts, or

- seeming to comply while deliberately not complying.
- OFSI takes circumvention very seriously because it attacks the integrity of the financial system and damages public confidence in the foreign policy and national security objectives that the sanctions regimes support. Normally, we will refer the case for criminal investigation. If NCA does not seek criminal prosecution, we will normally impose a monetary penalty.

Severity

- To assess the severity of a breach, we will consider its GBP value (which may be estimated) and the risk of harm done to the sanction regime's objectives. Those objectives are set out in the relevant regulation, which describes what activities the regime aims to prevent or encourage. The higher the value and the greater the risk of harm to the regime's objectives, the more severe we are likely to regard a case.
- We may still regard as severe an indirect provision of resources that we think the breaching party could have discovered in advance – for example, through common due diligence or know-your-customer processes. Such indirect provision may still meet the standard for "reasonable cause to suspect".

Knowledge and compliance standards in the sector

- Everyone must ensure they know the law, and ignorance of the law is no defence. But it is also true that some sectors have more developed compliance systems and processes than others, because of the kind of work they do. OFSI believes it is reasonable to take into account if and how this may apply and be evidenced when it considers the case.
- We expect regulated professionals to meet regulatory and professional standards. We may consider their failure to do so an aggravating factor.
- We wish to encourage strong compliance cultures and will not seek to punish companies that simply fall below a high standard if that is the only distinguishing factor in a case. This is particularly true when the company has acted swiftly to remedy the cause of the breach. However, we may still take enforcement action if other factors outweigh this mitigating factor.

Behaviour

- We will consider how each party in a case has behaved. Individuals may display different behaviour over time and several types of behaviour in a particular case. We have divided behaviours into several broad categories that we believe reflect compliance in the financial sanctions regime. Doing so enables us to ensure we respond appropriately to similar behaviour in different situations.
- We will consider, for example, whether the breach seems to be deliberate or an error or failure to take reasonable care; whether there has been a systems and control failure or an incorrect legal interpretation; or whether the person appears unaware of their responsibilities.

Failure to apply for a licence; breach of licence terms

- We license certain uses of frozen funds under derogations present in the financial sanctions legislation. It is prohibited to undertake activity that requires a licence

without one. Once we have given a licence, monetary penalties may also apply to breaches of licence conditions.

Professional Facilitation

- Individuals who act on behalf of or provide advice to others should ensure that they act within the law while representing their client. We will therefore tend to regard breaches involving professional facilitation as being more serious. Where the breach has been caused by simply making a mistake, and this can be evidenced, this will tend to mitigate the breach.

Repeated, persistent or extended breaches

- Repeated, persistent or extended breaches by the same person will tend to result in us taking more serious action. This is particularly true when the individual appears unresponsive to or seems to ignore what we tell them and makes further breaches of financial sanctions. We will also tend to view multiple breaches extended over time as being more serious in total, even if they are individually of low value or relative seriousness.

Reporting of breaches to OSFI

- Breaches of financial sanctions must be reported to OFSI. A number of reporting issues affect how we deal with a case, as explained below.

Voluntary disclosure

- We regard voluntary disclosure of a breach of financial sanctions by the person(s) responsible for it as a mitigating factor when we assess the case. It will also have real benefits if we decide to apply a penalty. Accordingly, failure to voluntarily disclose a breach of financial sanctions is an aggravating factor, meaning we will tend to regard the breach as more serious than otherwise. If multiple parties are involved in a breach, we expect voluntary disclosure from each. A party that does not voluntarily disclose may not benefit from another's disclosure if they were not actively part of it. (As in, for example, a joint disclosure provided by one party on behalf of all.)

Materially complete disclosure and good faith

- We expect all disclosures to be materially complete on all relevant factors that evidence the facts of a breach of financial sanctions, and to truthfully state these facts in good faith. We also expect that all persons involved in the breach will co-operate with us in concluding our assessment, even if that means the person may be subject to enforcement action. If evidence later emerges that a disclosure was not materially complete for any reasons other than simple error or new facts emerging, or was made in bad faith, we will take this very seriously. In particular, if we discover that parties have dealt with us in bad faith and the case does not undergo criminal prosecution, we will normally impose a monetary penalty. This is because bad faith attacks the integrity of the sanctions system, and thus greatly aggravates any breach.

