HM Treasury

OFSI's enforcement processes

Consultation

July 2025

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Executive summary

This consultation invites views and comments on proposed measures to enhance the effectiveness of the enforcement processes undertaken by the Office of Financial Sanctions Implementation (OFSI). OFSI has identified revisions to its enforcement processes that could enable it to resolve cases more efficiently, improving the delivery of public enforcement actions and reducing burdens on OFSI and on subject firms or individuals. They could also improve the transparency of OFSI's enforcement case assessment process. OFSI's current enforcement processes are set out in Chapter 2.

In this consultation, we are seeking views on:

- Changes to OFSI's public case assessment guidance and penalty discounts for voluntary disclosure and co-operation. See Chapter 3 for more detail.
- The introduction of a settlement scheme for monetary penalty cases. See Chapter 4 for more detail.
- The introduction of an Early Account Scheme (EAS) that would in appropriate cases enable subjects of an OFSI enforcement investigation to provide a complete factual account of the matters under investigation to OFSI. See Chapter 5 for more detail.
- The introduction of a streamlined process with indicative penalties for appropriate cases involving information, reporting and licensing offences. See Chapter 6 for more detail.
- Changes to OFSI's statutory penalty maximums. See Chapter 7 for more detail.

The changes proposed in this consultation would apply only to cases where the relevant enforcement powers are OFSI's civil enforcement powers in connection with breaches of financial sanctions (including Russia-related designated person asset reporting) and the UK Maritime Services Ban and Oil Price Cap exception (Oil Price Cap). This consultation does not propose to make any changes to the criminal enforcement of financial sanctions breaches, or to the civil enforcement of breaches of non-financial sanctions such as trade or transport sanctions, which are the responsibility of other government departments and agencies.

Chapter 1
Introduction

1.1 Sanctions are a critical instrument of the UK's foreign and national security policy. The Sanctions and Anti-Money Laundering Act 2018 (SAMLA) gives the UK autonomous powers to impose, implement, enforce and lift sanctions. The Act also allows us to uphold our international obligations in relation to UN sanctions.

1.2 The UK has 36 live sanctions 'regimes' created through regulations under SAMLA. These regimes are sets of sanctions measures focused on specific countries or policy objectives and designed to achieve defined purposes.

1.3 Sanctions measures can relate to finance, trade, transport or immigration, and several departments are responsible for different aspects of UK sanctions. The Office of Financial Sanctions Implementation (OFSI), which is a part of HM Treasury, is responsible for ensuring that UK financial sanctions are properly understood, implemented, and enforced.

1.4 OFSI is committed to providing transparency, clarity, support, and predictability to firms undertaking legitimate business. We engage with industry to enhance businesses' understanding of UK sanctions and provide accessible guidance to support users to implement UK sanctions. This approach gives businesses confidence and creates a regulatory environment that is conducive to economic growth.

1.5 OFSI takes robust, proportionate action in response to breaches of financial sanctions. In serious cases, OFSI imposes civil monetary penalties. It uses a wide range of other tools to respond appropriately to less serious cases. Since 2017, OFSI has issued 12 penalties totalling over £20 million for breaches of sanctions. Where appropriate, OFSI can refer a case to law enforcement agencies for criminal investigation and potential prosecution.

The case for potential revisions

1.6 OFSI last consulted on its monetary penalty processes when they were being introduced in 2016-17. There have been some substantial changes in UK sanctions since that time. Following Russia's illegal invasion of Ukraine in February 2022, there has been a significant increase in the number of individuals and entities targeted by UK sanctions. In addition, the legal test for imposing penalties for breaches of financial sanctions was changed to one of strict liability in 2022.

1.7 Since 2022, OFSI has pursued a higher number of complex enforcement investigations, opening a record number of cases in the financial year 2023-24.

1.8 Investigations necessarily take time to complete, as the fact patterns of suspected financial sanctions breaches are often extremely complex. OFSI's timescales for completing investigations are broadly in line with other regulators and jurisdictions, but there are still opportunities to improve our processes and increase efficiency.

1.9 Potential public enforcement actions are not publicised prior to internal routes of review being exhausted. These internal routes of review are themselves often very lengthy, and necessarily resource-intensive for both OFSI and the requester.

1.10 OFSI has identified several potential revisions to its guidance and enforcement processes which it believes could make the processes clearer and more transparent and could make resolving enforcement cases quicker and easier.

1.11 Providing more guidance on how OFSI assesses cases, including through publishing a new case assessment matrix (chapter 3), could improve the transparency and simplicity of OFSI's penalty processes.

1.12 Introducing a settlement option (chapter 4) has the potential to significantly reduce the duration of some enforcement cases. This is consistent with the approaches taken by other civil enforcement agencies in the UK and our international counterparts.

1.13 Introducing an Early Account Scheme (EAS) (chapter 5) could provide a structure to enable the subject of an investigation, in appropriate cases, to provide as comprehensive an account as possible, as early as possible. This could significantly expedite the investigation stage of a case.

1.14 Streamlining the enforcement process for information, reporting and licensing offences (chapter 6) and providing separate guidance on enforcement action in respect of these offences could enable cases to be resolved more quickly and provide greater clarity and consistency on how breaches of these offences will be enforced.

1.15 Finally, OFSI welcomes views on potential changes to the statutory maximum penalties for breaches of financial sanctions (chapter 7). HM Treasury is required to keep the statutory maximum penalties under review to ensure that they continue to enable proportionate enforcement action that is an effective deterrent. Some of the UK's international partners have recently increased their maximum penalties for financial sanctions. Some partners also use alternative models for calculating maximum penalties and OFSI welcomes evidence on the effectiveness of those alternative models.

1.16 With one exception, the changes discussed in each chapter are not dependent on those in other chapters and OFSI welcomes feedback on each set of changes individually. The exception is the EAS, as it is highly unlikely that OFSI would seek to introduce the EAS without also introducing the settlement scheme.

1.17 Enforcement is one of the primary tools by which OFSI seeks to achieve its stated objectives of improving sanctions compliance.

Enforcement changes behaviours, deters breaches and protects the integrity of the UK's sanctions regimes and the UK economy. Appropriate and proportionate enforcement action is in the public interest and achieves the greatest benefit when delivered swiftly. The proposed changes should help decrease the length of time it takes to conduct and resolve investigations, potentially reducing administrative burdens and costs for those being investigated.

1.18 The private sector is crucial to the effective implementation of financial sanctions. OFSI works closely with the private sector to ensure financial sanctions are properly implemented and understood. However, we know that engaging with an OFSI investigation can be challenging for some firms, especially smaller to medium sized enterprises. We have also heard firms of all sizes express a preference for quicker outcomes from enforcement cases.

1.19 The proposed changes aim to address these challenges, and in developing them we want to make sure these policy changes take into account the full range of views from businesses and other important stakeholders. We therefore encourage you to engage with this consultation. Details on how to respond are set out below.

How to respond

1.20 Our preferred format in which to receive responses is via HM Treasury's online Smart Survey form, which can be found here: https://www.smartsurvey.co.uk/s/OFSIEnforcement/

1.21 Email responses should be sent to: OFSIEnforcementConsultation@hmtreasury.gov.uk

1.22 Questions or enquiries in relation to this consultation can also be sent to the above email address. Please include the words "OFSI's enforcement processes consultation" in your email subject. Whilst it is preferable to send responses electronically, if needed responses can be sent by post to:

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

1.23 OFSI encourages stakeholders to provide as much evidence as possible to help inform our response. Please include facts and figures where possible to justify your responses, including estimates of the impact of proposed changes on your business or sector. Additional comments are welcomed on the impact (positive, negative, or neutral) of any proposed changes on individuals with protected characteristics or on the environment or climate.

1.24 The consultation will remain open for twelve weeks. The closing date for responses to be submitted is Monday 13 October 2025.

1.25 Once the consultation has closed, OFSI will consider all responses and in due course publish a response outlining the next steps, including draft legislation if appropriate.

