Title: Amendments to Financial Sanctions Legislation (Economic Crime (Transparency and Enforcement) Bill)	De minimis assessment **Date: 28/02/2022**
Lead department: HM Treasury **Contact for enquiries: ofsi@hmtreasury.gov.uk**	**Type of legislation: Domestic** **Date measure comes into force:** **Three months from Royal Assent (s.146)**
Cost of Preferred Option: <£5m	**Equivalent Annual Net Direct Cost to Business per year: <£5m**

1. What is the problem under consideration? Why is government intervention necessary?

Sanctions are an important foreign policy and national security tool. They are restrictive measures which are designed to be temporary and can be used to coerce a change in behaviour, to constrain behaviour, or to communicate a clear political message to other countries or persons. It is necessary for HM Treasury, exercising its competent authority function through the Office for Financial Sanctions Implementation (OFSI), to have strengthened powers to enforce financial sanctions effectively via its civil monetary penalty powers.

The measures covered within this IA greatly enhance OFSI's ability to do so with: a more robust legal test; the ability to publicise breaches not resulting in monetary penalties to censure and deter further violations; broader information sharing powers, and ministerial discretion to delegate reviews of penalties. It is only possible to make these changes through primary legislation.

The Economic Crime (Transparency and Enforcement) Bill encompasses a number of measures for which Impact Assessments have been completed. Those making amendments relevant to financial sanctions are an HMT responsibility and this IA covers those measures only.

2. What are the policy objectives and the intended effects?

The Bill is introducing 4 measures to deliver the Government's policy objectives by amending existing financial sanctions legislation:

1. Monetary penalty legal test
2. Public disclosure of investigation outcomes
3. Information sharing provisions
4. Delegation of ministerial reviews

The focus of this impact assessment is on (1) - the primary measure that is likely to have an economic impact on businesses: amending Section 146 of the Policing and Crime Act to change the basis under which civil monetary penalties can be applied for breaches of financial sanctions.

<u>1. Monetary penalty legal test</u>

We intend to amend section 146 of the Policing and Crime Act 2017 so that civil monetary penalties can be applied to persons for breaches of financial sanctions with no requirement for OFSI to prove that the person had knowledge, or reasonable cause to suspect, their activity breached sanctions. The burden on OFSI to prove that there was a factual breach of sanctions remains and this measure does not change the test for criminal liability. Specific financial sanctions regimes for various purposes are contained in regulations made under the Sanctions and Anti-Money Laundering Act 2018. HM Treasury's ability to impose civil monetary penalties for breaches of these prohibitions is contained in the Policing and Crime Act 2017.

The objective of this measure is to strengthen OFSI's ability to issue penalties where breaches have already occurred and provide OFSI greater legal certainty when taking enforcement action, including against negligent companies. This measure does not in itself represent a significant change in OFSI's approach to enforcement or the standards expected to be upheld. This would support OFSI making the fullest possible contribution to the UK's foreign policy and national security goals.

It will also help to maintain the integrity of, and confidence in, the UK financial services sector as the scope of financial sanctions increase. It does not mandate any additional measures or impose any new requirements on business or other organisations.

2. Public disclosure of investigation outcomes:

At present HMT, via OFSI, can publicise financial sanctions breaches which result in issuance of a monetary penalty. HMT proposes to amend the Policing and Crime Act (2017) to allow it to publish notices detailing financial sanctions breaches by UK (United Kingdom) persons in cases where OFSI has decided not to impose a monetary penalty.

The effect of this measure is that by publicising the details of cases where financial sanctions breaches have been committed, including names of those involved, would have a clear deterrent effect. This would also help OFSI share 'lessons learnt' from more breach cases more widely, which in turn could help to drive up financial sanctions compliance in the UK.

3. Information sharing provisions

We will also be amending primary legislation to enable better information sharing provisions to be written into SIs. This will have no immediate impact on government costs and no impact on business.

4. Delegation of ministerial reviews

An amendment enabling delegation of ministerial reviews of monetary penalties will be a purely administrative provision with no cost impact on businesses.

3. What policy options have been considered, including any alternatives to regulation? Please justify preferred option

Option 1 – Amend existing legislation (Preferred)

The preferred option is that which is proposed within this impact assessment is to amend section 146 of the Policing and Crime Act 2017, allowing civil monetary penalties to be applied to persons for breaches of financial sanctions with no requirement for OFSI to prove that the person had knowledge or reasonable cause to suspect their activity breached sanctions.

A strict liability test accompanied by guidance best allows for the robust enforcement of financial sanctions whilst also allowing OFSI to take into consideration a wide range of factors, including self-disclosure, proportionality, public interest, and steps taken by companies and individuals to ensure they do not breach financial sanctions.

