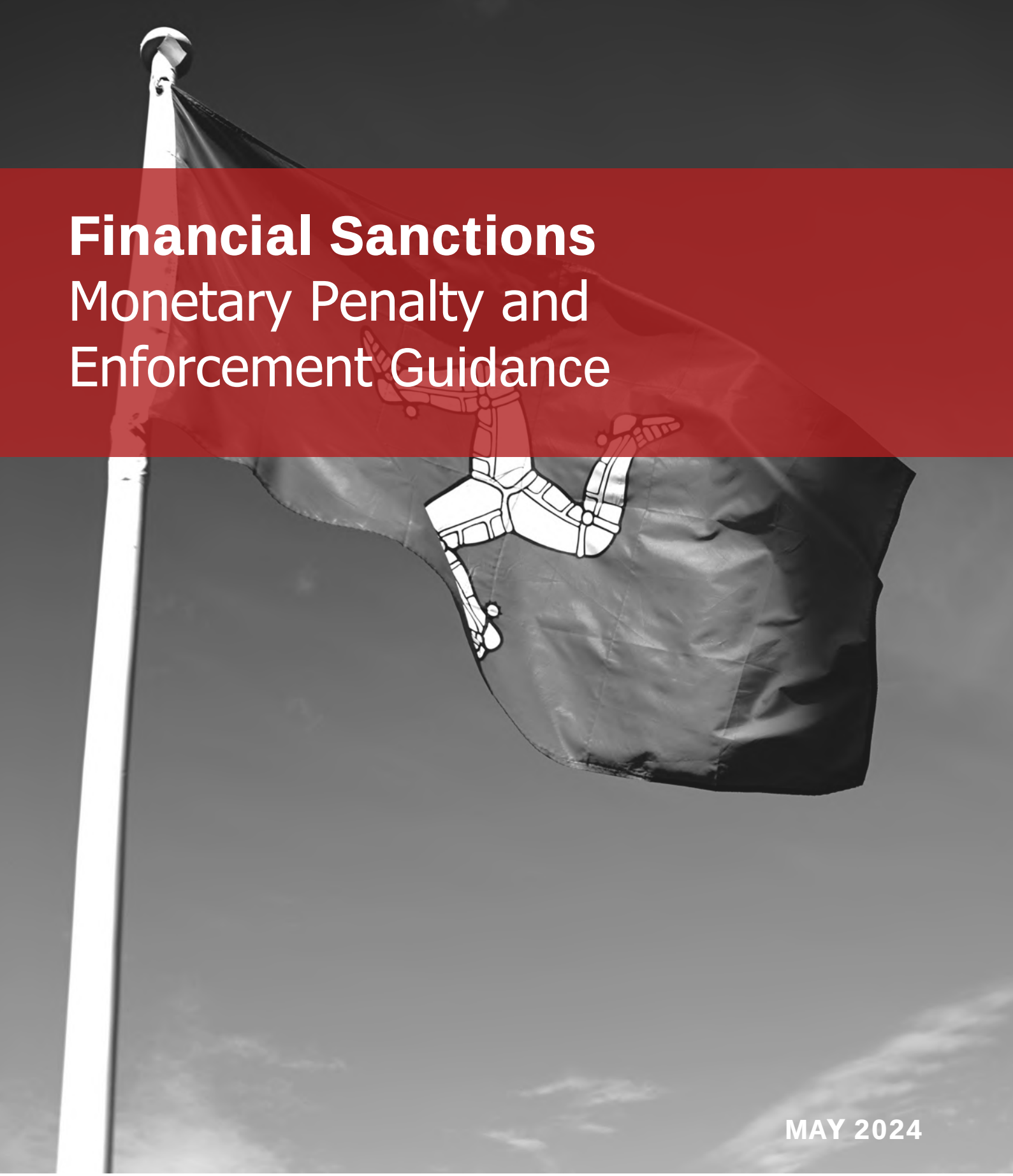

Financial Sanctions
Monetary Penalty and Enforcement Guidance

MAY 2024

Isle of Man Government

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Introduction

Monetary penalties for financial sanctions breaches

The Sanctions Act 2024 (the "2024 Act") contains powers for the Treasury to impose monetary penalties for breaches of financial sanctions.

The Customs and Immigration Division ("Customs and Immigration") of the Treasury applies these powers. This guidance sets out what the powers are, how the Treasury will use them, and a person's rights if the Treasury imposes a monetary penalty on them.

We have issued this guidance in line with section 10(1) of the 2024 Act, which states –

> (1) The Treasury must issue guidance as to –
>
> (a) the circumstances in which it may consider it appropriate to impose a monetary penalty under section 7 or 9; and
>
> (b) how it will determine the amount of the penalty.

In this guidance the Treasury sets out –

- an explanation of the powers given to the Treasury in the 2024 Act
- a summary of our compliance and enforcement approach
- an overview of how we will assess whether to apply a monetary penalty, and what we will take into account
- an overview of the process that will decide the level of monetary penalty
- an explanation of how we will impose a monetary penalty, including timescales at each stage and rights of review and appeal.

The Treasury will periodically review this guidance in response to feedback and as we learn from using these powers.

Monetary penalties for financial sanctions breaches under regulation 88C of The Russia (Sanctions) (EU Exit) Regulations 2019

Regulation 88C of the Russia (Sanctions) (EU Exit) Regulations 2019 (the "Russia Regulations") contains powers for the Treasury to impose monetary penalties for breaches of the Designated Person asset reporting requirement (see Chapter 5 of the Financial Sanctions General Guidance).

More guidance on what the powers are, how the Treasury will use them, and a person's rights if the Treasury imposes a monetary penalty on them can be found in the Russia Sanctions Guidance, which can be found on the Sanctions Guidance page of the Sanctions and Export Control website.

Contents

1. Background

This Chapter sets out some basic information about financial sanctions, the power to impose monetary penalties, and to whom the power can apply.

