



**ISLE OF MAN
FINANCIAL SERVICES AUTHORITY**

Lught-Reill Shirveishyn Argidoil Ellan Vannin

Consultation Response

**CONSULTATION REGARDING THE DRAFT
BENEFICIAL OWNERSHIP (CIVIL PENALTIES)
REGULATIONS 2022 FOR CONTRAVENTIONS
UNDER THE BENEFICIAL OWNERSHIP ACT 2017**

CR22-02

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1. Glossary

Term	Meaning in this document
Act	Beneficial Ownership Act 2017 ¹
Authority	Isle of Man Financial Services Authority
Beneficial owner	means a natural person who ultimately owns or controls a legal entity to which the Act applies, in whole or in part, through direct or indirect ownership or control of shares or voting rights or other ownership interest in that entity, or who exercises control via other means
Database	the Isle of Man Database of Beneficial Ownership
Department	Department for Enterprise
FSA2008	Financial Services Act 2008 ²
Nominated officer	means a person appointed in accordance with section 6 of the Act
Relevant person	means — (a) a legal entity to which the Act applies; (b) a nominated officer; (c) a legal owner; (d) a beneficial owner; (e) an intermediate owner (see section 10 of the Act); and (f) a registrable beneficial owner.

¹ https://legislation.gov.im/cms/images/LEGISLATION/PRINCIPAL/2017/2017-0003/BeneficialOwnershipAct2017_6.pdf

² https://legislation.gov.im/cms/images/LEGISLATION/PRINCIPAL/2008/2008-0008/FinancialServicesAct2008_15.pdf

2. Background

This Consultation Response is issued by the Authority following Consultation Paper CP22-01³.

The purpose of the consultation was to obtain information, views and evidence regarding proposed expansion of civil penalties for contraventions of the Beneficial Ownership Act 2017 ('the Act').

The consultation was of particular interest to relevant persons under the Act.

3. Summary of Responses

The consultation was published via the Authority's website and the IoM Government's consultation hub. It was open from 1 February 2022 to 28 February 2022 and received 12 responses. Four were from regulated entities, two from professional associations and six from members of the public.

Five of the respondents gave feedback about the level of the penalties, three felt the penalties were too low to be dissuasive and two felt the penalties were too harsh and should be reduced.

The main comments received, and the Authority's views on those comments are as follows:

Responses received (in summary)	Authority's response
<p>Concerns were expressed that the Authority will issue penalties for genuine errors or non-material mistakes and that the penalties will have a disproportionate impact on individuals or small businesses compared to larger entities.</p> <p>One respondent further suggested that an additional category of penalty be added for non-material or administrative errors, which could be set at £100.</p>	<p>The proposed Beneficial Ownership Civil Penalty Regulations are not intended to 'catch out' individuals or businesses who make legitimate, non-material mistakes, but to provide the Authority with the powers required to effectively oversee compliance with the Act and to consider appropriate action where significant or repeated failings have been identified.</p> <p>It is not the intention of the Authority to issue automatic penalties (of any value) for each non-material or administrative error. Rather a penalty would be applied to those who repeatedly fail to comply with their obligations or where the failings are one-off but significant.</p>

³ <https://consult.gov.im/financial-services-authority/beneficial-ownership-civil-penalties-regulations/>

<p>Could additional flexibility be introduced for the level of the penalties. For example, instead of serious failings being subject to a penalty of £5,000, this could be up to £5,000 to allow the Authority to take account of mitigating circumstances?</p>	<p>The application of discretionary civil penalties does allow for a degree of flexibility, however it can also increase the risk of inconsistency in cases with subtle but different circumstances.</p> <p>It is anticipated that the Authority will only apply a civil penalty in cases where there is a significant or are repeated failings by a relevant person, meaning that mitigating factors could be taken into account when the Authority is considering whether (or not) to apply a penalty.</p> <p>Under the circumstances, the Authority considers that a simple but consistent civil penalty regime is proportionate.</p>
<p>Concerns were raised during the consultation regarding the practicality of enforcing the payment of civil penalties where the relevant person is not on the Island.</p>	<p>When applying a sanction of any description, the Authority will consider whether such a sanction is effective, proportionate and dissuasive. If a civil penalty is imposed, but is not paid, then the Authority may consider requesting the Registrar to consider alternative sanctions such as the legal entity being struck off the companies register.</p>
<p>One respondent stated that the existing criminal sanctions were sufficient because they provide further safeguards for [potential] defendants.</p>	<p>Criminal penalties rightly impose a higher burden of proof than civil penalties, however part of the reason for this is because the longer-term impact on a relevant person from a prosecution is considerably greater. In addition to the financial penalty, a person convicted of a criminal offence will have a criminal record, which may have an impact on that person's livelihood far beyond the imposition of a civil financial penalty.</p> <p>The Authority does not believe that criminal sanctions are a proportionate sanction for all failings and they should only be applied in the most serious cases.</p>
<p>One respondent enquired whether civil penalties should be based on the relevant person's income in order to make the civil penalties more dissuasive for larger businesses, such as corporate service providers.</p>	<p>Civil penalties based on a proportion of the relevant person's income is one appropriate methodology to apply where the person is providing services professionally.</p>

	<p>In order to calculate civil penalties as a proportion of income in a consistent and fair way, <i>all</i> relevant persons would need to provide details of their income to the Registrar. Because lay-persons make up 39% of nominated officers, it is not considered to be appropriate to calculate civil penalties in this manner under the Act.</p> <p>Where a relevant person is found to be repeatedly breaching the requirements of the Act, and the civil penalties are proving to not be an effective deterrent, the Authority has alternative sanctions available including criminal sanctions and regulatory sanctions where the person is a regulated entity.</p>
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4. Changes to the Proposals

We considered the comments provided by the consultation respondents and we have responded to them above.

Following the consultation, the Authority intends to proceed with the introduction of the Beneficial Ownership (Civil Penalty) Regulations 2022.

5. Next Steps

The Authority will make the Beneficial Ownership (Civil Penalty) Regulations 2022 and subject to approval by Tynwald, will come into effect on 31 July 2022.

In case of any query, please contact —

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