We will commit to engaging with business and stakeholders to update accompanying guidance to this revised legal test that sets out OFSI's enforcement approach and principles that companies may wish to consider when designing reasonable precautions. OFSI already publishes guidance emphasising the types of checks that companies should carry out around ownership and higher-risk countries. We do not expect OFSI's revised guidance to impose a significantly greater regulatory burden, or that companies would choose to significantly increase their investment in controls from this. Instead, it would seek to provide greater direction on the measures OFSI would consider appropriate to have in place, though this will likely align with and be informed by existing industry guidance and current best practice.

For businesses that are unlikely to be exposed to financial sanctions, we will work closely with them to ensure our guidance reflects that systems and controls should be risk-based and proportionate so as not impose an undue burden. The main groups that are impacted by financial sanctions are businesses (largely banking and payment processors), charities (and other NGOs), and those who frequently operate in areas where there is a high likelihood of financial sanctions being engaged.

We consider that most banks will already have in place systems to meet their obligations to prevent breaches of financial sanctions. Many regulated financial institutions already have requirements enforced by the Financial Conduct Authority and other supervisors to conduct many of the checks that would generally be considered appropriate for financial sanctions. We also expect many highly exposed businesses to also fall within the broad jurisdiction and robustly enforced US Office of Foreign Asset Control (OFAC) requirements. This imposes a strict liability test which means that many firms will already need to have systems in place for.

For public disclosure of investigation outcomes, we believe this would have a clear deterrent effect and in some cases be a fairer and more proportionate outcome than a monetary penalty. This would also help OFSI share 'lessons learnt' from more breach cases more widely, which in turn could help to drive up financial sanctions compliance in the UK.

Option 2 - Do nothing

To do nothing could be highly contentious, there is high public and media interest surrounding recent designations and sanctions in relation to the ongoing situation in Russia. To not provide OFSI sufficiently strong powers to pursue breaches of financial sanctions may undermine the critical role sanctions play in supporting the UK's foreign policy and national security objectives.

These measures strengthen OFSI's ability to pursue enforcement action against malign actors who may be looking to circumvent sanctions and use the UK to gain access to funds or economic resource. OFSI must also be able to clearly impose monetary penalties against negligent businesses facilitating breaches of financial sanctions that undermine sanctions regimes.

4. Please justify why the net impacts (i.e., net costs or benefits) to business will be less than £5 million a year.

These measures relate to enforcement against financial sanctions breaches. In the financial year 2020 to 2021 OFSI considered 132 reports of potential financial sanctions breaches. This is a slight decrease from 2019 to 2020 where 140 instances were considered but generally the number of cases considered remains on an upwards trajectory from the 99 potential financial sanctions breaches that considered in the financial year 2018 to 2019. OFSI's statistics are based on the year in which a report is received (or OFSI becomes aware of a potential breach through other means), rather than the year in which the potential breach activity occurred.

Many of the potential breaches reported to OFSI are deemed not to be breaches of financial sanctions after investigation. OFSI has imposed 7 monetary penalties since being granted powers to do so in 2017, and usually resolves breaches by other means, including warning letters or referrals to other relevant authorities and regulators (including the FCA).

The impact of financial sanctions on business depends both on the scope (who financial sanctions apply to) and on the enforcement regime for sanctions. The increase in the breadth and severity of UK financial sanctions imposed in recent weeks, with further designations likely to follow, make an accurate assessment of how financial institutions and other exposed businesses will respond to these specific enforcement measures extremely challenging. However, as these measures support the enforcement of financial sanctions, and do not mandate any additional actions or financial sanctions requirements, we do not currently have reliable evidence that these will create significant direct costs to business.

These measures would not be directly imposing new obligations on businesses, although guidance may recommend what appropriate systems and controls could look like for certain types of businesses. We expect businesses in high-exposure environments will already have measures in place and these measure does not oblige business to change any of their current procedures. The main costs we anticipate to be incurred on business would be in familiarisation and, if appropriate, reviews of existing systems and controls to ensure companies can satisfy themselves they are unlikely to breach financial sanctions. These are reviews that we would expect companies to be undertaking on a regular basis in any event, especially with the increase in new sanctions regimes recently imposed. We do not currently have evidence showing that the regulatory impact of this amendment would be above the £5 million threshold. We may in the future have further consultation which changes this, but at present our view is that net costs are below £5m per year.

There is a chance of de-risking costs, where a stronger legal test may lead to more cautious behaviour from financial institutions (closing accounts, refusing access to funds) that then has an indirect impact on businesses or individuals that are at higher risk of being exposed to sanctions. However, we provisionally assess this to be minimal risk given the strict liability nature of OFAC's financial sanctions test, and current industry perceptions that OFSI's monetary penalty is already robust. As an indirect cost, this would not be counted against the £5m threshold.