References to a 'person' throughout this guidance can be a reference to natural persons, as well as a legal person, body or entity. References to a 'designated person' are to persons who are subject to financial sanctions, and references to the 'listing' of a person means their inclusion on the UK Sanctions List.

References to financial sanctions legislation means the financial sanctions provisions that have effect in the Island by virtue of the Sanctions (Implementation of UK Sanctions) Regulations 2024.

1.1. What are Financial Sanctions?

The most common types of financial sanctions currently in use or used in recent years include –

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

The Treasury provides more information about financial sanctions in our Financial Sanctions General Guidance, which can be found on the Sanctions Guidance page of the Sanctions and Export Control website.

This document provides information that you are encouraged to explore for enhancing your understanding regarding financial sanctions.

More information about why we impose sanctions, the different types of sanctions, and what your obligations are can be found on the Sanctions website.

1.2. Powers given to the Treasury to impose penalties for financial sanctions breaches

A breach of financial sanctions may be a criminal offence, punishable upon conviction by up to 7 years in prison. There are both civil and criminal enforcement options to remedy breaches of financial sanctions. Law enforcement agencies may consider prosecution for breaches of financial sanctions. The monetary penalties regime created by the 2024 Act provides an alternative to criminal prosecution for breaches of financial sanctions legislation.

The power to impose a monetary penalty, and the limits on the amount of monetary penalty, are created by section 7 of the 2024 Act –

7. 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 the person has breached a prohibition, or failed to comply with an obligation, that is imposed by or under a UK financial sanctions provision that has effect in the Island.

(2) 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 a UK financial sanctions provision that has effect in the Island, any requirement imposed by or under that provision for the person to have known, suspected or believed any matter is to be ignored.

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

(4) 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.

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

Legislation can be regularly amended, and this link may not display the most up-to-date version. Individuals and companies should always make sure they are consulting the most up-date source.

All financial sanctions breaches come within the scope of Treasury's powers to impose monetary penalties, if they meet the criteria described in this guidance.

1.3. What do 'breached a prohibition' or 'failed to comply with an obligation' mean?

The Customs and Immigration Division of the Treasury provides guidance on prohibitions in our Financial Sanctions General Guidance, which can be found on the Sanctions Guidance page of the Sanctions and Export Control website.

Please read that guidance for a fuller explanation; the summary below should not be relied upon in isolation.

Summary

1. Financial sanctions legislation will contain prohibitions on carrying out certain activities or behaving in a certain way where financial sanctions apply. What is prohibited depends on the exact terms of the relevant financial sanctions legislation.

2. Individuals and companies should always refer to the up-to-date version of sanctions legislation imposing the specific financial sanctions that apply in their case to understand exactly what is prohibited. The Treasury interprets the prohibitions in sanctions legislation widely, as do courts.

3. If the financial sanction takes the form of an asset freeze, it is generally prohibited to–

- deal with the funds or economic resources belonging to or owned, held or controlled by a designated person;
- make funds or economic resources available, directly or indirectly, to, or for the benefit of, a designated person; or
- engage in actions that directly or indirectly circumvent the financial sanctions.

4. Financial sanctions also contain reporting obligations which apply to relevant firms, as defined in the 'Information and records' part of the sanctions legislation for each sanctions regime. For example, relevant firms are required to notify the Financial Intelligence Unit ("FIU") if they have dealings with a designated person, hold frozen assets or if they suspect that a person has committed a financial sanctions offence. Failure to comply with reporting obligations is an offence. Further information on the reporting obligations applicable to relevant firms can be found in Chapter 5 of the Financial Sanctions General Guidance.

5. When the Treasury has licensed an activity, the licence may be subject to conditions and reporting requirements. It is an offence not to abide by them or not to take any actions that the licence requires. The licence does not authorise any activity incompatible with its conditions.

6. The Treasury also has powers to request information under sanctions legislation. Depending on the legislation concerned, these may include powers to request information in order to establish the extent of funds and economic resources owned, held or controlled by or on behalf of a designated person; to monitor compliance or detect evasion; or to obtain evidence of the commission of an offence. It is an offence not to comply with a requirement to provide information or a Treasury request for information.

1.4. On whom may a monetary penalty be imposed?

A monetary penalty may be imposed on a 'person', which is used throughout this guidance to include reference to natural persons, as well as a legal person, body or entity.

In addition, section 9(1) of the 2024 Act says:

> (1) If a monetary penalty is payable under section 7 by a body, the Treasury may also impose a monetary penalty on an officer of the body if it is satisfied, on the balance of probabilities, that the breach or failure in respect of which the monetary penalty is payable by the body –
>
> (a) took place with the consent or connivance of the officer; or
>
> (b) was attributable to any neglect on the part of the officer.

This means separate penalties could be imposed on a legal entity and the officers who run it. If so, the Treasury will consider the imposition and level of monetary penalty on an officer of a body separately from that of the corporate body. An officer on whom a monetary penalty is imposed will have separate appeal rights to the relevant corporate body under sections 8 and 9(3) of the 2024 Act.

Section 9(2) sets out who may be considered an 'officer' in this context.

> 'officer of a body' means –
>
> (a) in relation to a body corporate, a director, manager, secretary or other similar officer of the body or a person purporting to act in any such capacity;
>
> (b) in relation to a partnership, a partner or a person purporting to act as a partner;
>
> (c) in relation to an unincorporated body other than a partnership, a person who is concerned in the management or control of the body or purports to act in the capacity of a person so concerned.

It is also possible for the Treasury to impose a monetary penalty on one person involved in a case and for another to be prosecuted criminally.

2. Our compliance and enforcement approach

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

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

Promote

- We will promote compliance, publicising financial sanctions and engaging with the private sector.
- An effective compliance approach promotes compliance by reaching the right audiences, through multiple channels, with messages they can understand and respond to.