Failure to provide information on financial sanctions breaches

- Failure to provide information on breaches can be a criminal offence in its own right. In some circumstances, financial sanctions legislation requires financial services providers to give information. In others HM Treasury, through OFSI,

may have used statutory powers to require the provision of information. In both cases, failure to provide the information may be an offence. We may therefore impose a monetary penalty for not providing information when required to do so. See **section 2.10.14** for more about our approach to monetary penalties for failing to provide information.

Timeliness of disclosure

- We expect breaches to be disclosed in a timely fashion after the breach or its discovery. What this means will differ in each case. It is reasonable for you to take some time to assess the nature and extent of the breach, but this should not delay an effective response to the breach. In practice, it is better to contact us early to inform us of a breach or potential breach.

Public interest, strategic priority and future compliance effect

- We will consider whether it is in the public interest to take particular enforcement action as part of our assessment of a case. In some instances, even if the facts seem to warrant us imposing a monetary penalty or referring for criminal investigation, we may choose not to do so in the public interest. This may involve assessing the importance of the case, what actions have already been taken, and whether it is appropriate to use the resources of investigators and prosecutors to respond effectively to the breach.
- In other instances we may choose to take more serious action than the value of the case appears to warrant. Examples may include if the case raises an important point of principle or is in some way novel or contentious, and the public interest requires this to be tested. This is particularly likely if the integrity of the financial system or law seems to be threatened, or confidence in them needs to be maintained.
- As part of this public interest test, when we decide the outcome of a case we will take into account the strategic priority that HM Government places on a particular sanctions regime.

Other relevant factors

- We reserve the right to consider any factor in a case if it is material and relevant. This enables us to consider novel situations and ensure that all the facts of the case receive due attention.

Revisions to case assessment processes

2.9 From time to time we will review our case assessment process and may change or improve it based on our experience of managing it. We will publish changes to our process before implementing them, in the same detail as in this guidance. We will assess each case using the case-assessment guidelines current when the breach is reported to or discovered by us.

2.10

Consultation Question 4

Do you understand our proposed case assessment approach?

Consultation Question 5

What are your views on our proposed case assessment approach?

The penalty process

2.11 OFSI's penalty determination process consists of three parts:

- 1 penalty threshold
- 2 baseline penalty matrix
- 3 penalty recommendation

Penalty threshold

2.11.1 The penalty threshold is the gateway to a penalty being imposed. The threshold is reached if our case assessment results in the following outcomes:

The statutory test:

- The case meets the tests in s.131(1) of the Policing and Crime Act; that is, on the balance of probabilities there has been a breach and the person committing it knew or had reasonable cause to suspect they were committing a breach.

Then, one or more of the following:

- The breach has involved funds or economic resources being made available directly to a designated person. The financial sanctions regimes are designed to prevent this.
- There is evidence of circumvention. By making arrangements to circumvent the law, a person not only breaches the law but attacks the integrity of the system. OFSI takes such cases more seriously.
- Without the above factors being present, a case is nonetheless assessed by OFSI to meet the standard for a serious case using the case factors set out at **section 2.8**.
- A person has not complied with a requirement to provide information.

2.11.2 If the penalty threshold is reached, we may impose a penalty. In some circumstances we have discretion not to do so; see **section 2.10.18**.

Baseline penalty matrix

2.11.3 Generally, OFSI will impose a level of penalty that is clearly and consistently related to our view of the seriousness of the case and the GBP value of the breach (which may be estimated).

2.11.4 OFSI places a high value on voluntary disclosure. Such co-operation is a sign of good faith and makes enforcing the law simpler, easier, quicker and more effective. Voluntary disclosure may mean that we do not take as serious a view of a case as the simple facts might merit. It may also reduce the level of penalty we impose.

2.11.5 The baseline penalty matrix therefore encourages prompt and complete voluntary disclosure of the facts of the case. It also seeks to ensure that the most serious cases receive a higher penalty.

How this works

2.11.6 OFSI will first determine the statutory maximum penalty it could impose. This will be the greater of £1 million or 50% of the value of the breach. Within the relevant statutory maximum, the caseworker will then decide what level of penalty is reasonable and proportionate.

- “Reasonable” means an ordinary reasonable person would regard the proposed penalty as appropriate to the offence.
- “Proportionate” means there is a clear relationship between the value of the proposed penalty and both the GBP value of the breach (if known) and how seriously the breach undermined the sanctions regime. So it must be neither an insufficient nor excessive response.

This creates a baseline penalty level to which the following penalty matrix applies.