Chapter 2

OFSI's current enforcement process

2.1 The Policing and Crime Act 2017 (PACA), as amended by the Economic Crime (Transparency and Enforcement) Act 2022, contains powers for HM Treasury to impose monetary penalties for breaches of financial sanctions. The power to impose a monetary penalty, and the limits on the amount of monetary penalty, are set out in section 146 of PACA. Monetary penalties can also be imposed on an officer of a body under section 148 of PACA.

PACA Section 146: 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.

(1A). In determining for the purposes of subsection (1) whether a person has breached a prohibition, or failed to comply with an obligation, imposed by or under financial sanctions legislation, any requirement imposed by or under that legislation for the person to have known, suspected or believed any matter is to be ignored.

(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.

OFSI's current process for issuing monetary penalties

2.2 Section 149(1) of PACA requires HM Treasury to issue guidance on the circumstances in which it may consider it appropriate to impose a monetary penalty, and how it will determine the penalty amount. OFSI's Enforcement and Monetary Penalty Guidance sets out how OFSI assesses cases, makes the decision to impose and calculates the amount of civil monetary penalties within the current framework.

2.3 OFSI takes a number of factors into account when assessing a case (the Case Factors). The Case Factors are currently split between severity (case factors A – C) and conduct (D – M). OFSI assesses the severity of the breach as it relates to the value, harm or risk of harm, and whether a person deliberately sought to circumvent the prohibitions. OFSI assesses conduct by considering the behaviour of each party in a case. Conduct is divided into several broad categories that reflect non-compliance with the financial sanctions regime. The case factors are explained more fully in OFSI's published guidance.

2.4 OFSI considers each factor by referring to OFSI's strategy, policy, guidance and processes, and to the specific facts of the case. In considering these factors, OFSI makes an overall assessment as to the breach severity and the conduct of the person who has breached. The overall case assessment categorises each case into one of four categories: Lower Severity, Moderate Severity, Serious or Most Serious.

2.5 After considering both severity and conduct, we will make an overall assessment and in all monetary penalty cases classify the seriousness of the case as either 'serious' or 'most serious'. While every case that meets the criteria for a monetary penalty is by definition serious, it is also true that some cases are more serious as set out below.

2.6 Most Serious cases may involve: a very high monetary value; particularly poor, negligent or intentional conduct; or severe or lasting damage to the purposes of the sanctions regime. OFSI decides this based on the facts of the case. The Most Serious cases are likely to attract a higher monetary penalty level.

2.7 Lower Severity and Moderate Severity cases are likely to be dealt with via a private warning letter or by publishing information pertaining to a breach without imposing a monetary penalty (referred to as a Disclosure). OFSI may also refer regulated professionals or bodies to their relevant professional body or regulator.

2.8 All penalty cases are either Serious or Most Serious. This influences the level of the baseline penalty (the amount of monetary penalty up to and including the statutory maximum that is reasonable and proportionate, prior to any discounts) and impacts any discount OFSI provides for the voluntary disclosure of breaches.

2.9 Following an investigation by OFSI, a recommendation may be made by the case team to a senior official, usually the OFSI Director (referred to as the Decision Maker), that a monetary penalty is the most appropriate outcome for the case.

2.10 This recommendation includes a recommended penalty amount. The amount is calculated by first determining the statutory maximum, which is the greater of £1 million or 50% of the value of the breach. The recommendation also includes a determination as to whether the case is Serious or Most Serious, depending on the facts. Within the statutory maximum, the case team recommends a reasonable and proportionate penalty amount based on the seriousness of the case. This could be any amount up to and including the permitted maximum if that is considered reasonable and proportionate.

2.11 This creates a baseline penalty amount to which any voluntary self-disclosure discount may then be applied, at OFSI's discretion.

2.12 OFSI encourages the voluntary self-disclosure of suspected breaches of financial sanctions. Voluntarily disclosing breaches affects whether a voluntary self-disclosure discount can be applied in monetary penalty cases. Currently, OFSI can make reductions of up to 50% for voluntary self-disclosure in a Serious case and 30% in a case assessed to be Most Serious. If OFSI assesses a series of breaches where only some were voluntarily disclosed to OFSI, but others were not, OFSI takes that into account when determining any reduction.

2.13 Voluntary disclosure discounts are discussed in greater detail in Chapter 3.

2.14 The Decision Maker then considers the penalty recommendation put to them by the case team and may agree to (with or without amendments to the amount) or reject the recommendation.

2.15 Section 147 of PACA sets out procedural rights and obligations in relation to imposing monetary penalties. If OFSI is minded to impose a monetary penalty, this is communicated to the person or entity on whom OFSI intends to impose the penalty through a Notice of Intention. The investigation subject will have the right to make representations concerning OFSI's intention to impose a monetary penalty, including representations on the value of the proposed penalty.

2.16 The recipient of the Notice of Intention has 28 working days to make representations in writing, although OFSI will consider requests to make them in person. Representations may include, for example, matters of law, the facts of the case, how OFSI has followed its own processes, and whether the penalty is fair and proportionate. Persons or their representatives may ask OFSI to extend this period and must provide evidence of the reasons for that request which OFSI may grant or refuse at its discretion.

2.17 OFSI normally considers and responds to representations within 28 working days after the final date of the period for making representations. OFSI then writes to the person or their representative with a final assessment, taking into account the representations. The result of OFSI's consideration of the representations may be to proceed with the action proposed in the Notice of Intention, to proceed with a modified version of that action, or to take no action at all. Unless the

subject exercises their right to request a Ministerial Review, any penalty becomes finalised at this stage. If OFSI's decision is to impose a penalty, OFSI will issue a letter to the subject setting out OFSI's decision and explaining how to make payment. That letter will also include information on the person's right to seek a review.

2.18 The recipient has 28 working days from the date of OFSI's decision letter to request a Ministerial Review. The review involves a Minister or senior official (the "Decision Reviewer") considering OFSI's decision and the material that decision was based on, including any material the subject may have introduced at the representations stage. To ensure a separation between decision-making and review, this review will not be carried out by any person involved in the original decision.

2.19 On receiving a review request, an OFSI team separate from the investigating team will prepare a summary of the case for the Decision Reviewer explaining the decision(s) OFSI took and why. The summary will be accompanied by relevant material, including any representations the subject may have made. Ordinarily, the Decision Reviewer does not consider new material, and therefore no further material is required from the subject. The Decision Reviewer may question OFSI officials to clarify existing materials or information related to the case.

2.20 Originally, PACA required that a Ministerial Review of a monetary penalty decision made by OFSI be conducted personally by a Minister. However, with the introduction of the Economic Crime (Transparency and Enforcement) Act 2022, this requirement was amended. As of June 2022, reviews can be delegated to senior officials, provided the penalty is not of significant national importance. This means that while the Minister retains ultimate responsibility, the decision-making process can be carried out by senior officials.

2.21 HM Treasury aims for most reviews to be concluded within 2 months. After reviewing the case, the Decision Reviewer may vary, maintain, or cancel OFSI's original decision.

2.22 OFSI will communicate the outcome of the review in writing to the person who requested it. If the penalty is upheld, at the original or a different amount, the penalty is finalised and becomes payable.

2.23 A person may, only after exhausting these routes, make an appeal to the Upper Tribunal. A notice of appeal must be made in writing and received by the Upper Tribunal no later than 28 calendar days after notice was given of the decision under challenge.[1]

[1] The Tribunal Procedure (Upper Tribunal) Rules 2008, Schedule 4, para. 2(1).

Chapter 3

Enforcement case assessments and discounts

Changes to OFSI's public case assessment guidance

3.1 OFSI has assessed a significant number of cases in the past three years and has identified changes to aspects of the case assessment process that could improve transparency and simplicity.

3.2 Firstly, OFSI proposes providing more guidance and transparency about how OFSI reaches case assessments, and in turn how those assessments affect penalty calculations through publishing a proposed new case assessment matrix. Some detail on the current process has been included in Chapter 2.

3.3 OFSI considers there would be benefit in providing additional detail into the severity and conduct assessments made by case teams, and the role these assessments play in determining how seriously OFSI views a case and the likely enforcement outcome.