Enable

- We will enable compliance by making it easier to comply, and providing guidance and alerts to help individuals and companies fulfil their own compliance responsibilities.
- An effective compliance approach enables cost-effective compliance, makes it easy to comply and minimises by design the opportunities for non-compliance.

Respond

- We will respond to non-compliance by intervening to disrupt attempted breaches and by tackling breaches effectively.
- An effective compliance approach responds to non-compliance consistently, proportionately, and transparently, taking into account the full facts of the case, and learns from experience to continuously improve our response.

Change

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

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

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

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

3. Case assessment

This Chapter gives a summary of how the Treasury assesses potential breaches or actual breaches of financial sanctions. The guidance in this Chapter **applies to all cases where the potential breach took place on or after 00:00 1 May 2024**. It does not set out the complete case assessment process that the Treasury will use. However, it does provide a detailed overview of the process, and will help individuals and companies understand what we consider when we assess a potential breach of financial sanctions.

3.1. Overview

The Treasury categorises breach cases as being of lesser severity, moderate severity or serious enough to justify a civil monetary penalty or criminal investigation. Taking into account the severity of the breach and the conduct of the individuals involved, the Treasury can respond in several ways. This ensures our enforcement response is proportionate and appropriate. The steps we could take in response to a breach include –

- issue a warning
- refer regulated professionals or bodies to their relevant professional body or regulator in order to improve their compliance with financial sanctions
- publish information pertaining to a breach, even where no monetary penalty is imposed, if this is in the public interest
- impose a monetary penalty
- refer the case to law enforcement agencies for criminal investigation and potential prosecution

The Treasury may undertake several of these actions in any particular case in line with Chapter 1 of this guidance.

The Treasury will assess the seriousness of breaches on their merits and determine what enforcement action is appropriate and proportionate on a case-by-case basis. 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. Moderate cases are likely to be dealt with via a publication without monetary penalty (which the Treasury refers to as a "Disclosure"), further details of which can be found in Chapter 10.

'Balance of probabilities' is the civil standard of proof and means the Treasury consider that, on the evidence, the occurrence of the breach was more likely than not. We will not be seeking to prove facts beyond reasonable doubt (the criminal standard), but to make a judgement on whether it is more likely than not that they are true.

Civil monetary penalties can be applied to persons for breaches of financial sanctions with no requirement for Treasury to demonstrate that the person knew or had reasonable cause to suspect the conduct amounted to a breach of sanctions. However, the Treasury will still need to demonstrate that a breach occurred on the balance of probabilities. An example of factors the Treasury will take into account when assessing what action to take is set out at *3.4 Case factors*.

3.2. Establishing whether there is a breach

The Treasury will seek to establish whether there is a breach of a prohibition or a failure to comply with an obligation under sanctions legislation. If there is not, we will close the case.

Connection to the Isle of Man

A breach does not have to occur within Isle of Man borders for the Treasury's authority to be engaged. There simply has to be a connection to the Isle of Man.

Financial sanctions apply to all persons within the territory and territorial sea of the Isle of Man and to all Island persons, wherever they are in the world. Individual and legal entities who are within or undertake activities within the Isle of Man's territory must comply with financial sanctions that are in force. All UK nationals normally resident on the Isle of Man and legal entities established under Manx law, including their branches must also comply with sanctions legislation, irrespective of where their activities take place.

A connection to the Isle of Man might be created by such things as an Isle of Man company working overseas, transactions using clearing services in the Isle of Man, actions by a local subsidiary of a Isle of Man company (depending on the governance), action taking place overseas but directed from within the Isle of Man, or financial products or insurance bought on Isle of Man markets but held or used overseas. These examples are not exhaustive or definitive and will depend on the facts in the case.

Some breaches of financial sanctions involve complicated structures or relationships, where a genuine connection to the Isle of Man exists but is not immediately apparent. In every case, we will consider the facts to see whether the potential breach comes within our authority.

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

The Treasury will continue to take a fair and proportionate approach to assessments and consider each breach on a case-by-case basis, as set out below. In certain circumstances, the Treasury may choose not to impose a monetary penalty where alternative and more proportionate remedial action is in the public interest.

3.3. Being fair and proportionate in our assessment

We will treat each suspected breach on its own merits. We will assess the facts to decide on an outcome that is fair, proportionate and best enforces the purpose of the regime.

We take a number of factors into account when assessing a case. We will consider each factor by referring to our guidance and processes, and to the specific facts of the case. We may also seek legal advice, and advice from other law enforcement agencies.

To ensure our response is proportionate, we will assess overall how severe the breach is and the conduct of the individuals involved. A relevant factor in this assessment will include whether the person committing the breach knew or suspected that their conduct amounted to a breach of financial sanctions. Broadly, the more aggravating factors we see, the more likely

we are to impose a monetary penalty. The more serious the breach, and the worse the conduct of the individuals, the higher any monetary penalty is likely to be.

Mitigating factors may reduce a monetary penalty we impose or lead us not to take enforcement action. We will take mitigating factors into account when deciding how to proceed with a case.

3.4. Case factors

The Treasury will take several factors into account that will aggravate or mitigate when determining the facts and how seriously the Treasury view a case (the "case factors"). Within these case factors, the Treasury will make an overall assessment as to the breach severity and the conduct of the person who has breached. The case factors, split between severity and conduct, can include the following:

3.4.1. Severity

The Treasury will make an assessment as to 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.

A. Circumvention of sanctions

A person will usually commit an offence when they intentionally participate in activities knowing that the object or effect of them is (directly or indirectly) –

- to circumvent any of the prohibitions, or
- to enable or facilitate the contravention of any such prohibition or requirement

The Treasury takes circumvention very seriously. It attacks the integrity of the financial system and damages public confidence in the policies and objectives that the sanctions regimes support.

