



Department for
Business, Energy
& Industrial Strategy

Office for the Internal Market: Setting the maximum level of penalties for non-compliance with requests for information

UK Government Response



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Introduction

The [UK Internal Market Act 2020](#) (UKIMA) is designed to create a coherent approach to market access for businesses, professionals, and consumers and to support the UK internal market by limiting barriers and supporting seamless trade between all parts of the United Kingdom.

UKIMA also establishes the Office for the Internal Market (OIM) within the Competition and Markets Authority (CMA). The OIM will be responsible for monitoring the overall health and effectiveness of the internal market by carrying out a set of independent advisory, monitoring, and reporting functions. It will provide technical advice to all four administrations and their legislatures to support the effective operation of the UK internal market on an ongoing basis.

To secure these important functions and in line with the CMA's existing practice, the OIM has the power to issue a written notice requiring a person to provide information or documents to assist in carrying out its reporting, monitoring and advisory functions and if necessary to impose penalties where such a notice is not complied with.

Before setting the maximum penalties, the Government sought views on:

- The maximum penalty for the intentional obstruction or delay of any person in the exercise of the power at section 41(7) of the Act – the copying of documents produced in accordance with an information notice. Such a penalty must be a fixed amount.
- The maximum level of penalty the OIM can administer for non-compliance with a request for information. The penalty could be a single fixed amount, a daily rate or both.

At the same time, the CMA consulted on its draft [Statement of Policy](#) which explains how the OIM will approach the enforcement of its information-gathering powers.

For its part, the Government proposed that the maximum penalty should be set at the same rate as the statutory maximum limits as set out in the UKIMA, to not exceed:

- £30,000 for a fixed amount (for either a penalty for a breach of a requirement of a notice under section 41 of the Act, or for intentionally obstructing or delaying a person copying documents provided in accordance with an information notice (section 41(7) of the Act)).
- £15,000 for the daily rate.
- a combination of a fixed amount (£30,000) and a daily rate amount (£15,000).

The consultation closed on 11 August 2021. This report summarises the responses received and sets out how the Government intends to proceed.

Conducting the Consultation Exercise

A public consultation took place over an 8-week period from 16 June to 11 August 2021. In line with the statutory duties in the UKIMA, the Secretary of State consulted the CMA and devolved administrations during the consultation period and consulted with the wider public and the business community.

Seven written responses to the consultation were received via email and through the dedicated online portal on GOV.UK (see Table 1). Academics/educational institutions, public bodies, and business representative organisations were among the respondents. Written responses were also received from the CMA and the Welsh Government. The Scottish Government and Northern Ireland Executive were formally consulted but did not provide written response. BEIS held verbal discussions with Officials in all devolved administrations and the CMA during the consultation period.

To supplement the written responses received during this period, BEIS also joined and held 11 events and bilateral meetings with over 25 organisations representing a diverse range of UK sectors, including agriculture, manufacturing, and retail. These organisations represented the interests of small and medium-sized enterprises (SMEs) as well as larger companies. The views received from these organisations – where they did not respond formally – were broadly consistent with those received in writing and are therefore not broken out separately in the response that follows.

Table 1: Number of consultation responses, categorised by type of respondent

Platform	Number of responses
A business representative organisation	4
An enforcement/regulatory or other public body	2
An academic; educational institution or think tank	1
Total number of consultation responses	7

Government Response

The majority of respondents provided general feedback and views without reference to the specific questions in the consultation. A list of the names of organisations who responded to the consultation is outlined in Annex A. Most respondents supported the principle of the OIM having information-gathering powers and the ability to impose penalties for non-compliance. There was also general support for the maximum levels of financial penalties proposed as set out in Table 2. Two responses not in favour of the proposed maximum penalty levels cited concerns about the impact on SMEs, and whether the proposed penalties represented a proportionate approach to enforcement.

Table 2: Support for the proposed maximum level of penalties set out the draft legislation

Response Type	Number of responses	Percentage of respondents
Yes	4	57%
No	2	28%
Unknown	1	14%
Total	7	100% ¹

Table 3: Commons themes provided by respondents

Response Type	Number of responses	Percentage of respondents
Proportionality	4	57%
Concerns on the impact on small and medium sized businesses (SMEs)	4	57%
Penalties should only be imposed as a last resort	3	42%
Penalties are necessary to incentivise compliance and carrying out the OIM functions	3	42%
CMA penalties across different functions	2	28%

¹ Figures have been rounded to the nearest whole number for simplicity.