3.4 Figure 3.A below sets out severity and conduct ratings assessments that would be made under the proposed policy when OFSI considers how to respond to a breach of financial sanctions. This matrix is intended as an indicative guide only; it would not be prescriptive and inflexible.

Figure 3.A

	Low Severity	**Medium Severity**	**High Severity**
Mitigating Conduct	*Lesser severity*	*Potentially serious*	*Serious*
Neutral Conduct	*Potentially serious*	*Serious*	*Serious*
Aggravating Conduct	*Serious*	*Serious*	*Most Serious*

3.5 OFSI may under this proposed approach decide that, even where conduct is assessed to be neutral, the severity of the breach is so high that it warrants being assessed as Most Serious. Conversely, conduct could be assessed to be so highly mitigating that a medium severity breach was resolved with a warning letter in place of a Disclosure or penalty.

3.6 Secondly, OFSI currently considers a subject's conduct to be an assessment of conduct both around the time of the breach and post-breach. This means that under the current approach, actions occurring after the breach, such as voluntary disclosure and co-operation, can affect the overall conduct rating, even though that same conduct can lead to a reduction in the penalty amount at subsequent stages.

3.7 OFSI proposes amending this process to remove the duplicate rewarding of post-breach conduct in penalty cases. Whilst post-breach conduct would still be a relevant factor in assessing what enforcement action is likely to be appropriate, in penalty cases the detailed conduct assessments will be limited to conduct leading up to and at the time of the breach or breaches.

3.8 This would result in case factors J (Reporting of breaches to OFSI) and K (Co-operation) no longer being considered as case factors under conduct at this stage for penalty cases.[2] The two factors would instead be taken into account as part of an expanded Voluntary Disclosure and Co-operation discount (discussed at paragraph 3.12-3.21 below).

3.9 Thirdly, without overriding OFSI's discretion to take the action it considers most appropriate in any case, we propose more directly linking these assessments to penalty calculations as per figure 3.B below.

Figure 3.B

Overall assessment	Likely outcome
Lesser severity	Lesser Severity cases are likely to be dealt with via a private warning letter, provided there are no significant aggravating factors, and the breach does not form part of a wider pattern.
Potentially serious	These are cases which are likely to be assessed as either Moderate Severity or at the lower end of Serious (see below). They are less likely to be dealt with via a warning letter.

[2]The full list of case factors is set out in chapter 3 of OFSI's Financial sanctions enforcement and monetary penalties guidance.

	Moderate cases are likely to be dealt with via a publication without monetary penalty (Disclosure).
Serious	These are cases which are likely to result in a civil monetary penalty, with a baseline penalty to be set at up to 75% of the statutory maximum amount.
Most Serious	These are cases which may be referred for criminal investigation in the first instance. If OFSI pursues the case and a civil penalty is imposed, then the baseline penalty would likely be set between 75% and 100% of the statutory maximum amount.

3.10 Fourth, we propose that a reasonable and proportionate baseline penalty amount for Most Serious cases should be at or above 75% of the statutory maximum. In turn, baseline penalties for Serious cases should be considered at up to 75% of the statutory maximum. This is a change from the current amounts of 50% and above for Most Serious cases and 0-50% for Serious cases.

3.11 OFSI considers that this provides the correct balance between effectiveness of the deterrent effect and proportionality. OFSI would retain its discretion to depart from this indicative approach in appropriate cases.

Changes to OFSI voluntary disclosure discounts

3.12 Whilst OFSI considers that it is right to recognise prompt and complete voluntary self-disclosure with a discount, our current approach of awarding a 50% reduction can risk undermining the penalty amount in some cases. The penalty amount should always reflect the overall severity of the breach, but the 50% discount rate means it risks being too low in some cases where conduct is particularly serious.

3.13 Under the current policy framework, OFSI can apply up to 50% as a discount in Serious cases and up to 30% for Most Serious cases. Instead, we propose applying a discount amount of up to 30% for voluntary disclosure and co-operation in both Serious and Most Serious cases.

3.14 The purpose of these discounts is to incentivise parties who suspect they have breached financial sanctions to disclose that fact to OFSI swiftly and with as much information as possible. This makes investigating potential breaches and enforcing sanctions easier and simpler for everyone. The Early Account Scheme explained in Chapter 5 provides additional benefits to both parties and therefore can result in a larger settlement discount should this be the appropriate outcome.

3.15 We want firms to voluntarily self-disclose all breaches to OFSI, regardless of the severity of the breach. In the current system, there is a relative incentive to voluntarily self-report breaches which a firm may consider OFSI will judge to be Serious, and a relative disincentive to report Most Serious breaches, because the discount is lower. We believe that aligning the discounts for Serious and Most Serious cases and including co-operation in this way makes the process simpler and more transparent.

3.16 OFSI also proposes replacing the current discount for voluntary self-disclosure with a Voluntary Disclosure and Co-operation discount. OFSI would set out a more detailed set of expectations that would need to be met before OFSI would give an enforcement subject the full Voluntary Disclosure and Co-operation discount.

3.17 Currently, a voluntary self-disclosure reduction will usually be applied when a person provides a prompt and complete disclosure to OFSI of a suspected breach of which OFSI has not already become aware by other means. However, this is always assessed on a case-by-case basis and the discount may not be applied if, among other things, it transpires that the person has not made a complete disclosure in the course of the investigation, if they are voluntarily disclosing to OFSI only because they believe OFSI is already aware or may become aware from a law enforcement investigation, or if they refuse to provide information upon request.

3.18 OFSI guidance states that we expect breaches to be disclosed as soon as reasonably practicable after discovery of the breach, and that we expect disclosures to include all evidence relating to all the facts of the breach.

3.19 This means that an investigation subject could receive the full 50% discount for a Serious case under the current framework for voluntarily reporting, even if they frustrated OFSI's investigation and thereafter refused to co-operate with any voluntary requests for the provision of information.

3.20 OFSI proposes that, instead, a subject would be eligible to receive up to the full 30% discount, applicable to both Serious and Most Serious cases, where they have:

a. Voluntarily **self-reported** breaches to OFSI in a prompt and complete manner. OFSI would expect this to be as soon as practicable, and could in many circumstances be an initial disclosure ahead of a fuller report to follow without unreasonable delay;

b. Subsequently provided OFSI with a **complete account** of the circumstances of the breach;

c. Thereafter **co-operated** with OFSI's investigation, including providing voluntary responses in a prompt and complete manner, as well as proactively providing OFSI with information and documents to assist OFSI's investigation.

3.21 Where OFSI considers that the above is only partially met, a discount of lower than 30% could still be applied. For example, it may still be appropriate for a firm which did not voluntarily self-report a breach but then conducted an internal investigation and fully co-operated with OFSI's investigation, to benefit from a discount of less than 30% on grounds of good co-operation. Below is an illustrative example of how this could work.

Illustrative example of proposed model

3.22 Stage 1: Severity assessed as medium, conduct as aggravating.

3.23 Stage 2: Case therefore assessed to be a Serious case where a civil monetary penalty may be appropriate. The statutory maximum penalty amount is £1m, because 50% of the breach value (£1.3m) is £650,000 (i.e. less than £1m).

3.24 Stage 3: Taking into account the facts of the case, the baseline penalty amount is set at £560,000 (within but below 75% of statutory maximum penalty). If the case had been assessed as Most Serious, the baseline penalty amount would have been set between £750,000 and £1m (i.e. 75% of the statutory maximum or higher).

3.25 Stage 3: The subject is assessed to have made a prompt and complete voluntary self-disclosure and fully cooperated with OFSI's investigation. A full Voluntary Disclosure and Co-operation discount is therefore applied (30%). The penalty amount is therefore set at £392,000.

3.26 OFSI is also considering introducing a settlement scheme, which is discussed in Chapter 4. If this settlement scheme is introduced, then this illustrative example could be followed by Stage 4: Settlement offer considered appropriate and accepted by subject, final settlement amount post-discount (20%) set at £313,600.

Questions

Q1: Do you agree with the proposed changes to OFSI's case assessment guidance?

a. Strongly agree
b. Agree
c. Neither agree nor disagree
d. Disagree
e. Strongly disagree
f. Don't know

Please explain your answer.