B. Value of the breach

The Treasury will consider the financial value (which may be a reasonable estimate) of the transactions or resources involved in the breach of the legislation as one factor in the overall assessment of the case. While a high value breach is generally more likely to result in enforcement action, there are circumstances involving lower-value breaches where it will be considered appropriate to take enforcement action.

C. Harm or risk of harm to the sanction regime's objectives

We will make an assessment of the harm, or the risk of harm, done to the sanction regime's objectives. Those objectives are set out in the relevant legislation, which describes what activities the regime aims to prevent or encourage - for example, to guard against nuclear proliferation. The greater the risk of harm to the regime's objectives, the more seriously we are likely to regard a case.

3.4.2. Conduct

In making an assessment as to the conduct of the person who has breached, we will consider how each party in a case has behaved. Individuals may display different behaviour over time and several types of behaviour in a particular case. We have divided conduct into several broad categories that we believe reflect non-compliance with the financial sanctions regime. Doing so enables us to ensure we respond appropriately to similar behaviour in different situations.

D. Intent, knowledge, reasonable cause to suspect etc.

We will consider whether the breach appears to be deliberate; whether there is evidence of neglect or a failure to take reasonable care; whether there has been a systems and control failure or an incorrect legal interpretation; whether the person seems unaware of their responsibilities; or whether there has simply been a mistake. For breaches occurring on or after 01 May 2024, although no longer part of the legal test for establishing a breach of financial sanctions, the Treasury may assess whether or not a person knew and/or had reasonable cause to suspect as an aggravating or mitigating factor.

It is possible for a mistake to cause a breach of financial sanctions regulations, for example making funds available to a designated person. We will consider both actual knowledge and whether a person should have been aware of the effect of their actions.

E. Knowledge of sanctions and compliance systems

When we consider what action to take, we take into account the level of actual and expected knowledge of financial sanctions held by an individual or a company, considering the kind of work they do and their exposure to financial sanctions risk.

Regulated professionals should meet regulatory and professional standards. We may consider their failure to do so an aggravating factor.

F. Ownership and control

Where the Treasury determines that a breach has occurred, and an incorrect assessment of ownership and control of an entity is relevant to the commission of the breach, the Treasury will consider the degree and quality of research and due diligence conducted on the ownership and control of that entity.

The test for establishing ownership and control of an entity is contained in the relevant sanctions legislation, and guidance on the test can be found in the Financial Sanctions - General Guidance. The Treasury does not prescribe the level or type of due diligence to be undertaken to ensure compliance with financial sanctions.

Due Diligence

The Treasury will consider appropriate due diligence conducted on the ownership and control of an entity to be a mitigating factor where the ownership and control determination reached was made in good faith and was a reasonable conclusion to draw from such due diligence. The Treasury may also consider a failure to carry out appropriate due diligence on the ownership and control of an entity, or the carrying out of any such due diligence in bad faith, as an aggravating factor.

The weight to be attributed to the mitigating or aggravating factor (as applicable) will be assessed on a case-by-case basis.

The Treasury will consider whether the level of due diligence conducted was appropriate to the degree of sanctions risk and nature of the transaction. The nature of a person's contractual or commercial relationship with the entity will also be relevant to the Treasury's consideration of the appropriateness of measures undertaken. The Treasury would expect to see evidence of a decision-making process that took account of the sanctions risk and considered what would be an appropriate level of due diligence in light of that risk.

The Treasury would usually expect these decisions to be made by reference to an internal framework or policy, but recognises that there is no one-size fits all approach. The Treasury expects careful scrutiny of information obtained as part of any ownership and control assessments, particularly where efforts appear to have been made by designated persons to avoid relevant thresholds.

Mitigating circumstances

Depending on the circumstances, the Treasury may consider demonstration of any and/or all of the following efforts as potentially mitigating –

- an examination of the formal ownership and control mechanisms of an entity to establish whether there is available evidence of ownership and control by a designated person
- an examination of actual, or the potential for, influence or de facto control over an entity by a designated person
- open-source research on an entity and any persons with ownership of, or the ability to exercise control over, the entity, together with an examination of whether such persons are, or have links to, designated persons such that further investigation may be warranted
- direct contact with the entity and/or other relevant entities to probe into indirect or de facto control, including, where appropriate, seeking commitments by Island persons as to the role of any designated person or person with links to a designated person
- regular checks and/or ongoing monitoring of the above where appropriate

Whilst the examples below expand on the above by listing some specific potential areas of enquiry, it is not possible for the Treasury to set out an exhaustive list of factors that could be considered as each case will depend on its individual circumstances.

Where we determine a breach to have occurred, the Treasury will take into account any relevant efforts and checks undertaken. The extent to which the efforts and checks undertaken are appropriate and reasonable in a given case will inevitably depend on the facts of the case, the degree of sanctions risk of the relevant entities and the nature of the transaction.

Examples

Examples of areas of enquiry the Treasury may expect to be undertaken by persons seeking to establish whether an entity is owned or controlled by a designated person are below.

It may not be necessary for the due diligence undertaken in a given case to have covered all of the areas of enquiry set out in the below examples for such due diligence to be a mitigating factor. It may not always be necessary to assess all of these for lower risk activities and transactions, and a relevant consideration may be the existence or lack of a direct or ongoing relationship. These are not intended as, and should not be considered, thresholds for meeting the ownership and control test in the legislation.