2.11.7 We will make up to a 50% reduction in the final penalty amount to a person who makes a prompt and complete voluntary disclosure of a breach of financial sanctions. The maximum of 50% will apply to “serious” cases. If we assess a case as of the “most serious” type, we will make reductions of only up to 30% for voluntary disclosure.

2.11.8 If there is no voluntary disclosure but we do not assess the case as of the “most serious” type, we will reduce the penalty only by up to 15%.

2.11.9 This makes clear the premium we place on voluntary disclosure, and that there is benefit to voluntary disclosure even in the most serious cases. It also maintains a distinction between “serious” and “most serious” case types.

2.11.10 You have automatic access to the voluntary disclosure reduction once you affirm that your voluntary disclosure is materially complete. If you decline to do so, we will normally treat the case as if no voluntary disclosure has been made, and apply the appropriate penalty.

2.11.11 The starting point set out by the penalty matrix is therefore as follows:

		Seriousness	
		Serious	Most Serious
Voluntary Disclosure	Yes	Baseline penalty minus voluntary disclosure reduction of 50%	Baseline penalty minus voluntary disclosure reduction of up to 30%
	No	No voluntary disclosure reduction, but penalty may be up to 15% lower than baseline	No voluntary disclosure reduction, full baseline penalty applied

Penalty recommendation

2.11.12 The baseline penalty matrix creates ranges of penalty value. For cases which are in the serious/voluntary disclosure box, the 50% reduction will be applied in full. For cases which come within the other boxes, within these ranges, we set the penalty amount at our discretion.

Penalties for information offences

2.11.13 Financial sanctions regulations contain legal requirements to provide information. Non-compliance with these is a criminal offence. OFSI will liaise with NCA to decide whether it is appropriate to use criminal powers to deal with such cases. If the NCA does not take a criminal prosecution for an information offence, we may look at the case and apply a monetary penalty.

2.11.14 OFSI will consider applying a monetary penalty in the following circumstances:

- OFSI has made a specific demand for information that has not been provided.
- Our demand for information has been refused, particularly when this seems to be with the intention of frustrating proper assessment of the case.
- A person has provided information in a voluntary disclosure or otherwise, but we discover it to be false or made in bad faith.
- A person has failed to comply with reporting requirements in an OFSI licence.

2.11.15 OFSI will impose a level of penalty that reflects the seriousness of the failure to provide information.

2.11.16 We may impose a penalty for information offences separately and as well as any other penalty.

2.11.17 If we impose a penalty for information offences, we use the process in **section 2.11**.

Discretion not to impose a penalty

2.11.18 To ensure fair treatment of all on whom we impose a penalty, we will normally follow this process in each case. However, we reserve the right not to impose a penalty in certain circumstances. These may vary, but will generally include the following:

- Imposing the penalty would have no meaningful effect – for example, the value of the penalty is so low it would neither deter offending nor provide restitution for the wrongdoing.
- Imposing the penalty would be perverse – for example, the tests for a penalty are met on the facts but there is clear evidence that the offence arose from improper coercion or blackmail.
- It is not in the public interest to impose a penalty (as described in **section 2.8**).

Consultation Question 6

Does this guidance give you enough information to help you understand how a penalty is calculated?

Consultation Question 7

OFSI will reduce the level of penalty if there is voluntary disclosure. What are your views on OFSI's approach to this?

Part 4: Procedure for imposing a penalty

2.12 Section 132 of the 2017 Act sets out the steps that HM Treasury must take to impose a penalty, the rights that a person has to make representations and seek a review, and the right to appeal³ the decision to the Tribunals. This section explains the detailed processes involved.

2.12.1 Before imposing a monetary penalty on a person under s.131, the Treasury must inform the person of its intention to do so. We will normally do so in writing.

2.12.2 In the letter OFSI will:

- explain the reasons for imposing the penalty
- specify the penalty amount
- explain that the person is entitled to make representations, and specify how long they have to do so

2.12.3 OFSI will explain the reasons for the penalty by summarising our assessment of the case in enough detail to justify why it is appropriate.

2.12.4 OFSI will specify the penalty amount by explaining how we calculated it, including why we made or did not make any voluntary disclosure reduction.

³ Please see footnote to 2.12.16 regarding rights of appeal

Making representations

2.12.5 We want the process of making representations to be fair, proportionate and effective for both the person penalised and for OFSI.

2.12.6 The person may make representations about any relevant matters. These may include (for example) matters of law, the facts of the case, our interpretation of the facts, how we have followed our processes, and whether the penalty is fair and proportionate. We may disregard representations that seem vexatious or irrelevant.