Q2: Do you agree with the proposed changes to OFSI's voluntary disclosure discounts?

a. Strongly agree

b. Agree
c. Neither agree nor disagree
d. Disagree
e. Strongly disagree
f. Don’t know

Please explain your answer.

Chapter 4

Settlement scheme

Background and context on settlement schemes

4.1 This chapter sets out a proposed model for a settlement scheme to enable the quicker resolution of cases.

4.2 Resolving an enforcement case more quickly through a settlement scheme would save time and resources for OFSI and the subjects of our investigations. It would also allow subjects an opportunity to engage with OFSI at the end of an investigation, to discuss OFSI's findings and any potential enforcement action before any decision has been taken. Ultimately, it is hoped that this would help bring OFSI enforcement matters to a close on mutually acceptable terms. This has the additional benefit of getting important sanctions compliance messages out to industry more swiftly.

4.3 OFSI has engaged with other bodies in the UK with civil enforcement powers who offer settlement options, as well as with OFSI's US counterpart, the Office of Foreign Assets Control (OFAC), in considering whether to propose the introduction of a settlement scheme for the resolution of enforcement cases.

4.4 Analysis of OFSI's published penalty cases to date shows that the time from the initial penalty decision being made to the penalty case being resolved and made public is often up to 12 months.

4.5 The settlement scheme would be offered at OFSI's discretion in appropriate cases. It would not replace OFSI's usual decision-making process. The subjects of an investigation may also decline to enter into settlement discussions, or refuse to agree to settle at the end of the settlement period, at which point the usual process, as set out in s. 147 of PACA, of imposing a penalty would apply (including a person's right to request a review and to appeal the decision).

4.6 In considering potential models for the settlement scheme, OFSI has paid particular attention to models currently used by the Financial Conduct Authority (FCA) and the Bank of England which includes the Prudential Regulation Authority (PRA). Adopting a similar settlement model would more closely align OFSI's enforcement approach to other bodies undertaking civil enforcement in the UK.

4.7 OFSI's choice to base its model on these was in part influenced by the majority of OFSI's penalties to date being imposed against firms operating in the financial sector. By basing its model on established frameworks, OFSI has greater confidence that the implementation of a

settlement scheme for financial sanctions in the UK would be of benefit to subject firms.

Proposed settlement scheme

4.8 Under this proposed settlement model, OFSI would conduct its initial investigations into breaches in the same way as it currently does. This includes sending formal Requests for Information (RFIs) to the subject of an investigation as well as any other party OFSI considers may be in possession of relevant information.

4.9 At the conclusion of an investigation, following the formation of a recommendation by the case team that a penalty is likely to be the appropriate enforcement outcome, OFSI would put a recommendation to the Decision Maker and ask for their approval to impose a penalty in principle, and for OFSI to offer a settlement.

4.10 OFSI consider it unlikely to be appropriate to offer settlement in cases where:

a. the breaches were committed knowingly or intentionally;

b. the subject is or has previously been suspected of circumventing financial sanctions, or whether the breach itself is in relation to the circumvention offence;

c. the subject has not engaged with OFSI in good faith or has not cooperated with OFSI during the course of an investigation.

4.11 OFSI may however take into account a range of factors when making a recommendation to the Decision Maker as to whether settlement may be appropriate.

4.12 Whether or not a breach has been self-disclosed to OFSI will not determine whether OFSI offer a settlement option, although may be considered a relevant factor. Evidence of concealment of a suspected breach may result in no settlement being offered.

4.13 OFSI propose that it would only offer settlement in cases where it is seeking to impose a monetary penalty. OFSI is not proposing to make significant changes to the process by which OFSI makes decisions to publish Disclosures.

4.14 Should the Decision Maker agree in principle that a penalty should be imposed, they will decide at the same time whether it is appropriate to offer the settlement option and agree in principle to the level of settlement discount. The Decision Maker may decide to issue a Notice of Intention to impose a penalty without offering settlement.

4.15 In cases where the Decision Maker has agreed to offer settlement, OFSI would write to the subject, advising them that the investigation team have concluded their investigation and that OFSI's Decision Maker has agreed that the matter is one that appears to justify the imposition of a penalty and is suitable for resolution by way of settlement. The letter would invite the recipient to indicate, within 10 business days, whether they would like to enter into settlement

discussions with OFSI with a view to resolving the matter. The 10 business day period is intended to allow the recipient to consider the offer and also to prepare for settlement discussions, should they wish to.

4.16 At the end of this period, if the recipient chooses to enter into settlement discussions, OFSI would send them a draft Notice of Intention and draft public penalty notice that would form the basis of the settlement discussions. These would be provided on a without prejudice basis. The draft Notice of Intention would set out OFSI's understanding of the facts and the breaches and its assessment of the conduct and severity in the case, as well as OFSI's views on the penalty that it considers to be appropriate and reasonable in the circumstances.

4.17 If the recipient declines the offer of settlement discussions, OFSI would finalise the Notice of Intention and intended penalty amount.

4.18 OFSI proposes that where settlement discussions are successful, the settlement discount would be an additional 20% of the remaining proposed penalty amount after any discount has been applied for Voluntary Disclosure and Co-operation. (See chapter 3 for discussion of proposed changes to the current voluntary self-disclosure discount. The proposed introduction of a settlement scheme is not dependent on the adoption of the changes proposed in chapter 3).

4.19 The receipt of the draft Notice of Intention would mark the commencement of a 30 business day period during which time OFSI and the investigation subject would have without prejudice discussions. The subject could make representations, including factual representations, concessions/admissions, or legal arguments, on a without prejudice basis. These could relate to any aspect of the case. OFSI would take the representations into account and consider whether they justify revising the draft Notice of Intention, including the penalty amount. OFSI and the subject would seek to reach agreement on all of the terms of the draft Notice of Intention and conclude a settlement agreement of the penalty within the 30 business day period.

4.20 As indicated, OFSI proposes that communications about a possible settlement would be held on a without prejudice basis. This would mean that statements made (in writing or orally) during this 30 business day period with the aim to settle an enforcement matter, whether made by OFSI or by the recipient of the settlement offer, could not be referred to or relied on subsequently by either party if, for example, no settlement is reached.

4.21 Extensions to the 30 business day period would only be granted in limited circumstances, and only if OFSI's assessment is that settlement is likely to be achieved by a short extension. Should OFSI and the subject not agree in this period, a statutory Notice of Intention would be formally issued and the penalty process would continue in accordance with OFSI's established processes and guidance.

4.22 If the potential penalty subject did not agree a settlement with OFSI during the 30 business day period or during an agreed extension

period, the subject could, at any point during the subsequent penalty review process, choose to settle the case with OFSI. Whilst OFSI would still engage with the subject about the terms of the settlement after the 30 business day settlement period and any agreed extension has concluded, and evidence or arguments presented during the course of those later discussions could potentially lead to a reduction of the originally proposed penalty amount, subjects settling outside the agreed window will not get a settlement discount. The loss of this discount is intended to encourage focused engagement during the settlement discussion period.

4.23 Settlement of a case under this model, in relation to financial sanctions breaches is not the same as an out-of-court settlement in the context of judicial proceedings. Rather, it would involve the subject accepting OFSI's finding that a breach of financial sanctions has occurred, and would require a commitment both to pay the agreed amount and to forgo the rights to request a Ministerial Review and/or to appeal OFSI's decision judicially (e.g., to the Upper Tribunal). This approach is in keeping with the approach taken by UK regulators in settling enforcement actions in other spheres.

4.24 OFSI will consider throughout and when agreeing to the terms of a settlement whether doing so serves OFSI's wider objectives, and is consistent with OFSI's enforcement priorities and intended outcomes.

4.25 Whilst OFSI would usually only seek to initiate settlement discussions at the point of a decision in principle that the case appears on its face to be one in which it would be appropriate and reasonable to impose a penalty, it would be open to the subject party approaching OFSI during an investigation (but before a decision has been made) to indicate their willingness to settle a case. This could allow OFSI to set out all the areas on which we require further information and accelerate the progression of the investigation to an initial decision stage.