Formal ownership and/or control

1. the percentage of shares and/or voting power of shareholders
2. the ownership and distribution of other shares in a company
3. whether ownership / shareholding has recently been altered or divested, including in possible anticipation or response to the imposition of financial sanctions. If so, consideration of whether this warrants further investigation into the possibility of joint arrangements or indirect or *de facto* control
4. the composition of shares, and whether shares have been split into different classes, or other structural changes made
5. whether changes to ownership and/or control were part of a pre-planned or wider business/financial strategy
6. corporate constitutional documents, including articles of association or constitution
7. any commercial justifications for complex ownership and control structures
8. agreements between shareholders or between any shareholders and the entity (e.g., shareholders', joint venture, operating, or guarantee agreements)

Indirect or *de facto* control

1. indications of continued influence (or the potential for it) by a designated person, including through personal connections and financial relationships
2. the presence or involvement of proxies, including persons holding assets on behalf of a designated person
3. ownership, holdings of shares, or control by trusts associated with a designated person
4. if shares or other ownership interests of a designated person have been divested, the nature of any relationships and prior involvement of the person benefitting
5. if applicable, how recent transfers of shares were funded and whether this was done at an accurate and true valuation
6. any operational steps taken to ensure that the designated person cannot exercise control over the entity and/or that the designated person cannot benefit from, or use, corporate assets
7. information relating to the circumstances of board and/or management appointments, including the backgrounds, relevant experience, and relationships with designated persons
8. the running of board meetings and governance processes, including board or shareholders'
9. meeting minutes concerning recent changes in the entity's ownership and control relating to the designated person
10. ongoing financial liabilities directly related to a designated person, e.g., personal loans, loan guarantees, property holdings, equipment etc.
11. other shareholder agreements, voting agreements, put or call options or other coordination agreements in place between the entity and the designated person or controlled entities
12. whether there are any benefits conferred to the designated person by the entity or transactions between the entity and the designated person

Where relationships or activity is ongoing, the Treasury expects that due diligence is, and assessments are, reviewed at appropriate times. Ownership and control is not static and the Treasury's consideration of the due diligence undertaken will consider the regularity of checks, and/or ongoing monitoring where appropriate.

For consideration of due diligence as a mitigating factor, the onus for demonstrating that reasonable and appropriate due diligence into ownership and control has been undertaken, and that the ownership and control determination reached was made in good faith and was a reasonable conclusion to draw from such due diligence, rests with the person against whom the Treasury is considering taking enforcement action.

G. Failure to apply for a licence or breaching licence terms

We licence certain uses of frozen funds under derogations present in the financial sanctions legislation. A licence is a written permission from the Treasury allowing an act that would otherwise breach prohibitions imposed by financial sanctions. Once we have issued a licence, monetary penalties may also apply to breaches of licence conditions.

H. Professional facilitation

Facilitation of a financial sanctions breach is a form of circumvention (see sub-section A above). Individuals who act on behalf of or provide advice to others as part of their job may be considered professional facilitators. They should ensure they act within the law while representing their client. Simply discovering a potential breach when acting for a client does not automatically make a professional facilitator party to it, but they may become so if their subsequent actions amount to collusion in the breach. Potential breaches should be reported to the Financial Intelligence Unit (FIU).

I. Repeated, persistent or extended breaches

Repeated, persistent or extended breaches by the same person will be considered as an aggravating factor. This is particularly true when the person is unresponsive to a previous warning and makes further breaches of financial sanctions. We will view multiple breaches extended over time as being more serious collectively, even if individually they are of low value or relative seriousness.

J. Reporting of breaches to the Financial Intelligence Unit (FIU)

Breaches of financial sanctions must be reported to the FIU. Please note that reporting obligations apply regardless of client confidentiality, but remain subject to legal professional privilege. A number of factors around reporting affect how we deal with a case, as explained below.

Voluntary disclosure, materially complete disclosure and good faith

The Treasury values voluntary disclosure. Voluntary disclosure of a breach of financial sanctions by a person who has committed a breach may be a mitigating factor when we assess the case. It may also have an impact on any subsequent decision to apply a monetary penalty.

If multiple parties are involved in a breach, we expect voluntary disclosure from each party.

Reports regarding breaches or suspected breaches should be submitted to the FIU via the online reporting system THEMIS.

We expect breaches to be disclosed as soon as reasonably practicable after discovery of the breach. What this means will differ in each case.

Although it is reasonable for a person to take some time to assess the nature and extent of the breach, or seek legal advice, this should not delay an effective response to the breach.

In practice, it is better to contact us early to inform us of a breach or potential breach. Where full disclosure is not possible, a person could make an early disclosure with partial information on the basis that it is still working out the facts and will make a further and full disclosure as soon as possible.

We expect disclosures to include all evidence relating to all the facts of the breach. We expect facts to be truthfully stated in good faith.

The Treasury takes very seriously any evidence that a disclosure did not include relevant information, unless this was a mistake or new facts emerge.

To determine whether a disclosure is voluntary, we will consider the facts and timing of each disclosure individually. The mere fact that another party has disclosed first will not necessarily lead to the conclusion that later disclosure has any lesser value. However, we will not consider disclosure to be voluntary and therefore a mitigating factor if -

- we have required or requested provision of information about a breach or breaches
- the person has been prompted to disclose facts because the Treasury is assessing a case
- the person has been prompted or required in law to disclose facts because of a separate law enforcement or regulatory investigation.

We will consider any issue around voluntary disclosure as part of a person's representations.

K. Co-operation

The Treasury also values co-operation throughout the course of an investigation and consideration of enforcement action. Co-operation makes enforcing the law simpler, easier, quicker and more effective.

This may include a person proactively undertaking internal investigations and providing the Treasury with material or information beyond that requested that could assist the Treasury's consideration of the case. The prompt provision of complete responses to questions put by the Treasury will also be considered relevant, and refusal to do so may be considered an aggravating factor.

L. Failure to provide information on financial sanctions breaches

Failure to provide information that is compelled by virtue of sanctions legislation or further to a request by the Treasury on financial sanctions breaches can be a criminal offence in its own right

In some circumstances, financial sanctions legislation require relevant firms to give information. In other circumstances the Treasury, can use statutory powers to require the provision of information.

In both cases, failure to provide information may be an offence for which we may impose a monetary penalty. An offence is only committed where a person fails to produce information without reasonable excuse.