2.12.7 Representations must be in writing and in a format that:

- summarises each point that the person wishes OFSI to take into account
- explains why these points are relevant
- explains how the person expects these points to affect our case decision or penalty level
- evidences any assertions of fact
- provides copies of supporting documents as required, with relevant sections highlighted as appropriate

2.12.8 OFSI will consider any offer to make representations in person in addition to written representations. We may agree to this if we think there will be benefit from doing so. Whether or not we agree, the written representations must cover anything stated in person.

2.12.9 Representations may be made by the person penalised or a properly appointed representative or agent. OFSI will require written evidence that a representative or agent has been properly appointed before we will communicate with them about the person's affairs.

2.12.10 OFSI will not normally consider representations by a third party unless they form part of the representations made by the person penalised or their agent; that is, they come under the cover of the person's representations. This ensures we take into account only representations the person wishes us to.

2.12.11 The person has 28 calendar days to make written representations from the date of our initial letter. We will not normally accept late representations. Persons or their representatives may ask us to extend this period and must provide evidence that it is reasonable to do so. We have complete discretion whether or not to accept the request.

2.12.12 If no representations are made within this period, the penalty is finalised and becomes payable. We will issue a written notice stating the penalty amount and how payment should be made.

2.12.13 If representations are made, we will consider them and review both the case assessment and the penalty level in the light of them. Potential outcomes include reaffirming our decision to impose a penalty, changing the proposed penalty amount, or deciding not to impose a penalty.

2.12.14 OFSI will normally consider and respond to representations within 28 calendar days after the final date of the period for making representations. However, we may extend this period if this is necessary to ensure a fair assessment of the representations.

2.12.15 OFSI will write to the person or their representative with our final assessment, taking into account the representations. If the assessment means we still intend to impose a penalty, our letter will include advice on the person's right to seek a review, as set out in the next section.

Consultation Question 8

Is the process for imposing a penalty and making representations clear from this guidance?

Right of Ministerial review

2.12.16 Section 132 of the 2017 Act states at sections 3 to 6⁴ that,

(3) If (having considered any representations), the Treasury decides to impose the penalty, the Treasury must—

(a) inform the person of its decision,

(b) explain that the person is entitled to seek a review by a Minister of the Crown, and

(c) specify the period within which the person must inform the Treasury that the person wishes to seek such a review.

(4) If the person seeks a review, the Minister may—

(a) uphold the decision to impose the penalty and its amount,

(b) uphold the decision to impose the penalty but substitute a different amount, or

(c) cancel the decision to impose the penalty.

(5) A review under subsection (4) must be carried out by the Minister personally.

(5A) If on a review under subsection (4) the Minister decides to uphold the Treasury's decision to impose the penalty and its amount, or to uphold the Treasury's decision to impose the penalty but to substitute a different amount, the person may appeal (on any ground) to the Upper Tribunal.

(5B) [On an appeal under subsection (5A), the Upper Tribunal may quash the Minister's decision and if it does so may—

(a) quash the Treasury's decision to impose the penalty;

(b) uphold that decision but substitute a different amount for the amount determined by the Treasury (or, in a case where the Minister substituted a different amount, by the Minister).

(6) In this section, "Minister of the Crown" means the holder of an office in Her Majesty's Government in the United Kingdom.

⁴ This text includes amendments that have been laid before Parliament but not yet debated: specifically subsections (5A) and (5B)

Process for Ministerial review

2.12.17 OFSI will inform the person of our final decision to impose a penalty in writing. In the same letter we will explain their entitlement to a review of the decision.

2.12.18 The person will normally have 28 calendar days from the date of our letter to inform the Treasury (via OFSI) that they want a review. This request must be in writing via OFSI at the address in **section 2.12**.

2.12.19 The request must include:

- A statement that the person is using their right under s.132 of the Policing and Crime Act 2017 to seek a Ministerial review of a monetary penalty for breaching financial sanctions regulations, and
- A brief summary of why they seek the review.

2.12.20 The Ministerial review will not normally be a way of introducing new material. It reviews the decisions we have taken on the material we have used to assess the case, after the person has had an opportunity to introduce any material they wish to at the representations stage.

2.12.21 Financial sanctions are currently dealt with by the Economic Secretary to the Treasury (EST), so the EST is the Minister who will normally carry out the review. The EST may ask another Minister to carry out the review (for example, in their absence), but following the requirement at s.132 (5), the Minister may not delegate the review to officials in OFSI or elsewhere.

