



HM Treasury

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

Consultation response form

Name: [REDACTED]	
Organisation: [REDACTED]	
<input checked="" type="checkbox"/> Please tick if you are responding on behalf an organisation	
Name of organisation (if applicable) [REDACTED]	
Address: [REDACTED] Email: [REDACTED] Telephone: [REDACTED]	
<p>1. Do these introductory sections give you enough information to understand the scope of the law on monetary penalties? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>What else would be useful?</p> <ul style="list-style-type: none"> - A statement that breaches of financial sanctions must be reported to OFSI, and that voluntary disclosures will be looked upon favourably, as a mitigation. - A short summary of how penalties will be calculated, including factors that will be taken into account. 	
<p>2. What are your views on OFSI's compliance and enforcement approach?</p> <ul style="list-style-type: none"> - We consider that the general approach is positive and likely to be effective, however additional guidance (as outlined below) might be useful to make this clearer. - We would expect an understanding of how OFSI is engaging with the private sector. This would form part of the 'promote' part of the approach as in paragraph 2.5.1. - We would expect some guidance on how to reporting works in a practical sense, with an emphasis on how it made easy and accessible. This would form part of the 'enable' part of the approach as in paragraph 2.5.1. 	
<p>3. Is there anything else you would expect a compliance model to tackle?</p> <p><input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>(if yes please explain what below)</p>	

- We consider that the compliance and enforcement approach would be strengthened if it included a commitment to respond to all reports. This would form part of the 'respond' part of the approach as in paragraph 2.5.1.

4. Do you understand our proposed case assessment approach?

Yes No

(if no please explain why below)

[Click here to enter text.](#)

5. What are your views on our proposed case assessment approach?

- In assessing the appropriate monetary penalty applicable, the financial means of the individual or company who committed the breach should be taken into account. This is because it would not be in the interests of enforcement to impose a significant penalty that can ultimately not be paid by the entity on which it is imposed.
- There are some terms within the case assessment approach that should be defined for clarity:
 - o 'timely' reporting (para 2.8). A statement should be made that timely is 'in any case no more than' a certain period of time, to allow those reporting to prioritise effectively and ensure they do not unduly delay reporting due to the absence of a required timeframe.
 - o 'good faith' and 'bad faith' (para 2.8). Since it is stated that a report made in bad faith will be taken very seriously, it is important that it is clear to those who may be reporting what this means.
 - o Some additional guidance in terms of what is 'reasonable cause' to suspect within paragraph 2.7.2 would be useful, as this infers that entities also have to take care not to be negligent, but it is not completely clear whether negligence would fail the 'reasonable cause for suspicion' test.
- Very importantly, we have concluded that a voluntary report should provide a defence, rather than a mitigation to the offence. The reason for this is that those who breach will be discouraged to report if they know they will still be eligible for penalty. If voluntary reporting were made into a defence then OFSI would receive many more reports and would be in a position to trace funds going to and from sanctioned parties better.

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

Yes No

(if no please explain why below)

- In paragraph 2.11.6, we are not sure whether the 'reasonable' test is appropriate for determining whether the proposed penalty is proportionate to the offence. This is because determining what is 'reasonable' with reference to this requires a level of specialist knowledge.
- It is unclear what reduction a voluntary disclosure will actually afford the discloser. Paragraph 2.11.4 provides that voluntary disclosure "may" reduce the level of penalty imposed, whereas 2.11.11 and 2.11.12 state "voluntary disclosure reduction of 50%" and "For cases which are in the serious/voluntary disclosure box, the 50% reduction will be applied in full.", which would suggest that reduction is guaranteed. This should be clarified so that those voluntarily disclosing will know where they stand.
- Document refers to "See section 2.10.14 for more about our approach to monetary penalties for failing to provide information." However this section is not within the document. More guidance on the penalties for not providing information should be included.

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

- We have concluded that a voluntary report should provide a defence, rather than a mitigation to the offence. The reason for this is that those who breach will be discouraged to report if they know they will still be eligible for penalty. If voluntary reporting were made into a defence then OFSI would receive many more reports and would be in a position to trace funds going to and from sanctioned parties better.
- It is unclear what reduction a voluntary disclosure will actually afford the discloser. Paragraph 2.11.4 provides that voluntary disclosure "may" reduce the level of penalty imposed, whereas 2.11.11 and 2.11.12 state "voluntary disclosure reduction of 50%" and "For cases which are in the serious/voluntary disclosure box, the 50% reduction will be applied in full.", which would suggest that reduction is guaranteed. This should be clarified so that those voluntarily disclosing will know where they stand.

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

Yes No

(if no please explain why below)

- Some additional information explaining how and when it will be communicated if the review period by OFSI is extended would be useful, so that firms who have made disclosures know what to expect.

9. Do you understand the guidance on seeking a Ministerial review?

Yes No

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

- We are slightly concerned about the deadlines for response for seeking Ministerial review (and likewise for making representations), given it is from the date of the letter. 28 days from the date of the letter, by the time the letter has been delivered and sorted, may leave a very small window for the response from the disclosing party. We would suggest that the deadline should either be 28 days from date of receipt (tacked), or a longer period from the date of the letter.
- It is very important that the letter should contain complete guidance about how to request a review, rather than simply advise of the option to do so. Likewise, in terms of how to make representations, guidance on this should be included clearly in the letter.

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

Yes No

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

- We consider this to be appropriate.

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

For the most part, yes, subject to the comments made herein.

Please e-mail this form to: OFSIConsultation@hmtreasury.gsi.gov.uk

Or post to OFSI Consultation, HM Treasury, 1 Horse Guards Road, London SW1A 2HQ