We also recognise that some documents may be protected by legal professional privilege. Protections for legally privileged material are explicitly written into the majority of the sanctions

legislation, which exempt legally privileged information from having to be disclosed under the above obligations and requirements. Such protections will apply even where not explicitly referenced.

M. Other relevant factors

We reserve the right to consider any factor in a case if it is material and relevant. This enables us to consider new situations and ensure all the facts receive due attention. Situation dependant, some case factors within the categories of severity and conduct may also be relevant to consider in the other, or in both, categories.

Some sectors are affected by financial sanctions in ways that require specialist knowledge of the sector to assess. We will always consider specific circumstances when assessing the facts of a case and may take specialist advice to ensure we understand the situation correctly. We may also ask for more information from those involved.

3.5. Assessment outcome

As part of our case assessment, we will make an assessment as to the severity of the case and conduct of each person involved. 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 clearly much more serious. It is appropriate to be able to make this distinction as part of our consideration of the facts.

'Most serious' type cases may involve a very high value, particularly poor, negligent or intentional conduct or severe or lasting damage to the purposes of the sanctions regime. The Treasury will decide this based on the facts of the case. The most serious cases are likely to attract a higher monetary penalty level. We will explain why we consider a case to be 'most serious' to the person we intend to penalise and when we publish a case summary (if we do). This distinction also affects any reduction of the monetary penalty due to voluntary disclosure, described in Chapter 4, below.

3.6. Public interest

The Treasury will also consider the public interest in pursuing enforcement action, and in determining the type of enforcement action to pursue. Consideration of the public interest will encompass such issues as the prudent use of public resources and fairness and consistency in applying the law. In some instances, it may not be in the public interest to take enforcement action even where this appears to be warranted, and in other instances it may be in the public interest to take more serious action than the facts of the breach appear to warrant.

Revisions to case-assessment process

From time to time we will review our case-assessment process and may change it based on our experience. Where we make substantive amendments to our approach, we will make clear (within the guidance and any publication notice) that we have done so.

4. The monetary penalty process: imposing a penalty

The Treasury's monetary penalty-decision process consists of three parts -

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

4.1. Monetary penalty threshold

Following a case assessment, as per Chapter 3, the Treasury will likely assess the penalty threshold is reached if one or more of the following can be demonstrated -

- the case meets the tests in section 7(1) of the 2024 Act; that is, on the balance of probabilities, there has been a breach
- the breach has involved funds or economic resources being made available to a designated person. The financial sanctions regimes are designed to prevent this
- the breach has involved a person dealing with the funds or economic resources of a designated person or entity in breach of an asset freeze
- there is evidence of circumvention. By making arrangements to circumvent the law, a person not only breaches the law but attacks the integrity of the system
- a person has not complied with a requirement to provide information

  and/or
- the Treasury considers that a monetary penalty is appropriate and proportionate.

The Treasury will assess these matters on a case-by-case basis. If the penalty threshold is reached, we may impose a penalty. We have discretion not to do so and in practice decide what enforcement response is appropriate depending on whether the case is of lesser or moderate severity or serious enough to justify imposing a monetary penalty.

4.2. Baseline monetary penalty matrix

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

Voluntary disclosure may be a mitigating factor in our assessment of the case. It may also reduce the level of monetary penalty we impose.

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

How this works

The Treasury will first work out the statutory maximum monetary penalty it could impose. This will be the greater of £1 million or 50% of the value of the breach. Within this maximum, the Treasury will then decide what level of monetary penalty is reasonable and proportionate, based on our view of the seriousness of the case. This could still be the permitted maximum if that is reasonable and proportionate, and could be any amount between the maximum and zero.

'reasonable' means an ordinary reasonable person would regard the proposed penalty as appropriate to the offence

'proportionate' means there is a relationship between the value of the proposed penalty and a holistic assessment of all the other factors present in the case. This does not mean that a penalty should necessarily be either a specific percentage or multiple of the breach amount. It only means it must be neither an insufficient nor excessive response.

This creates a baseline penalty level to which the following penalty matrix applies. We will make up to a 50% reduction in the final monetary penalty amount to a person who gives a prompt and complete voluntary disclosure of a breach of financial sanctions. If we assess a case as 'serious', we may make reductions of up to 50% for voluntary disclosure. If we assess a case as 'most serious', we may make reductions of up to 30% for voluntary disclosure. If we assess a series of breaches where only some were voluntarily disclosed to the FIU we will take that into account when determining any reduction.

This makes clear the value we place on voluntary disclosure, and that there may be a benefit to voluntary disclosure even in the most serious cases.

A voluntary disclosure reduction will usually be applied when a person notifies the FIU of a suspected breach. However, this will be assessed on a case by case basis and may not be given if, among other things, it transpires that they have not made a complete disclosure in the course of the investigation, if they are self- disclosing to the FIU only because they believe the FIU is already aware, or if they refuse to provide information upon request.

4.3. Monetary penalty decision

The penalty process follows this approach -

- determine the estimated value of the transactions which breach the legislation
- determine the maximum monetary penalty: this is £1 million or 50% of the estimated value of the breach, whichever is higher
- apply the seriousness determination: either 'serious' or 'most serious', depending on the facts
- determine the baseline: this is also based on the facts of the case and what level of monetary penalty under the relevant maximum would be reasonable and proportionate
- determine if a reduction applies: if so, determine an appropriate percentage reduction and apply it to the baseline

In the event that there is no transaction value to base a calculation on (for example, if a penalty is imposed for an information offence) the Treasury will impose such monetary penalty as seems reasonable and proportionate to the facts of the case. The permitted maximum in such cases is £1 million. This initial process creates a monetary penalty recommendation.