2.12.22 On receiving a request for review, the Minister will instruct OFSI to prepare a report on the case and explain the decisions we took and why. The Minister may review the original material in the case and any material or arguments provided during the representations, and speak to officials and seek legal advice at his or her discretion. To ensure a separation of decision-making and review, OFSI will have no role in this process except to pass on the initial request and provide the report and material to the Minister.

2.12.23 HM Treasury will seek to ensure that Ministerial reviews are concluded within 28 calendar days. However, this period may be extended without notice if required.

2.12.24 After reviewing the case, the Minister will make a determination. This may be that:

- the decision to impose the penalty and its amount is upheld
- the decision to impose the penalty is upheld, but a different amount is substituted, or
- the decision to impose the penalty is cancelled

This decision will be communicated in writing to the person.

2.12.25 Once the Minister has decided to uphold a penalty, at the original or a different amount, the penalty is finalised and becomes payable.

How to make representations or request Ministerial review

2.13 You should email:

OFSI@HMTreasury.gsi.gov.uk

To send hard copies of documents:

Office of Financial Sanctions Implementation

HM Treasury
Horse Guards Road
London
SW1A 2HQ

Procedural mistakes

2.14 It may be that OFSI mistakenly fails to fulfil part of this process within the requirements set in law and this guidance, and this is discovered during the process. If so, OFSI will always seek to remedy the mistake by returning the process to the point the mistake was made, progressing the case correctly from that point.

2.14.1 OFSI will not automatically cancel a penalty after issue simply because of a procedural mistake, but we will always review whether the mistake means we should reconsider the imposition of a penalty or its amount. This will help ensure a proper balance between the rights of a person on whom we impose a penalty and the public interest in ensuring the law is properly enforced.

Right of appeal

2.15 Section 132 5B of the 2017 Act allows the person penalised to appeal (for any reason) to the Upper Tribunal within 28 calendar days of being informed of the Ministerial review outcome (the date on the letter).

2.15.1 Upper Tribunal procedure is outside the scope of this guidance. If a penalised person wishes to appeal, they will be informed of the procedure. You can read the Upper Tribunal guidance here: <https://www.gov.uk/government/publications/upper-tribunal-procedure-rules>

Paying a penalty

2.16 Once a monetary penalty becomes finalised and payable, OFSI will inform the person concerned how they should pay. Payment must be made within 28 calendar days of the date we impose the penalty.

2.16.1 Section 131(11) of the 2017 Act says: *“Any monetary penalty payable under this section is recoverable by the Treasury as a civil debt.”* HM Treasury will pursue non-payment of debt by appropriate means.

2.16.2 Section 131(12) of the 2017 Act also says:

Any monetary penalty received by the Treasury by virtue of this section must be paid into the Consolidated Fund.

This means the money goes into the Exchequer’s general funds for use by HM Government. Payments are not ring-fenced to fund OFSI and do not offset any OFSI costs. There is thus no incentive for OFSI to use the penalty process to generate revenue.

Consultation Question 9

Do you understand the guidance on seeking a Ministerial review?

Consultation Question 10

What are your views on the process for seeking a Ministerial review?

Part 4: Publication of civil penalty imposition

2.17 Section 134(2) of the 2017 Act says:

The Treasury must, at such intervals as it considers appropriate, publish reports about the imposition of monetary penalties under section 131 or 133.

2.17.1 OFSI will normally publish details of all monetary penalties it imposes. This helps penalties to deter future non-compliance, and promotes increased awareness of good practice.

2.17.2 In all cases where we impose a penalty, OFSI will normally publish a summary of the case. This summary will set out the following:

- Who the penalty has been imposed on – each person, company or entity.
- The summary facts of the case, including breach type; sanctions regime; the regulation broken; and whether there was voluntary disclosure.
- The GBP value of the breach, where this can be identified, and why OFSI imposed the monetary penalty.
- The GBP penalty value imposed on each person.
- Compliance lessons OFSI wishes to highlight in this case, to help others avoid committing a similar breach.
- Other information required to give a true understanding of the case.

2.17.3 In all major cases (for example, where there is a significant GBP penalty value, a very serious breach, or a point of principle), and in other cases at OFSI's discretion, we may draw attention to the imposition of a penalty through media relations, highlighting the case and the action we took.