Questions

Q3: Do you agree with OFSI's proposal to introduce a settlement scheme?

a. Strongly agree
b. Agree
c. Neither agree nor disagree
d. Disagree
e. Strongly disagree
f. Don't know

Please explain your answer.

Incentives

4.26 OFSI proposes to offer a discount of 20% to subjects who agree a settlement during the 30 business day settlement period or during an extension to the settlement period. This discount will be applied to the baseline penalty amount, as adjusted by any Voluntary Disclosure and Co-operation discount that has previously been applied.

4.27 OFSI recognises that the decision on whether to settle a case may be motivated by a number of complex factors, of which a set discount may only be one consideration.

4.28 OFSI is interested in views on incentives other than discounts.

4.29 One of the primary incentives under consideration, in addition to the settlement discount, would be for subjects to have the ability, during the 30 business day settlement period, to make representations to OFSI as to OFSI's characterisation of the case in the published Decision Notice, and to propose the inclusion of detail of remediations undertaken and a firm's future commitment to sanctions compliance.

4.30 A further incentive could be for firms to avoid admitting liability when agreeing settlements. The published Decision Notice could refer to apparent or suspected breaches of financial sanctions. However, OFSI considers that such an approach could reduce the significance and deterrent effect of its enforcement notices.

4.31 OFSI considers that identifying the parties to a settlement is in the public interest due to the impact this has in deterring breaches of financial sanctions. As such we do not consider that anonymisation would be an appropriate incentive.

Questions

Q4: Do you agree with OFSI's proposed settlement discount?

a. Strongly agree
b. Agree
c. Neither agree nor disagree
d. Disagree
e. Strongly disagree
f. Don't know

Please explain your answer.

Q5: Were you the subject of a potential monetary penalty, would the proposed settlement discount incentivise you to enter into a settlement scheme?

g. Yes
h. No
i. Don't know

Please explain your answer.

Q6: Do you have any views on how OFSI could incentivise the use of the settlement scheme other than through penalty discounts?

Chapter 5

Early Account Scheme

Background and context on the Early Account Scheme

5.1 OFSI has powers to request information and documents under sanctions regulations. During an investigation, OFSI will gather information necessary to assess the case. This may be from the subject of the investigation, or from third parties who may hold relevant information. This process usually takes several months, and in particularly complex cases it can take up to three years to gather and then assess all the relevant information.

5.2 Ensuring that OFSI investigators have identified and accessed the relevant information usually requires a substantial amount of time and resource both for OFSI and the subjects of an investigation. Feedback suggests that some investigation subjects would welcome greater clarity on how they could assist OFSI to resolve investigations more quickly.

5.3 To this end, OFSI proposes to introduce an Early Account Scheme (EAS). In appropriate cases, where OFSI agrees to the use of the EAS, the subject of an investigation would agree to provide a detailed factual account of the potential breaches together with all relevant materials and evidence. This would provide a structure to enable the subject of an investigation to provide as comprehensive an account as possible, as early as possible. This could significantly expedite the investigation stage of a case. A similar scheme was introduced by the Prudential Regulation Authority, part of the Bank of England, in 2024.

5.4 The proposed EAS aims to enable the quicker investigation of cases. It is distinct from the proposed settlement scheme (set out in Chapter 4) which aims to enable the quicker resolution of cases following the conclusion of an investigation. However, if the settlement scheme is not introduced, it is highly unlikely that OFSI would seek to introduce the EAS in isolation.

5.5 As well as consulting on the possibility of introducing the EAS, OFSI is also proposing that in appropriate cases where the EAS has been used and a monetary penalty results, the maximum settlement discount would be increased from 20% to 40%.

Proposed EAS

Accessing the EAS

5.6 Under the EAS, potential investigation subjects would, when they submit their initial breach report to OFSI, be able to indicate whether they would like to use the EAS. Before agreeing to use of the EAS, OFSI would need to assess that the matter in question could be serious enough to result in a penalty. However, OFSI would not predetermine whether or not a penalty would be the appropriate outcome for investigation subjects using the EAS.

5.7 If access to the EAS was requested, OFSI would first arrange a meeting with the subject or their representatives to discuss a route to the prompt resolution of the matter in question. This engagement would cover both the appropriateness and terms of entry to the EAS.

5.8 OFSI would, at its sole discretion, only permit access to the EAS where it judged it to be appropriate given the circumstances known to OFSI about the case. Some relevant considerations could be:

a. The nature and seriousness of the suspected breaches (including whether any breaches were assessed to be committed knowingly or intentionally);

b. Whether the subject is or has previously been suspected of circumventing financial sanctions, or whether the breach itself is in relation to the circumvention offence;

c. Whether a penalty has been imposed or settlement been reached with the subject previously;

d. Whether any relevant adverse findings had been made against the subject entity (i.e., finding of dishonesty) by any enforcement or supervisory body;

e. The existence of linked investigations by any other official body, including supervisory and criminal authorities;

f. The degree to which OFSI requires further information to assess the case in question.

5.9 Voluntary self-disclosure of a breach would not be a pre-requisite to enter the EAS, but may be seen by OFSI as an indication of the extent to which the subject can be relied on to conduct a full and complete account. OFSI considers it would be very unlikely to permit access to the EAS for a firm that had failed to report suspected breaches the firm was aware of to OFSI. OFSI may include requirements or conditions attached to a person or firm using the EAS to resolve concerns it may have about the independence or trustworthiness of those conducting the EAS. These could include the use of a third party to undertake the account.

5.10 Where the subject entity is regulated, OFSI would likely engage with the entity's supervisory body/bodies to discuss any issues relevant

to the appropriateness of access to the EAS. OFSI may also consult with law enforcement to deconflict on any potential linked criminal investigations.

EAS process

5.11 If OFSI, at its sole discretion, was content for the investigation subject to use the EAS, OFSI would set out the necessary initial scope of the account to be provided, including the further information required to make a full assessment of the case in question, and agree in early discussions with the subject a full timeline and initial scope of the account.

5.12 An investigation subject using the EAS would be required to investigate and provide to OFSI a full, detailed account of the case, along with all relevant material, to enable OFSI to assess the case and appropriate enforcement outcome.

5.13 An EAS account would be significantly different in detail and scope to that which OFSI expects at the point of voluntary self-disclosure. In preparing the account, the subject or third party would need to investigate the suspected breach or breaches, identify any further suspected breaches, and identify all relevant material, including internal documents and correspondence, which would need to be provided alongside the account. Accompanying relevant material would include internal documents, policies and correspondence. OFSI would expect the account to be comprehensive, including assessments of all relevant material and the subject's view of how the case could be considered in relation to OFSI's Case Factors.

5.14 OFSI would expect the investigation and compiling of the account to be prepared by the subject or a by a third party (to be agreed by OFSI) and provided in full to OFSI, subject to discussions with the subject or third party about legally privileged material that may need to be considered on a case-by-case basis. Introducing an EAS would not change OFSI's approach to legally privileged material. Where information is withheld from OFSI on the basis that it is subject to legal professional privilege, OFSI expects the relevant parties to carefully ascertain whether legal privilege applies and to which information it applies, and state this to OFSI.

5.15 OFSI would likely require reviews at set intervals (e.g., monthly) during this process to monitor progress of the internal investigation and the preparation of the account. OFSI would also require any further suspected breaches discovered during the process to be brought to its attention either immediately upon discovery or at these periodic meetings.

5.16 OFSI would require that a named senior person at the firm in question, provide an attestation alongside the final account, confirming that it is a fair and full account of the circumstances of the case, and that it has been prepared in accordance with the agreed scope.

5.17 A suitable senior person within a large, regulated firm may be a Head of Financial Crime, General Counsel, Money Laundering Reporting Officer. Within smaller firms, OFSI would request the firm propose an individual and indicate why they deem them to be an appropriate person. OFSI would not intend that only large, regulated firms are able to access this scheme, and would welcome requests for access to the scheme from all legal persons (including firms, bodies and entities, other than individuals).