This recommendation is then considered by a decision maker, who can decide to agree, change or reject the recommendation. If the Treasury is minded to impose a monetary penalty, this is then communicated to the person on whom the Treasury intends to impose the penalty. That person has a right to make representations (see Chapter 5) which could change the Treasury's view on whether a monetary penalty should be imposed, or the value of any penalty.

4.4. Monetary penalties for information offences

The Treasury will treat a failure to provide requested information as an aggravating factor in a case.

For relevant firms, as defined in paragraph 2 of Schedule 2 to the Sanctions (Implementation of UK Sanctions) Regulations 2024, a failure to provide information on breaches of financial sanctions may be a criminal offence.

The Treasury issues licences to permit acts that would otherwise breach prohibitions imposed by financial sanctions. We often set reporting requirements in licences. If a person fails to comply with reporting requirements in a Treasury licence, it may be an offence and we may issue a monetary penalty.

The Treasury also has broad powers to require information from anyone. It may be a criminal offence in its own right not to provide it. We may issue a penalty if, for example, the Treasury has specifically demanded information that has not been provided, or our demand for information has been refused, particularly when this has the effect of frustrating our proper case assessment.

The Treasury will impose a level of monetary penalty that reflects the seriousness of the failure to provide information. We may impose a penalty for information offences relating to a breach as well as the penalty for the breach itself. They will be imposed separately to show clearly that there are monetary penalties for separate offences.

If we impose a monetary penalty for information offences, we will use the process described above in chapter 4.

5. Procedure for imposing a monetary penalty

Section 8 of the 2024 Act sets out the steps that the Treasury must take to impose a monetary penalty, the rights that a person has to make representations, and the right to appeal the decision. This Chapter explains the processes involved.

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

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

The Treasury will explain the reasons for the monetary penalty by summarising our case assessment in enough detail to justify why it is appropriate and also to allow the person to make meaningful representations.

5.1. Making representations

The Treasury wants the process of making representations to be fair, proportionate and effective. A person may make representations about any relevant matters. These may include (for example) matters of law, the facts of the case, our interpretation of the facts, how we have followed our processes, and whether the penalty is fair and proportionate. A person may also make representations on the effect that publication of the imposition of a monetary penalty would have on them or their company (or both).

We may consider but disregard representations that are irrelevant. If we disregard a representation, we will explain why in our response.

Representations must be in writing and in a format that -

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

Considerations for making representations

1. The Treasury requires representations in writing so that it has a clear record of all information considered when making the decision. Consequently, the Treasury will not normally allow representations to be made in person, but will consider any request to do so. If a party feels that they are disadvantaged by being unable to make representations in person then they may make an application to the Treasury stating their reasons, and we will take this into account.

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

3. The Treasury will not normally consider representations by a third party unless they form part of the representations made by the person penalised or their agent. This ensures we take into account only representations the person wishes us to.

4. The person has 28 working days to make written representations from the date of our initial letter. We will not normally accept late representations. Persons or their representatives may ask us to extend this period and must provide evidence of the reasons for that request.

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

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

7. The Treasury will normally consider and respond to representations within 28 working days after the final date of the period for making representations. However, we may extend the period if this is necessary to ensure a fair assessment of the representations. We will inform the person of any extension and will respond as soon as we are able.

8. The Treasury will write to the person or their representative with our final assessment, taking into account the representations. The penalty becomes payable at this stage. If the assessment means we still intend to impose a penalty, our letter will include advice on the person's right to appeal the decision, as set out in Chapter 6.

6. The right of appeal

Section 8 of the 2024 Act states at subsections (3) to (6):

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

(a) inform the person of its decision;

(b) explain that the person is entitled to appeal the decision; and

(c) specify the period within which an appeal may be brought.

(4) A person may appeal against a decision of the Treasury under this section to a court of summary jurisdiction.

(5) The appeal must be brought within the period of 30 days beginning with the date on which the person was informed of the Treasury's decision to impose the penalty.

(6) On appeal the court may —

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

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

(c) set aside the decision to impose the penalty.

Court of summary jurisdiction procedure is outside the scope of this guidance. It is not a process managed by the Treasury. The court of summary jurisdiction procedure rules can be found in the Summary Jurisdiction Act 1989

7. Paying a monetary penalty

Once a monetary penalty becomes finalised and payable, the Treasury will inform the person concerned how they should pay.

Payment should be made within 28 working days of the date the penalty has been imposed, and should not be unreasonably delayed. We can discuss payment timing with persons subject to a penalty.

The Treasury will pursue non-payment of debt by appropriate means. Section 7(8) of the 2024 Act and regulation 88C(8) of The Russia Regulations provide that a monetary penalty is recoverable by the Treasury as a civil debt.

Section 7(9) of the 2024 Act and regulation 88C(9) of the Russia Regulations provide that any monetary penalty received by the Treasury is to be paid into General Revenue.

This means that the payment goes into the Treasury general funds for use by the government.

8. Publication of monetary penalty

8.1. Monetary penalties

Section 10(2) of the 2024 Act says:

> *(1) The Treasury must, at such intervals as it considers appropriate, publish reports about the imposition of monetary penalties under section 7 or 9.*

The Treasury will normally publish details of all monetary penalties it imposes, as a summary of the case. Publishing such details helps increase awareness, deter future non-compliance and promote good practice.

This summary will set out the following -

- who the penalty has been imposed on - each person, company or entity
- the summary facts of the case, including breach type; sanctions regime; the legislation broken; and whether there was voluntary disclosure
- the aggregated GBP value of the transactions which are in breach of the legislation, where this can be identified, and why the Treasury imposed the monetary penalty (where applicable)
- the GBP penalty value imposed on each person (where applicable)
- compliance lessons the Treasury wishes to highlight in this case, to help others avoid committing a similar breach
- other information required to give a true understanding of the case and the Treasury's consideration of it.