Response Type	Number of responses	Percentage of respondents
Organisations need to familiarise themselves with the information-gathering regime	2	28%
Challenges responding to information notices	2	28%

Table 3 outlines the common themes provided by respondents to the consultation about the proposed exercise of enforcement powers by the OIM.

The following section sets out the main themes, alongside the Government response.

Exercise of penalty powers

The majority of respondents were supportive of the need for the OIM to have enforcement powers available to it as part of a range of tools to enable the OIM to gather timely and accurate information. Around half of the respondents noted the role of penalties in acting as a deterrent against non-compliance such that the cost of non-compliance must be higher than the cost of compliance.

Around half of respondents raised concerns about proportionality in enforcement, noting that large businesses and organisations would find it easier to comply with information notices and absorb the cost of any penalties, relative to SMEs who may have less capacity to comply with an OIM information request and may not be aware of the role and purpose of the OIM. Proposals put forward to mitigate this ranged from a tiering of penalties; an exemption for small businesses; use of non-financial penalties such as naming and shaming; and ensuring that penalties were used as a matter of last resort and only where voluntary approaches have been exhausted.

It was noted by one respondent that the functions of the OIM were different to those already exercised by the CMA and that the use of such powers and the suitability of the current maximum penalty should be kept under review.

Government Response

The Government has carefully considered the consultation responses received and notes the overall support for setting the maximum level of financial penalties as proposed in the consultation document and draft legislation. The Government also recognises the concerns raised about proportionality and the practical considerations associated with complying with an information notice from the OIM.

Although these matters are ultimately within the discretion of the CMA as an independent non-ministerial department, the Government agrees that proportionality should be a key consideration in the approach to gathering information. The Government is therefore pleased to note that the OIM's final [Statement of Policy](#) on the enforcement of its information-gathering powers provides further details highlighting the importance of adopting a proportionate response, informed by the specific circumstances of each case.

As the OIM Statement of Policy also sets out, the OIM will only ask for documents or information which, in its opinion, are relevant for the purposes of carrying out its functions at the time of the request. For example, this could mean requiring information on the actual or potential impact of a regulation on the operation of the UK internal market. The revised Statement of Policy also notes that the OIM can seek information through informal means, and would not need to use its formal powers for gathering information in these circumstances.

The OIM will use its discretion in determining whether to impose a penalty, as well as the penalty amount it decides to impose – it is not required to impose the maximum penalty. In relation to this, the OIM will take into consideration and have regard to the addressee's size and financial resources when determining the level of penalty imposed for non-compliance. Consequently, the OIM is likely to set penalties towards the statutory maxima for only the most serious failures to comply. This will ensure that the OIM takes an even-handed and proportionate approach to utilising its information-gathering powers.

Drawing on the CMA's experience of gathering information from a wider range of stakeholders across its existing functions, the Government notes that the CMA have only used those other penalty powers in a small number of cases; 8 penalties for non-compliance have been issued since 2014. This suggests that penalties have primarily been used to deter non-compliance and that the proposed level of penalties would be appropriate to ensure compliance in the vast majority of cases

The Government strongly supports the OIM's proportionate exercise of penalty powers and has stressed the importance of ensuring that all decisions are made following careful consideration of the factors of each case. A decision by the OIM to issue a penalty in a specific case can be appealed to the Competition Appeals Tribunal.

Following consideration of the responses received to this consultation it is the Government's view that the steps outlined by the CMA in the OIM Statement of Policy are sufficient to ensure that the powers to issue penalties will be exercised in a proportionate manner in response to the circumstances of each individual case. The maximum level of penalties proposed in the consultation provide the OIM with flexibility to determine the appropriate course of action and are set at a level to ensure that they act as a deterrence to non-compliance. It is expected that where the OIM issues a request for information, it will work constructively with the recipient without the need to exercise these powers in the majority of cases.

The Government will keep the exercise of penalty powers by the OIM under review as part of its wider responsibilities under the UKIMA.

