



**ISLE OF MAN
FINANCIAL SERVICES AUTHORITY**

Lught-Reill Shirveishyn Argidoil Ellan Vannin

Consultation Paper

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

CP22-01

Issue Date: 1 February 2022

Closing Date: 28 February 2022

Consultation Paper – CP22-01

This consultation paper is issued by the Isle of Man Financial Services Authority ('the Authority'), which has responsibility for assessing compliance with the Beneficial Ownership Act 2017 ('the Act') by relevant persons. ***The contents of this paper are of importance to all relevant persons to which the Act applies.***

The purpose of this paper is to obtain information, views and evidence regarding proposed expansion of civil penalties for contraventions of the Act.

The closing date for comments is **28 February 2022**.

Please send comments by email to Policy@iomfsa.im or alternatively by post to the following:

Mr Dan Johnson – Senior Manager, Policy and Authorisations
Isle of Man Financial Services Authority
PO Box 58, Finch Hill House
Bucks Road, Douglas
Isle of Man, IM99 1DT

Confidentiality and Data Protection

The information you send may be published in full or in a summary of responses. All information in responses, including personal data, may be subject to publication or disclosure in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2015 and the Data Protection Act 2018). If you want your response to remain confidential, you should explain why confidentiality is necessary. Your request will be acceded to only if it is appropriate in the circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding. The Authority is registered with the Information Commissioner as a data controller under Isle of Man data protection legislation. It collects and processes personal data to carry out its functions under relevant legislation and may share personal data with other parties where there is a legal basis for doing so. Further information on how the Authority collects and processes personal data can be found in the Privacy Policy on the Authority's website: <https://www.iomfsa.im/terms-conditions/privacy-policy/>.

If you have a query in relation to how this consultation has been carried out, please contact the Authority's Policy and Authorisations Division by email at Policy@iomfsa.im or by telephone on +44 (0) 1624 646000.

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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 this 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

1 Executive Summary

1.1 Overview

In 2016, through an Exchange of Notes, the Governments of the Isle of Man and the United Kingdom committed to provide each other with beneficial ownership information in relation to legal persons incorporated in their respective jurisdictions, namely through their beneficial ownership databases. The Isle of Man Database of Beneficial Ownership is established and maintained by the Companies Registry of the Department for Enterprise (the 'Department') and is overseen by the Isle of Man Financial Services Authority (the 'Authority').

The Act came into operation in July 2017 and requires relevant persons to provide, retain or submit required details of the legal entity's beneficial owners. It is a responsibility of the nominated officer to maintain beneficial ownership information and submit registrable beneficial ownership information to the Department for inclusion within the Database and preserve the details of beneficial owners.

1.2 What Is The Purpose Of This Consultation Paper?

The Authority intends to broaden the scope of contraventions and offences for which a civil penalty can be considered, including those where currently only criminal sanctions are available. The Authority invites affected and interested parties to consider the draft Regulations set out in this paper at Appendix A.

The Authority welcomes views in relation to the proposed draft Regulations. Comments should be submitted to the Authority prior to the consultation's closing date.

1.3 Who May Be Affected By This Consultation Paper?

This paper will be of particular interest to relevant persons under the Act.

2 Consultation Process

2.1 The Authority's regulatory objectives

The Authority's regulatory objectives are set out in section 2(2) of the FSA2008 as —

- (a) securing an appropriate degree of protection for policyholders, members of retirement benefits schemes and the customers of persons carrying on a regulated activity;
- (b) the reduction of financial crime; and

-
- (c) the maintenance of confidence in the Island's financial services, insurance and pensions industries through effective regulation, thereby supporting the Island's economy and its development as an international financial centre.

The proposals in this consultation paper are relevant to objectives (b) and (c). The Authority is required to give consideration to certain factors when discharging its functions in accordance with paragraph 3 of Schedule 1 to the FSA2008. The factors that are most relevant to this proposal are as follows:

Factor	Information
The need for the regulatory, supervisory and registration regimes to be effective, responsive to commercial developments and proportionate to the benefits which are expected to result from the imposition of any regulatory burden.	The proposed penalties allow the Authority to apply effective, proportionate and dissuasive sanctions to encourage compliance with the provisions of the Act.
The need to use resources in an efficient and economic way.	Currently the only penalties for many of the contraventions of the Act are criminal sanctions. The costs associated with criminal sanctions are high for the Authority, the defendants and the courts.
The need to safeguard the reputation of the Island.	<p>The topic of beneficial ownership is attracting increasing scrutiny from international parties. The Act was brought into force to safeguard the Island's reputation as a responsible financial centre.</p> <p>Enforceability of the Act also is integral to the protection of the Island's reputation.</p>

2.2 Responding to the Consultation Paper

The Authority considers open dialogue with stakeholders as essential in developing its proposals and greatly appreciates comments on the proposals in this document. The purpose of this consultation is to gather views and evidence from which an informed decision will be made on the content of the draft legislation. However, please note that your comments may not result in a change to the proposals.