8.2. Non-monetary penalty

The Treasury may also choose to publish details of breach cases where no monetary penalty has been imposed. Further details on the circumstances in which the Treasury may choose to make such a Disclosure are set out in Chapter 9 of this guidance. We may draw attention to the imposition of a monetary penalty or breach of financial sanctions where no monetary penalty has been imposed through media relations, highlighting the case and the action we took.

We will not generally make public more than a summary of the case. To do so may increase the risk of financial sanctions contravention, particularly where a new technique has been used to circumvent the law. Any information not published may be exempt from release under the Freedom of Information Act 2015. We will review and consider any FOI request on its own merits.

The Treasury will continue to assess each breach on a case-by-case basis and determine what

remedial action is appropriate in line with the principles set out in this guidance.

8.3. Other circumstances

There may be circumstances in which we decide that it is not appropriate to publish a summary, for example where it is not in the public interest to do so or where the impact of publishing is considered to be disproportionate. It is for the person to tell us (during representations) about any effect that publication of a report may have, and we will consider it at that point.

We would normally expect to publish a summary where it is in the public interest and there may be compliance lessons to be shared, therefore, the bar for not doing so will be high.

The Treasury recognises there may be different publication considerations where the breach has been carried out by an individual rather than an entity.

If we do not publish a summary or decide it is not proportionate, we will satisfy the requirement at section 10(2) by either publishing an anonymised report, or by including the case in statistical information and any aggregated reporting the Treasury publishes.

8.4. Timing of publication where a monetary penalty is imposed

The Treasury will not normally publish the case summary where a monetary penalty has been imposed until after the person has had the opportunity to exercise their right to an appeal - once the deadline for requesting an appeal set out in this guidance has elapsed.

9. Publication of breaches where no monetary penalty is imposed

The guidance in this Chapter, in relation to the 2024 Act, applies to all cases where a financial sanctions breach has taken place on or after 00:00 01 May 2024. This chapter sets out the Treasury's approach to publishing the details of breaches of financial sanctions in accordance with powers set out in the 2024 Act.

Furthermore, regulation 88C(10) of the Russia Regulations also provides for the publishing of details of breaches of financial sanctions obligations.

Publications made under section 10(3) of the 2024 Act are referred to as "Disclosures". Section 10(3) of the 2024 Act says:

> (3) The Treasury may also publish reports at such intervals as it considers appropriate in cases where—
>
> (a) a monetary penalty has not been imposed under section 7 or 9, but
>
> (b) the Treasury is satisfied, on the balance of probabilities, that a person has breached a prohibition, or failed to comply with an obligation, that is imposed by or under financial sanctions legislation.

9.1. Circumstances in which the Treasury may make a Disclosure

As set out in Chapter 3, the Treasury categorises cases as being of lesser severity, moderate severity or serious enough to justify a civil monetary penalty. Cases which the Treasury deems to be of moderate severity are likely to be dealt with via a Disclosure if the Treasury considers a warning letter would be too lenient, but a monetary penalty would be disproportionately punitive.

Such Disclosures will usually publicly name the firm or individual who has committed the breach and provide a summary of the facts of the breach. There are also other circumstances in which the Treasury may deem a Disclosure to be a fair and proportionate outcome, including –

- where there are valuable lessons to be learnt for industry; and
- exceptionally, where it is not in the public interest to issue a monetary penalty.

A Disclosure which highlights compliance lessons for industry may focus on an individual case or deal with several cases of a similar nature. This will allow the Treasury to highlight specific risks as well as broader trends which may make it easier for industry actors to comply with financial sanctions.

The bar for the Treasury making a Disclosure in lieu of a monetary penalty (where the case is

assessed as sufficiently serious for a monetary penalty) is high and this option is reserved for genuinely exceptional circumstances. For example, this might be appropriate in certain humanitarian cases where a breach is serious enough to justify a penalty but, on the particular facts, a monetary penalty would not be in the public interest.

9.2. Timing of publication where a Disclosure is made

Where the Treasury intends to make a Disclosure, the Treasury will, prior to publication, inform the person that the Treasury has assessed to have committed a breach of our intention to publish a case summary if it is the Treasury's intention to name the person in the Disclosure.

The Treasury will provide the person with 28 working days from this date in which to make any representations in relation to the finding of a breach and intended publication of the case summary. Persons or their representatives may ask us to extend this period and must provide evidence of the reasons for that request.

Where the Treasury intends to make a Disclosure but does not intend to name the person who committed the breach (for example, in the circumstances set out in section 9.3 below) the Treasury will inform the person of its intention to make a Disclosure but will not invite representations.

Following consideration of any representations made, the Treasury may –

- decide to publish details of the case
- decide to publish details of the case, but details of what the Treasury had intended to publish may be changed
- decide not to publish details of the case

If, following representations, the Treasury upholds its decision to publish details of the case, the Treasury will share the written case summary in advance of publication for the purpose of ensuring factual accuracy.

9.3. Information included in a Disclosure

A Disclosure may include the following information –

- who performed the breach
- the summary facts of the case, including breach type; sanctions regime; the legislation broken; and whether the breach was self-reported
- the aggregated GBP value of the transactions which are in breach of the legislation, where this can be identified, and why the Treasury decided to publish a case summary
- compliance lessons the Treasury wishes to highlight in this case, to help others avoid committing a similar breach
- other information required to give a true understanding of the case and the Treasury's consideration of it.

The Treasury will identify the designated person to whom the breach relates as a fact in the case unless there are strong reasons not to. This will include consideration of data protection obligations as appropriate.

Where a Disclosure is made solely for the purpose of highlighting compliance lessons for industry and the breach is considered to be of lesser severity, the Treasury will not usually identify who performed the breach.

Disclosures will be published on the Treasury's Sanctions page alongside publications related to civil monetary penalties. The Treasury may refer to Disclosures in other publications it produces or in the course of its outreach activities to promote compliance lessons or raise awareness of financial sanctions risks.