5.18 For entities intending to access the scheme, OFSI could make access to the EAS conditional on the appointment of a third party to conduct the investigation and prepare the account. This may be the case in particular where an entity is unable to demonstrate to OFSI that they have sufficient internal expertise (e.g., in conducting internal investigations, or with sanctions or financial crime experience) to investigate and create an account with sufficient separation from the persons involved in the breach. It may also be more the case for firms not subject to supervision. OFSI would generally not consider it appropriate for persons directly involved in the breach to be conducting the internal investigation and would seek to agree this at the early discussion stage.

5.19 Appropriate third-party firms may include law firms, financial crime consultancies, or other persons where sufficient expertise can be demonstrated. OFSI would require that a person at the relevant third-party firm provides an attestation that they were able to produce an account free of interference and with sufficient access to relevant persons and information.

5.20 OFSI would not anticipate that natural persons (individuals) are able to access the scheme given there would be no ability for sufficient independence.

5.21 OFSI considers that six months would usually be an appropriate timeframe for the completion of an account, starting when the terms of the EAS are agreed by both parties. In some cases, this could be set at greater than six months if an investigation was exceptionally complex, or extended during the course of producing an account if OFSI is satisfied the subject has made best efforts, that it has demonstrated adequate progress, and/or that the case is of sufficient complexity.

5.22 Once an account has been provided to OFSI, OFSI would closely interrogate the account and would reserve the right to carry out a full investigation itself.

5.23 OFSI may, once it has received and considered the account, consider that a private warning letter or Disclosure is the appropriate enforcement outcome. OFSI may also conclude, on the basis of the evidence presented, that no breach has occurred and therefore no further action is required.

5.24 If, on considering the account, OFSI was minded to impose a monetary penalty, OFSI would put a recommendation to the Decision Maker and ask for their approval to impose a penalty in principle, and

for OFSI to offer a settlement. This process, including the circumstances in which it would be appropriate to offer settlement, are set out in detail in Chapter 4.

5.25 OFSI considers that where a detailed factual account has been provided in accordance with the scope agreed, and relevant breach admissions have been made, the discount available in respect of any eventual settlement should be greater than the standard settlement discount (proposed at 20% within Chapter 4). OFSI therefore proposes that in suitable EAS cases, it would provide up to a 40% settlement discount, instead of 20%. This discount would be applied to the baseline penalty amount as adjusted by any Voluntary Disclosure and Co-operation discount OFSI considered appropriate in the circumstances. (See chapter 3 for discussion of proposed changes to the current voluntary self-disclosure discount. The proposed introduction of the EAS is not dependent on the adoption of the changes proposed in chapter 3).

5.26 The full 40% settlement discount would not be offered if OFSI considered that the early account was incomplete, unduly delayed or required OFSI to subsequently undertake significant additional investigative steps. In such cases, OFSI would decide on a suitable, smaller discount that is likely to be less than 40% but may in some cases be greater than 20%.

5.27 Where information is required from third parties in relation to an account, OFSI would expect the subject undertaking the account to make every attempt to collect this information. Where this is not possible and the use of OFSI's statutory powers were required, this would not be considered a failure of the subject party, but we would expect this to be raised with us promptly during the course of the preparation of the account, so as to avoid unnecessary delays.

5.28 At any point during the EAS, OFSI could seek to exit the process if it had concerns about the scope, truthfulness or intention by the subject party to complete a full and honest account. Similarly, if OFSI had genuine concerns about the integrity or completeness of the account provided, it could choose, after undertaking any further investigative steps necessary, not to offer a settlement option, but rather to proceed to a decision to impose a penalty.

5.29 The subject entity may also request to terminate use of the EAS at any stage. OFSI may still be entitled to compel provision of aspects of the account to allow OFSI to complete the investigation itself. In such a situation, OFSI could also hold the delay in the resolution of the case (by delaying investigative steps which OFSI could have taken earlier if the EAS had not been used) against the entity when considering co-operation in the case assessment and discount stage.

5.30 Where multiple legal persons were potential subjects of an investigation, and one requested access to the EAS, OFSI would seek to inform the other parties that one party had requested access without naming them. This is because OFSI considers it would be beneficial for

all parties in such a case for all persons to be able to consider producing parallel accounts through the EAS.

Questions

Q7: Do you agree that OFSI should introduce an Early Account Scheme?

a. Strongly agree
b. Agree
c. Neither agree nor disagree
d. Disagree
e. Strongly disagree
f. Don't know

Please explain your answer.

Q8: What are your views on appropriate incentives and discounts for subjects settling a case using the Early Account Scheme?

Chapter 6

Changes to penalty process for information, reporting and licensing offences

6.1 This chapter sets out the current, publicly available guidance on monetary penalties for information offences, along with proposals for potential changes that OFSI may make, including the introduction of indicative penalties under a streamlined process for information, reporting and certain licensing offences.

6.2 OFSI has powers to impose monetary penalties for a range of offences and currently has a single enforcement process, set out in public guidance, for all types of offence. OFSI considers that it could be helpful to have a modified, more streamlined process for certain types of offence, and to provide separate guidance in relation to OFSI enforcement action in respect of those offences which could provide greater clarity and ensure consistency in how breaches of these offences will be enforced.

Current approach to licensing, information, and reporting offences

6.3 A licence is a written permission from OFSI allowing an act, that would otherwise breach prohibitions imposed by financial sanctions, to be carried out within the terms of the licence. Licences can either be for specific uses by a specified person or issued as general licences available for use by specified persons or classes of person.

6.4 Where OFSI has licensed an activity, the licence may be subject to conditions and/or reporting requirements. It is an offence to breach the terms of a licence issued by OFSI and OFSI may impose monetary penalties for breaches of licence conditions.

6.5 Sanctions regulations make additional provisions specifically for "relevant firms" (as defined in regulations made under SAMLA), and a failure to comply with these requirements may be a criminal offence for which a penalty can be imposed by OFSI. The same applies for failures

to respond to Requests for Information (RFI) and failures to comply with asset reporting requirements as part of the OFSI Annual Review.

6.6 OFSI also has broad powers to request information from anyone. It may be a criminal offence not to provide information when requested. OFSI may issue a penalty if, for example, it has specifically requested information using its statutory powers that has not been provided, or our request for information has been refused, without a reasonable excuse. Where this has the effect, or risks having the effect, of frustrating an investigation, OFSI is more likely to consider enforcement action in respect of the failure to provide the information.

6.7 OFSI has imposed one penalty so far in respect of a failure to provide information without a reasonable excuse, and considers that such offences, while they may be less serious than breaches of financial sanctions, can warrant penalties in their own right.

6.8 OFSI's power to impose a penalty for information and reporting offences is the same legislative power as that which OFSI uses to impose monetary penalties in response to sanctions breaches. Under OFSI's existing guidance relating to monetary penalties, OFSI must follow the same process set out in Chapter 2 of this document for information and reporting offences as it does for breaches of financial sanctions. This process takes a considerable amount of time and resource to complete.

Potential Changes

6.9 Whilst (as stated above), OFSI has certain powers to impose a monetary penalty where information requested has not been provided, OFSI is also considering further changes to encourage compliant reporting, and to ensure compliance with licence conditions. OFSI is considering two alterations to penalty processes for information, reporting and licensing offences. These are: the possible pursuit of indicative penalties for certain offences, and the introduction of statutory fixed penalties.

Indicative Penalties (guidance)

6.10 In order to streamline the process for lesser value penalties, OFSI is considering the introduction of indicative penalties for certain offences with amended processes. Under this proposal, OFSI would publish in its guidance indicative penalty amounts that OFSI considers reasonable and proportionate for most instances of those offences.

6.11 The types of potential offences for which indicative penalty amounts might be suggested could include:

a. Non-compliance with reporting obligations, including both failure to report and late reporting without reasonable excuse.

b. Incomplete or otherwise non-compliant reporting on specific and general licences.

c. Breaches of specific and general licences, including breaches involving funds or economic resources with a value of up to £10,000.

6.12 The requirement for designated persons under the Russia and Belarus regulations to report to OFSI their own assets would not be in scope.[3]

6.13 OFSI would still investigate each case to determine whether a breach has occurred including, for example, assessing whether a person who has failed to produce information has done so without a reasonable excuse.

