

The UK's Economic Crime Act

What it is and how it affects businesses

With a number of key provisions under the act, relating to sanctions, coming into force on 15 June 2022, Fieldfisher's Sanctions and Financial Crime teams provide a brief guide to the changes and what businesses and their officers can do to reduce the risk of breaches



What is the Economic Crime Act?

The Economic Crime (Transparency and Enforcement) Act 2022 received Royal Assent on 15 March 2022, with new provisions coming into force on 15 June 2022.

Among other new measures, the act amends existing legislation in key areas that are important for individuals and businesses to know about, to avoid falling foul of the updated rules:

Civil liability for sanctions breaches

The act amends UK legislation that sets out the test for when the Office of Financial Sanctions Implementation (OFSI) can impose monetary penalties for financial sanctions breaches.

These amendments only apply to civil liability and have no relevance to criminal liability arising under sanctions regulations.

Strict liability for sanctions breaches

Significantly, the act amends the Policing and Crime Act 2017 to remove the requirement that the person in breach knew, or had reasonable cause to suspect, that they were in breach of a sanctions prohibition or obligation.

In other words, OFSI will now be able to impose penalties even where the person in breach had no idea they were breaching financial sanctions legislation.

OFSI will still need to prove on the balance of probabilities that there was a breach, however this new liability has potentially far-reaching consequences for every business and its officers, not just for Russian oligarchs and money launderers.

Publication of breaches

OFSI will have a new power to publish the details of entities or persons who breach sanctions (committed after 15 June 2022), including the value of the transaction in breach and the monetary penalty.

The maximum penalty OFSI can impose is £1 million, or 50% of the estimated value of the breach, whichever is higher. The £20.47 million fine issued to Standard Chartered Bank in 2020 illustrates the possible size of penalties.

OFSI's monetary penalty powers extend beyond UK borders and will be engaged as long as there is some (even a fairly limited) connection to the UK.

OFSI may choose to publish a breach even **where no monetary penalty has been issued**. This alone may have serious reputational implications for the business and individual(s) involved.

How can I protect my business?

Businesses and their officers will need to understand the ramifications of the changes under the Economic Crime Act and consider putting comprehensive policies and procedures in place to address risks and avoid being caught out by the new regime.

OFSI will consider various factors to determine whether a monetary penalty should be issued, or whether publication of a breach alone is more appropriate.

These factors include, *inter alia*:

- Circumvention of the regulations;
- Value of the breach;
- The entity or person's knowledge of financial sanctions;
- Their behaviour; and
- Their failure to apply for a sanctions licence and public interest.

Before imposing a monetary penalty, OFSI must inform the affected person (legal entity or individual), in writing, of its intention to do so.

The affected person will have the right to make written representations within 28 working days from the date of receiving the OFSI notification.

Businesses must therefore act fast if they are notified of a breach.

If a decision to impose a penalty is reaffirmed, the affected person will be notified and will have 28 working days to seek a review.

If, following such review, OFSI's decision is upheld, the affected person may appeal to the Upper Tribunal. The appeal must be received by the Upper Tribunal within 28 days of the notice of the decision being issued, following the review.

In circumstances where no penalty has been issued but an affected person has committed a breach, OFSI will inform the person that it has decided to publish the breach.

Representations can be made in the same manner as above in relation to monetary penalties. However, there is no entitlement to seek a review or appeal to the Upper Tribunal as in respect of monetary penalties.



How Fieldfisher can help?

Sanctions compliance must now be seriously considered by all businesses.

Fieldfisher's specialist Sanctions and Financial Crime teams can help you understand the sanctions regime and identify risks relevant to your sector and geographical presence.

We can support you to protect your company and help you keep up to date with how the rules are being applied and OFSI's approach.

Specifically, we can advise you on:

- ✎ Risk assessment;
- ✎ Policies and procedures;
- ✎ Sanctions clauses;
- ✎ Due diligence;
- ✎ Training; and
- ✎ Monitoring and review.

Where a breach has been committed, our team can assist in making representations, seeking the right to review and, if a decision is upheld, appeal where applicable.

We can undertake full compliance audits to review and develop your company's compliance programme with our comprehensive **Integrity** offering, including:

- ✎ AML procedures;
- ✎ KYC and third party risk management process;
- ✎ Bribery and corruption policies; and
- ✎ Corporate governance.

Why choose us?

- Fieldfisher's Sanctions and Financial Crime teams provide a unique service in the sanctions space, straddling the transactional side (advisory services to navigate competing sanctions regimes) and the civil and criminal contentious side (challenging designations before the EU courts and now through the UK independent regime) of sanctions.
- We have been advising clients on these issues, as they have appeared and evolved, for more than 15 years.
- We are one of the few firms ranked by legal directories in all relevant practice areas: Civil Fraud, Investigations and White Collar Crime.
- Our specialist European task force is on hand to address all queries relevant to the UK and EU jurisdictions.



Vivien Davies
Partner, Dispute Resolution
+44 (0)330 460 6695
vivien.davies@fieldfisher.com



Tony Lewis
Partner, Dispute Resolution
+44 (0)330 460 6692
tony.lewis@fieldfisher.com



Quinton Newcomb
Partner, Dispute Resolution
+44 (0)330 460 7370
quinton.newcomb@fieldfisher.com



Nicola Sewell
Director, Dispute Resolution
+44 (0)330 460 6664
nicola.sewell@fieldfisher.com



Alexandra Underwood
Partner, Dispute Resolution
+44 (0)330 460 6584
alexandra.underwood@fieldfisher.com