2.17.4 We will not generally make public more than the above summary details. To do so may increase the risk of financial sanctions evasion, particularly where a novel technique has been used to evade or circumvent the law. Any extra information is likely to be exempt from release under the Freedom of Information Act 2000; however, we will review and consider any FOI request on its own merits.

Timing of publication

2.17.5 OFSI will not normally publish the case summary until at least 28 days after we have issued the monetary penalty.

Consultation Question 11

Does this guidance clearly explain why and how OFSI will publish information on penalties imposed for breaches of financial sanctions regulations?

What are your views on the level of information OSFI will publish?

Consultation Question 12

Considering the document as a whole, does this guidance help you clearly understand OFSI's approach to imposing monetary penalties?

CONSULTATION TEXT ENDS

3 Responding to the consultation

Timing of the consultation

3.1 This consultation runs from **1 December 2016** to **26 January 2017**. Responses received after midnight on **26 January 2017** will not be reviewed.

3.1.1 This consultation is issued before the bill is enacted, which is currently (1 December 2016) in the final stages of the Parliamentary process. The consultation text is drafted as if the bill had been enacted (as this is how it will appear when published), but HM Treasury does not assume that the bill will pass or that Her Majesty will give royal assent. If Parliament amends the text of the bill to change the text set out above during the consultation, we will reissue this document showing the revised text and any changes to guidance that the amendments warrant.

3.1.2 If the amendments amount to material changes to the bill, OFSI will consider extending the consultation time period. If it is extended, this will be advertised via the OFSI webpage and via an alert to our subscribers list.

Contributing effectively to the consultation

3.2 HM Treasury welcomes your response to the questions posed at the end of each part of section 2 of the guidance.

3.2.1 We are keen to hear practical examples of how the guidance may help or hinder the enforcement of financial sanctions in the UK. This will ensure we take evidence-based decisions in any changes we make to the guidance.

3.2.2 We request that you follow the guided format below:

- Remain within the scope of the consultation. We will disregard responses that stray outside its scope insofar as they do.
- Answer each question individually; this will help us to collate responses and draw response themes together. Before your answer, please state which question you are answering.
- If you wish to refer to a point in the text, include the paragraph number you are referring to.
- Provide helpful commentary and constructive criticism. You are of course welcome to simply disagree with our proposed approach without saying why, but to be most effective please outline how we should act differently to achieve a better result.
- Please be succinct.
- If you intend to provide a corporate response for a company or institution, please make clear that this is what it is and that there is only one response from that respondent. Individuals within those bodies are still welcome to provide their views, as long as they make clear to us they are responding in a personal capacity. This means we can correctly ascribe any views to the correct body or person, and do not inadvertently misattribute comments.

After the consultation

3.3 Before publishing final guidance, OFSI will publish a consultation response document. This response will include:

- A list of persons or institutions who provided responses to the consultation.
- Thematically summarised responses to each question, including an indication of the broad balance of views on points where there are differing views.
- Whether or not OFSI agrees with points raised in responses to each question, and why.
- Whether or not OFSI has changed any part of the draft guidance in response to the consultation.

3.3.1 As this is a public consultation we will not accept anonymous contributions or requests to remain anonymous. However, we will not attribute particular comments to particular respondents in the response document's answer summaries.

3.3.2 Please be aware that your response may come within the scope of the Freedom of Information Act 2000, so may be subject to release under the Act. OFSI will consider each request for information under the 2000 Act on its own merits, in line with the law and HM Treasury FOI policy.

3.3.3 Once OFSI has considered all responses and made any changes it thinks appropriate, the monetary penalty guidance will be published on the OFSI Gov.uk webpage. If we have a very high response rate we may publish interim guidance while we finalise the consultation response. Guidance, either final or interim, will be published before the power to impose monetary penalties comes into effect in April 2017. It will be kept under review in line with the process set out in the guidance itself.

How to send a response to the consultation

3.4 Electronic responses are preferred and should be sent to:

OFSIConsultation@HMTreasury.gsi.gov.uk

3.5 Hard-copy responses may be sent to:

Office of Financial Sanctions Implementation
HM Treasury
Horse Guards Road
London
SW1A 2HQ

Office of Financial Sanctions Implementation

December 2016

HM Treasury contacts

This document can be downloaded from
www.gov.uk

If you require this information in an alternative
format or have general enquiries about
HM Treasury and its work, contact:

Correspondence Team
HM Treasury
1 Horse Guards Road
London
SW1A 2HQ

Tel: 020 7270 5000

Email: public.enquiries@hmtreasury.gsi.gov.uk