It is hard to assess how many companies, including regulated firms, are currently failing to maintain reasonable and in some cases required standards to prevent breaches of financial sanctions. OFSI regularly engages with the private sector in regard to financial sanctions implementation and will continue to do so to build an understanding of further impact.

Where any costs are incurred, we would expect them to be by highly exposed companies. Costs may also be incurred by engaging with a consultation, then reading updated guidance and assessing whether it is broadly in line with current practices. While these familiarisation costs cannot be quantified at this stage, businesses will not be required by law to have any additional measures or systems in place. Accordingly, the cost of familiarising employees with such changes should be commensurately low.

The majority of financial sanctions apply to all UK persons wherever they are in the world. Some sectoral sanctions restrictions do apply only to certain relevant to regulated firms, but these are still then universally imposed across the sector. Therefore, as monetary penalties can be imposed on any UK person (or company) that breaches them there should be no impact on competition among financial, credit institutions or any other businesses.

It would also not be desirable to exclude SMEs from a policy perspective. It is possible to be a large business and have minimal or no exposure to financial sanctions, and equally it is possible to be a small business and be highly exposed to areas of financial sanctions, for example if operating in higher risk jurisdictions.

There may be some financial impact on UK courts in response to more robust enforcement of financial sanctions. Within the evolving context of significantly expanded financial sanctions placed on Russia, we are unable to accurately predict the amount of potential breach reports that OFSI will receive, and therefore the number of penalties imposed and challenged in court. So far none of the seven monetary penalties imposed by OFSI have been challenged through to a Court hearing.

These measures and any potential increases in compliance costs will also incur significant benefits that are aligned with wider policy aims. These measures will increase confidence and trust in the UK's financial sectors, and they are expected to lower the risk of breaches and increase knowledge around financial sanctions. This may in turn make the UK financial sector more attractive and reduce potential liabilities of UK-linked firms in other jurisdictions where they may also be subject to monetary penalties or prosecution for breaching financial sanctions.

Many of the benefits of better enforced financial sanctions are not immediately quantifiable, for example, reducing the risk of a terrorist attack threatening the UK or UK interests, or preventing the spread of nuclear weapons. As with many national security policies, the role financial sanctions play in protecting the UK is evidenced through a lack of activity rather than a positive outcome. Sanctions play an important role in keeping the UK safe. For example, the Government policy objective for the terrorist asset-freezing regime is to help prevent terrorist attacks by freezing funds that might otherwise be used for terrorist purposes. Disrupting terrorism-related activities contributes to national security and helps prevent the UK financial sector from being unknowingly used to facilitate terrorism-related activities.

The monetary penalty legal test measure has a three-month commencement period. This extended commencement period was a deliberate policy choice to allow OFSI to undertake significant engagement on revised guidance and its approach to enforcement under this new legal test. As part of this, OFSI will engage with businesses and stakeholders to better understand and quantify the impacts and costs of this measure. We are confident that, with the assistance of guidance, we can ensure that this measure does not impose disproportionate or excessive costs on businesses.

5. Please confirm whether your measure could be subject to call-in by BRE (Better Regulation Executive) under the following criteria. If yes, please provide a justification of why a full impact assessment is not appropriate:

a) **Significant distributional impacts (such as significant transfers between different businesses or sectors)**

   No. The measures do not oblige any businesses to change any of their processes or procedures and therefore does not have any significant distributional impact.

b) **Disproportionate burdens on small businesses**

   No. There is no disproportionate burden enforced within these measures to small businesses as a whole, because as mentioned, these measures extend to businesses on a risk rather than size basis. Furthermore, the measures do not oblige any business, regardless of size to change its current process or procedures.

c) **Significant gross effects despite small net impacts**

No. As per the above there should be limited to none, gross and net effects.

d) **Significant wider social, environmental, financial or economic impacts**

No. These measures do not oblige any businesses to change any of their processes or procedures and most businesses will likely have appropriate processes in place already therefore there should be insignificant impact on the above.

e) **Significant novel or contentious elements**

No. The policies being proposed are within public interest and wider policy aims, the proposed is likely to be more contentious should the measures not be implemented.

Sign-off for de minimis assessment: SCS

I have read the de minimis assessment and I am satisfied that it represents a fair and proportionate assessment of the impact of the measure.

SCS of OFSI (delegated to E2)

Signed: ***Louise Marshall*** Date: 28/02/2022

SCS of Better Regulation Unit

Signed: ***Linda Timson*** Date: 28/02/2022

Sign-off for de minimis assessment: Minister

I have read the de minimis assessment and I am satisfied that it represents a fair and proportionate assessment of the impact of the measure.

Economic Secretary to the Treasury and City Minister

Signed***: John Glen MP*** Date***:*** 28/02/2022