6.14 OFSI would assess the relevant circumstances, including mitigating or aggravating factors, before concluding whether a penalty was warranted, and would retain its discretion to impose a higher or lower monetary penalty, according to circumstances, than the suggested indicative penalty.

6.15 Where OFSI considered that the relevant breach was in any part intentionally committed, of high severity, or if OFSI suspected circumvention of sanctions, OFSI would retain the discretion to impose a higher penalty through its standard monetary penalty process.

6.16 OFSI considers that the following amounts would be appropriate penalty amounts:

6.17 £5,000 - Failure to respond to an RFI, comply with the condition and/or permission of a licence or reporting obligations without reasonable excuse.

6.18 £10,000 - Aggravated failure to respond to an RFI, comply with the condition and/or permission of a licence or reporting obligations without reasonable excuse.

6.19 OFSI is not proposing to impose a penalty in all cases where a person has failed to comply with an obligation. In some instances, immediate rectification of the failure to respond or the non-compliance with the licence condition and/or permission or reporting requirements could be dealt with via a warning letter.

6.20 OFSI considers that the lower penalty amount of £5,000 is likely to be appropriate in the following types of cases:

3 The Russia (Sanctions) (EU Exit) Regulations 2019, Section 70A and The Republic of Belarus (Sanctions) (EU Exit) Regulations 2019, Section 38A.

a. A person exhibiting poor conduct (e.g., where OFSI has sent prior warning letters, or other instances of clear and sustained non-compliant behaviour);

b. Where a failure to respond has frustrated an OFSI investigation;

c. Where a person has made minimal or no efforts to rectify non-compliance and co-operate.

6.21 However, there are certain circumstances where a person's conduct would be considered serious enough to constitute an aggravated offence and penalty amount of £10,000. This may be appropriate in the following types of cases:

a. A person exhibiting repeated poor behaviour (e.g., a £5,000 penalty has been imposed previously);

b. A person recklessly provides information which is materially false or incomplete in response to a request.

6.22 Where a person deliberately ignores an OFSI request, knowingly provides false material, or seeks to deliberately obstruct an OFSI investigation, OFSI will consider referring the case to relevant criminal bodies or imposing a significantly higher penalty under the standard penalty process.

6.23 Whilst OFSI proposes giving 30 business days for the representation stages for penalties imposed under its standard framework, OFSI proposes shortening this to **15 business days** for each stage within this policy to reflect the greater simplicity of the specified breaches of information, reporting and licensing offences.

6.24 This would mean that where OFSI notifies the investigation subject that it intends to impose a penalty by sending the subject a Notice of Intention, that person would have 15 business days to respond instead of 30. The same would apply for OFSI's period to consider any representations, and the person's subsequent right to request a ministerial review if a penalty is imposed.

Fixed Penalty Notices (legislation)

6.25 OFSI has also considered the argument for providing a distinct statutory framework for penalties relating to the offences referenced above. This would be more akin to a fixed penalty scheme with set penalty amounts set out in statute.

6.26 OFSI considers that whilst doing so may provide greater legal certainty, it would also require significant amounts of time and resource to implement and reduce OFSI's discretion to impose lower or higher penalty amounts to reflect the individual circumstances of the breach.

6.27 The proposed amounts and process around fixed penalties would be the same as proposed for the indicative penalties policy.

Figure 6.A

Types of offence for which the streamlined process may be appropriate

Offence	Example regulation (Russia Regulations)
Breach of licence conditions	Regulation 67(1) and (2)
Reporting obligations	Regulation 70(6) and (6A)
Information offences (including failure to respond to RFI within specified time)	Regulation 74(1)

Questions

Q9: Do you agree that OFSI should revise its penalty processes for information, reporting and licensing offences?

a. Strongly agree
b. Agree
c. Neither agree nor disagree
d. Disagree
e. Strongly disagree
f. Don't know

Please explain your answer.

Q10: If OFSI revised its penalty processes for information, reporting and licensing offences, should OFSI use indicative penalties in public guidance or fixed penalties set out in legislation?

a. Indicative penalties
b. Fixed penalties
c. Don't know

Please explain your answer.

Chapter 7

Changes to OFSI's statutory penalty maximums

7.1 OFSI's statutory powers to impose monetary penalties were introduced through PACA. This legislation also determines the statutory maximum penalties that OFSI can impose.

7.2 These maximum penalties have not been revised since 2017. Given the substantial changes in UK sanctions since that time, OFSI would like to invite views on potential changes to these statutory maximum penalties. These changes could help to further reinforce the deterrent effect of the civil enforcement of sanctions.

7.3 The first part of this chapter sets out potential revisions to the current statutory penalty maximums. The second part invites views on alternative approaches to calculating maximum penalties.

Revisions to statutory maximum penalties

7.4 The statutory maximum penalties that OFSI can impose for breaches of financial sanctions are given in the box below.

PACA Section 146: Power to impose monetary penalties

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.

7.5 The Treasury is obliged under section 146(6) of PACA to keep the amount specified at section 146(3)(a) and (4) under review (it is currently £1,000,000). PACA also permits the Treasury to amend this amount by

regulations made by statutory instrument, sometimes called secondary legislation.

7.6 It would require primary legislation to amend PACA to change the permitted maximum given at s. 146(3)(b), i.e., to amend the part of the legislation that mentions "50% of the estimated value of the funds or resources" to which the breach or failure relates.

7.7 Powers to impose penalties or breaches of the Oil Price Cap and designated person asset reporting requirements are included directly in the Russia (Sanctions) (EU Exit) Regulations 2019, which are sanctions regulations made under SAMLA. These amounts may be changed by statutory instrument alone, i.e., by way of secondary legislation rather than primary legislation.

7.8 Changing the maximum permitted penalties would enable OFSI to enforce breaches of financial sanctions or the Oil Price Cap in a more impactful way. It would strengthen the deterrent effect of civil enforcement for cases that have been assessed as Serious or Most Serious.

7.9 A decision to adopt the proposed changes to the maximum permitted penalties set out in this chapter is not dependent on the decisions to introduce the other changes to OFSI's penalty processes set out in other chapters of this document.

Proposed changes

7.10 OFSI proposes a change to the amount at 3(a) and (4) to £2,000,000. This would be the maximum permitted penalty in cases where the breach or failure does not relate to particular funds or economic resources, or where the permitted maximum based on a specified percentage of the estimated value of the funds or economic resources at (3)(b) (currently 50%) was less than £2,000,000.

7.11 OFSI also proposes a change to the specified percentage of the estimated value of the funds or resources at (3)(b) to 100%. This would be the maximum permitted penalty in cases where the breach or failure relates to particular funds or economic resources with an estimated value greater than the amount specified at (3)(a) (currently £1,000,000).

7.12 If these proposed changes to the permitted maximum penalties were introduced, OFSI would retain a process to assess what level of monetary penalty within that maximum is reasonable and proportionate, which could be any amount between zero and the maximum.

7.13 Increases in the statutory maximums may in many cases lead to penalties of the same value as under the current statutory maximum. 8 of the 12 penalties imposed to date have been set at equal to or less than 5% of the maximum. Increasing the maximum would allow OFSI more discretion to impose higher penalties for cases at the upper end of the seriousness scale.

7.14 The decision to introduce one of these proposed changes is not dependent on the decision to introduce the other. For example, it is possible to change the amount specified at (3)(a) and (4) to £2,000,000 without changing the specified percentage at (3)(b) from the current 50%.

Questions

Q11: Do you agree that OFSI should increase the statutory maximum permitted penalty amount of £1,000,000, contained in s. 146 of PACA at subsections 3(a) and (4)?

a. Yes, increase to £2,000,000.

b. Yes, increase to another amount.

c. No, leave at £1,000,000.

d. Don't know.

Please provide details to explain your answer. If you responded that the permitted maximum should be raised to an alternative amount, please specify what you think this amount should be and why:

Q12: Do you agree that OFSI should increase the specified percentage of the estimated value of funds and resources used to calculate maximum permitted penalties at (3)(b)?

a. Yes, increase to 100%.

b. Yes, increase to another percentage.

c. No, leave at 50%.

d. Don't know.