Practicalities of complying with the OIM's information-gathering

A minority of respondents also offered views on the practicalities of complying with an OIM information notice. Respondents highlighted that a lack of familiarity with the OIM's new information-gathering regime may result in some organisations, particularly SMEs, failing to recognise the importance of responding to such a request in a timely way and the consequences for their business should they not do so. One respondent suggested a two-year grace period should be introduced before penalties are enforced by the OIM to enable businesses to familiarise themselves with the new regulatory provisions in the UKIMA.

It was noted that some businesses that may be subject to information notices, may have never had a formal requirement to provide the types of information the OIM could request (e.g., trade or sales data by UK nation). A lack of knowledge and inability to provide information could therefore be argued to be non-compliance. In those circumstances, some respondents argued that the OIM should not exercise their enforcement powers. Other respondents highlighted the need the OIM to provide further practical information for businesses on the OIM's functions, including how to interact and comply with information notices.

Government Response

As the OIM is a new body within the CMA, the Government believes it is essential that it can build its expertise to better understand the trends and developments taking place within the UK internal market on an ongoing basis. The Government also recognises the importance of ensuring that individuals and businesses have the necessary information, advice, and support to aid and facilitate compliance with any information request issued by the OIM.

The OIM Statement of Policy published alongside this response sets out how it will enforce its information-gathering powers. As the Statement of Policy notes, where it is practical and appropriate to do so the OIM will share its information notice in draft with individuals and organisations that are subject to an information request, so it can consider comments from the proposed recipient in advance of issuing the information notice. This will allow issues and concerns, such as comments on the drafting and the scope of the request, to be discussed in advance. The Government fully endorses this pragmatic approach.

The Statement of Policy sets out that the OIM's information notices will, wherever possible, provide addressees opportunities to make known any potential difficulties in responding (such as administration, financial, logistical, and practical issues). This will allow the OIM to work with addressees in a pragmatic and fair way to ensure that there is adequate time to respond to deadlines.

Additionally, [guidance](#) on the operation of the CMA's UK Internal Market functions sets out the CMA's approach the exercise of its new OIM function as a whole. The UK Government remains committed to working closely with businesses and other affected individuals to provide additional advice and support on the operation of the UK Internal Market Act. Further guidance and information on the operation of the Act is available on <https://www.gov.uk/government/collections/uk-internal-market> .

Overall Conclusion

The Government is grateful to those who responded to this consultation. Having considered the responses and for the reasons outlined above, the Government intends to set the maximum penalty amounts for the OIM functions as proposed in the consultation. These are as follows:

- £30,000 for a fixed amount (for either a penalty for a breach of a requirement of a notice under section 41 of the Act, or for intentionally obstructing or delaying a person copying documents provided in accordance with an information notice (section 41(7) of the Act)).
- £15,000 for the daily rate.
- A combination of a fixed amount (£30,000) and a daily rate amount (£15,000).

This maximum level of penalty will help ensure compliance with OIM information requests and powers and by extension support the OIM in its objective of providing economic expertise and reporting on the operation of the UK internal market.

The Government recognises the points raised by respondents in relation to proportionality and practicality. As set out above, the Government is confident that the CMA's approach to these issues as established in its Statement of Policy on enforcement sufficiently addresses each and that those in receipt of information-gathering notices will have reasonable time, advice, and support in order to comply.

Given this interest and the novelty of the OIM and the UKIMA more broadly, the Government will keep the use of these powers and the wider operation of the Office for the Internal Market under review.

Next Steps

The Government has laid a Statutory Instrument to set the maximum penalty amounts that the OIM can impose. In line with all Government policies, the penalty powers will be kept under review to ensure they are robust, proportionate, and fit for purpose. The OIM commenced its operations on 21 September 2021.

The Government is grateful to all those who responded and provided comments and will work closely with the CMA, devolved administrations, and the legislatures to ensure that the OIM works in the interests of all parts of the UK.

Contact Details

Enquiries to: UKIMConsultation@beis.gov.uk

Annexes

Annex A: Consultation Responses

- 1 Academic (anonymous)
- 1 Business Representative Organisation (anonymous)
- Competition and Markets Authority (CMA)
- Federation of Small Businesses
- Institute of Directors
- The Forum of Private Business
- Welsh Government

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