

Since 1 April 2017, the prospect of UK and non-UK companies receiving HM Treasury fines of £1 million or more has become a legal reality.

Part 8 of the *Policing and Crime Act*¹ (the Act) gives the Office of Financial Sanctions Implementation (OFSI), which is part of HM Treasury, power to offer deferred prosecution agreements and impose civil monetary penalties for infringements of UK, EU and United Nations (UN) financial sanctions. In effect, the Act, which received Royal Assent on 31 January 2017², marks the era of a new UK financial sanctions regime with significant monetary and criminal penalties for breaches.

Businesses should take note that OFSI has recently published new guidance on monetary penalties for breaches of financial sanctions³, a response to its consultation on this guidance⁴, as well as a press release⁵.

What Is the General Scope of Application of the UK Sanctions Regime?

UK sanctions in effect apply to any person in the UK, any UK citizen wherever located, any corporate entity operating in the UK, as well as any corporate entity incorporated or constituted under the law of any part of the UK wherever located (including overseas branches of UK companies). Moreover, the UK must adhere to UN and EU sanctions.

What is the Scope of OFSI's Enforcement Regime?

Under OFSI's guidance on monetary penalties for breaches of financial sanctions, a company is subject to the new enforcement measures if it has a UK connection, meaning that non-UK companies may also fall under the remit of OFSI's enforcement regime. OFSI recently published a guidance, which provides examples of what would amount to a UK connection such as: a UK company working overseas; an international transaction clearing or transiting via the UK; actions by a local subsidiary of a UK company; or financial products or insurance bought on UK markets but held or used overseas⁶.

Increase of Monetary Fines

Under Section 146 of the Act, HM Treasury has the power to impose a monetary penalty on "a person" (this includes both a legal person and a natural person) if it is satisfied on the balance of probabilities that a person has breached a financial sanction and that the person knew or had reasonable cause to suspect that a breach was being committed. "Balance of probabilities" means it is more likely than not that something has happened, and "reasonable cause to suspect" refers to an objective test that asks whether there were factual circumstances from which an honest and reasonable person should have inferred knowledge or formed the suspicion that the conduct amounted to a breach of sanctions⁷.

OFSI will look at a variety of factors to determine the seriousness of the breach, including the severity of the conduct, knowledge and compliance standards in the sector, the behaviour of the parties, the number of breaches, and whether the breaches have been reported to OFSI. OFSI's guidance states that the "penalty threshold" will be reached⁸, where:

- On the balance of probabilities there has been a breach and the person committing it knew or had reasonable cause to suspect a breach is being committed; and one or more of the following:
 - The breach has involved funds or economic resources being made available directly to a designated person
 - Arrangements have been made to deliberately, whether directly or indirectly, circumvent the law

1 [Policing and Crime Act 2017](#).

2 Part 8 (section 143 to 156) of the Act that addresses financial sanctions recently came into force on 1 April 2017. Other provisions enter into force on 3 April, 6 April and 2 May, respectively.

3 OFSI HM Treasury, "[Monetary penalties for breaches of financial sanctions – guidance](#)", April 2017.

4 OFSI HM Treasury, "[The process for imposing monetary penalties for breaches of financial sanctions: consultation](#)", December 2016.

5 OFSI HM Treasury, "[New penalties for breaching financial sanctions now in force](#)", April 2017.

6 OFSI HM Treasury, "[Monetary penalties for breaches of financial sanctions – guidance](#)", April 2017, page 12.

7 OFSI HM Treasury, "[Monetary penalties for breaches of financial sanctions – guidance](#)", April 2017, page 11.

8 OFSI HM Treasury, "[Monetary penalties for breaches of financial sanctions – guidance](#)", April 2017, page 18.

- Without the above factors being present, OFSI believe that a monetary penalty is appropriate and proportionate
- A person has not complied with a requirement to provide information to OFSI

In the event that the penalty threshold is reached, then OFSI may impose a penalty. However, in limited circumstances OFSI have discretion not to do so.

What is the Maximum Monetary Penalty?

In accordance with section 146 of the Act, where the breach of sanctions does not relate to particular funds or economic resources, the maximum penalty is £1 million. However, where the breach relates to particular funds or economic resources, the maximum is either £1 million or, if it is greater, 50% of the estimated value of the funds or resources. In any event, within this maximum, OFSI will decide what level of penalty is reasonable and proportionate, based on its view of the seriousness of the case⁹. Companies should take note that OFSI reserves the right not to impose a penalty in certain circumstances, where:

- It is not in the public interest to impose a penalty
- Imposing the penalty would have no meaningful effect – where the value of the penalty is so low that it would neither deter offending nor provide restitution for the wrongdoing
- Where the offence arose from improper coercion or blackmail¹⁰

Similar to the EU's cartel leniency policy, OFSI's guidance states that there will be incentives for a party in breach of sanctions to self-report to OFSI. In "serious" cases, this could result in up to a 50% reduction in the final penalty. In the "most serious" cases, voluntary disclosure could result in a reduction of up to 30%¹¹.

Increase in Maximum Criminal Penalty

The enhanced penalties now align more closely with those available for other breaches of the EU sanctions regime, and illustrate the level of seriousness of such a breach.

The Act increases the maximum criminal penalty for failing to comply with a prohibition under a freezing order **from two to seven years for conviction on indictment, and from three to 12 months on summary conviction**. Moreover, as stated by section 148(1) of the Act, where an offence is committed with the consent or connivance of a corporate body, or through the neglect of its officer, both are guilty of the offence and liable to be punished accordingly.

What Does This Mean for You and Your Business?

OFSI's enhanced powers accorded to it by Part 8 of the Act seems to indicate that the UK financial sanctions enforcement regime will be much more active in the near future.

Businesses will need to exercise extra caution when deciding who they do business with, in addition to who does business on their behalf. In order to not fall afoul of their legal obligations, business would be well-advised to err on the side of safety and implement risk-based policies and procedures to avoid being exposed to financial penalties. Even in a dire situation, businesses should remember that voluntary disclosure of a breach to OFSI can lead to a reduction of a penalty.

About Our Team

Our export controls and sanctions team has the ability to advise on the shifting regulatory framework on both sides of the Atlantic. We have extensive experience in advising and representing a wide range of companies and financial intuitions in Europe, the US and other jurisdictions within our global network of 46 offices in 21 countries on export control and sanctions from a multijurisdictional perspective. Our team is part of Squire Patton Boggs' overall International Trade Practice, providing a "one-stop" solution to global trade compliance through rapid, professional and tailored advice and compliance tools to fit your business needs and processes. If you have any questions relating to sanctions, please contact a member of our team. You can also email us at InternationalTradeCompliance@squirepb.com for assistance.

⁹ OFSI HM Treasury, "Monetary penalties for breaches of financial sanctions – guidance", April 2017, page 17.

¹⁰ OFSI HM Treasury, "Monetary penalties for breaches of financial sanctions – guidance", April 2017, pages 19-20.

¹¹ OFSI HM Treasury, "Monetary penalties for breaches of financial sanctions – guidance", April 2017, page 18.

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