Please provide details to explain your answer. If you responded that the specified percentage used to calculate the permitted maximum penalty should be increased to a level other than 100%, please specify what you think this level should be and why:

Alternative approaches to calculating maximum penalties

7.15 In the second part of this chapter, OFSI invites views on alternative approaches to calculating maximum penalties that OFSI could adopt.

7.16 These alternative approaches have been outlined in brief rather than set out as detailed models. At this stage, we welcome views on the broad benefits and costs of approaching penalties in a different way. This feedback could inform the development of more detailed alternative models.

7.17 Other UK bodies that conduct civil enforcement differ from OFSI in their method of calculating maximum permitted penalties. Some of OFSI's international counterparts also use different methods to calculate maximum or baseline penalties.

7.18 OFSI acknowledges that designing a completely new penalty regime could bring additional challenges compared to simply modifying the existing maximum penalties set out in the first part of this chapter. Any merits of alternative models would need to be considered against any transitional costs of introducing new legislation and familiarising stakeholders with the new regime. However, OFSI would like to take this opportunity to consider what a different penalty regime might look like and gather views.

Turnover

7.19 Under OFSI's current model, the maximum permitted penalty is, depending on the circumstances, either a fixed amount or calculated as a percentage of the estimated value of the funds or economic resources to which the breach or failure relates.

7.20 An alternative approach that OFSI could adopt would be to base its maximum penalty on a percentage of the subject firm's turnover during the period to which the breach relates. Basing a penalty on turnover would ensure that penalties reflected the size and sophistication of the firm and would recognise that larger firms have more resources available to the firm to ensure sanctions compliance. For individuals, a penalty could be based on their income during what is assessed to be the relevant period, for example, this may be annual income in the year(s) in which the breaches occurred).

Penalties per breach

7.21 Under OFSI's current model, the statutory maximum penalty is calculated in relation to the case as a whole. In cases where there have been multiple breaches that relate to particular funds or economics resources, the maximum penalty may be calculated as a percentage of the total value of all the breaches.

7.22 An alternative approach that OFSI could adopt would be to set a maximum penalty amount per breach. In cases where a subject has committed multiple breaches, the total maximum penalty would be the maximum amount per breach multiplied by the number of breaches, or a specified percentage of the total value of the particular funds or economics resources to which the breaches collectively relate, whichever was the greater.

Questions

Q13: What are your views on basing maximum penalties on a percentage of turnover during the period relevant to the breach?

Q14: What are your views on setting a maximum penalty amount for each breach rather than for each case?

Q15: Are there any other approaches to setting maximum penalties that OFSI should consider?

Annex A

Processing of personal data

HM Treasury consultation: OFSI's enforcement processes – processing of personal data

This section sets out how we will use your personal data and explains your relevant rights under the UK General Data Protection Regulation (UK GDPR). For the purposes of the UK GDPR, HM Treasury is the data controller for any personal data you provide in response to this consultation.

Data subjects

The personal data we will collect relates to individuals responding to this consultation. Responses will come from a wide group of stakeholders with knowledge of a particular issue.

The personal data we collect

The personal data will be collected through email submissions, or the digital form provided via our SmartSurvey page and are likely to include respondents' names, email addresses, their job titles, and employers as well as their opinions.

How we will use the personal data

This personal data will only be processed for the purpose of obtaining opinions about government policies, proposals, or an issue of public interest.

Processing of this personal data is necessary to help us understand who has responded to the consultation and, in some cases, contact certain respondents to discuss their response.

HM Treasury will not include any personal data when publishing its response to this call for evidence.

Lawful basis for processing the personal data

The lawful basis we are relying on to process the personal data is Article 6(1)(e) of the UK GDPR; processing is necessary for the performance of a task we are carrying out in the public interest. For the purpose of this consultation the task is consulting on departmental policies or proposals in order to develop good effective government policies.

Who will have access to the personal data

The personal data will only be made available to those with a legitimate need to see it as part of the consultation process.

If you elect to complete the digital form, this will be conducted using SmartSurvey, an industry-leading online survey provider with the highest standards of data security. As with other organisations processing personal data, SmartSurvey is subject to data protection compliance requirements. Although SmartSurvey uses an automated system, the responses you give will not lead to any decisions being made about you and they will not have a direct impact upon you. In this context, SmartSurvey acts solely as a data processor under strict instruction from HMT and will not use your personal data for any purposes other than to provide the service to HMT. For more information on how SmartSurvey handles respondents data, please refer to their privacy policy here - https://www.smartsurvey.co.uk/company/privacy-policy

We may publish anonymised extracts from consultation responses as part of our published consultation response.

Where respondents have responded on behalf of businesses, organisations or representative bodies, attributed extracts or summaries may be shared with officials within other public bodies involved in this consultation process to assist us in developing the policies to which they relate. Any personally identifiable information will be anonymised or omitted before sharing. Examples of these public bodies appear at: https://www.gov.uk/government/organisations

As the personal data is stored on our IT infrastructure, it will be accessible to our IT service providers. They will only process this data for our purposes and in fulfilment with the contractual obligations they have with us.

How long we hold the personal data for

Personal information in responses will be retained for six years after work on the consultation is complete. Responses submitted via the SmartSurvey digital form will only be kept by SmartSurvey for as long as we need them. Once the deadline for completion of the survey has passed, all responses will be transferred from SmartSurvey to HMT.

Your data protection rights

You have the right to:

- request information about how we process your personal data and request a copy of it
- object to the processing of your personal data
- request that any inaccuracies in your personal data are rectified without delay

- request that your personal data are erased if there is no longer a justification for them to be processed
- complain to the Information Commissioner's Office if you are unhappy with the way in which we have processed your personal data

How to submit a data subject access request (DSAR)

To request access to your personal data that HM Treasury holds, please email: dsar@hmtreasury.gov.uk

Complaints

If you have concerns about Treasury's use of your personal data, please contact our Data Protection Officer (DPO) in the first instance at: privacy@hmtreasury.gov.uk

If we are unable to address your concerns to your satisfaction, you can make a complaint to the Information Commissioner at casework@ico.org.uk or via the ICO website.

Annex B

Question list

Chapter 3: Enforcement case assessments and discounts

Q1: Do you agree with the proposed changes to OFSI's case assessment guidance?

Q2: Do you agree with the proposed changes to OFSI's voluntary disclosure discounts?

Chapter 4: Settlement scheme

Q3: Do you agree with OFSI's proposal to introduce a settlement scheme?

Q4: Do you agree with OFSI's proposed settlement discount?

Q5: Were you the subject of a potential monetary penalty, would the proposed settlement discount incentivise you to enter into a settlement scheme?

Q6: Do you have any views on how OFSI could incentivise the use of the settlement scheme other than through penalty discounts?

Chapter 5: Early Account Scheme

Q7: Do you agree that OFSI should introduce an Early Account Scheme?

Q8: What are your views on appropriate incentives and discounts for subjects settling a case using the Early Account Scheme?

Chapter 6: Changes to penalty process for information, reporting and licensing offences

Q9: Do you agree that OFSI should revise its penalty processes for information, reporting and licensing offences?

Q10: If OFSI revised its penalty processes for information, reporting and licensing offences, should OFSI use indicative penalties in public guidance or fixed penalties set out in legislation?

Chapter 7: Changes to OFSI's statutory penalty maximums

Q11: Do you agree that OFSI should increase the statutory maximum permitted penalty amount of £1,000,000, contained in s. 146 of PACA at subsections 3(a) and (4)?

Q12: Do you agree that OFSI should increase the specified percentage of the estimated value of funds and resources used to calculate maximum permitted penalties at (3)(b)?

Q13: What are your views on basing maximum penalties on a percentage of turnover during the period relevant to the breach?

Q14: What are your views on setting a maximum penalty amount for each breach rather than for each case?

Q15: Are there any other approaches to setting maximum penalties that OFSI should consider?

HM Treasury contacts

This document can be downloaded from www.gov.uk

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