The Authority wishes to encourage submission of views, but requests that comments are not submitted anonymously, as they will not be considered or included in the Consultation Response.

Professional bodies, trade associations and other representative groups are asked to provide a summary of the people and organisations that they represent when responding, as well as the methodology used to gain members' input.

3 Application of Civil Penalties

The Act currently makes any contravention of a provision a criminal offence. However, the Act also provides for the application of civil penalties (as set out in Regulations) in certain circumstances, and the Authority has determined that its ability to encourage compliance and enforce adherence to the Act's requirements would be improved if civil penalties were an alternative sanction in certain circumstances.

The key benefit of civil penalties in this instance is that they can operate to encourage compliance with the provisions of the Act. Widening the range of civil penalty options also allows for appropriate sanctions to be applied depending on the seriousness of the contraventions. A civil penalty option may be more proportionate in some circumstances and avoid the time and expense of a criminal prosecution in those circumstances.

Please note that despite civil penalty provisions, the Authority would still have the option to refer persons for prosecution if that is most appropriate in the circumstances. The Act only allows civil penalties to be applied if criminal proceedings have not been commenced in relation to the same contraventions.

4 Level of Penalty

The Regulations require that a relevant person pay £1,000 for less serious contraventions of the Act such as failure to keep a record of the nominated officer, give notice of changes to

the nominated officer, or preserve required details. The Act currently only provides for these contraventions to be treated criminally.

More serious matters such as offences committed by a relevant person in connection with oversight; or knowingly or recklessly furnishing the Authority or the Department with information that is false, inaccurate or misleading in a material particular are currently subject to a civil penalty of £5,000 under the Beneficial Ownership (Civil Penalties) Regulations 2018.

The new Regulations will further require that a person pays a civil penalty of £5,000 for other contraventions which would otherwise be a criminal offence under the Act and subject to a fine of £10,000 on summary conviction³.

The Regulations also provide that the Authority may mitigate a civil penalty or provide that no civil penalty is payable, if it considers that the circumstances are so exceptional that it would be unfair to require the relevant person to pay the full penalty.

5 Questions

Question

Please provide any comments you may have on the proposed introduction of civil penalties as an alternative to criminal sanctions to enforce certain provisions of the Act.

6 Next steps

Following the closure of the consultation period, the Authority will publish a summary of the comments received, which will be accessible through the Authority's website and the Isle of Man Government's Consultation Hub.⁴

Subject to views expressed in response to the consultation, it is intended that the proposed legislative and procedural changes will come into effect in mid-2022.

³ Section 55 of the Interpretation Act 2015 introduced a new standard scale of fines for all offences punishable on summary conviction. If the text of an enactment states that the maximum fine on summary conviction is £5,000, from 1 January 2018 that was increased to £10,000.

⁴ <https://consult.gov.im/>



Appendix A – Draft Beneficial Ownership (Civil Penalties) Regulations 2022

Statutory Document No. 2022/XXXX



Beneficial Ownership Act 2017

BENEFICIAL OWNERSHIP (CIVIL PENALTIES) REGULATIONS 2022

Approved by Tynwald:

Coming into Operation: 30 June 2022

The Isle of Man Financial Services Authority makes the following Regulations under section 30 of, and paragraph 8 of Schedule 1 to, the Beneficial Ownership Act 2017.

1 Title

These Regulations are the Beneficial Ownership (Civil Penalties) Regulations 2022.

2 Commencement

If approved by Tynwald, these Regulations come into operation on 30 June 2022.

3 Interpretation

In these Regulations –

“**the Act**” means the Beneficial Ownership Act 2017 and “**section**” means a section of the Act.

4 Application

These Regulations apply to relevant persons.

5 Civil Penalties

(1) Unless (2) applies, a relevant person must pay a civil penalty –



- (a) for each contravention of the Act specified in column 1 of the Table of the Schedule; and
 - (b) which is calculated as set out in column 2 of that Table.
- (2) The Authority may mitigate a civil penalty under (1), or provide that no civil penalty is payable, if it considers that the circumstances are so exceptional that it would be unfair to require the relevant person to pay the full penalty.
- (3) Any civil penalty due under this regulation must be paid to the Authority within 21 days of the date of the written notice given to the relevant person pursuant to paragraph 8(3) of Schedule 1 to the Act.

6 Revocation

The Beneficial Ownership (Civil Penalties) Regulations 2018 are revoked.

MADE XX MONTH 2022

Member of the Isle of Man Financial Services Authority

Member of the Isle of Man Financial Services Authority

SCHEDULE
CIVIL PENALTIES

Regulation 5

Table

Column 1	Column 2
CONTRAVENTION	AMOUNT OF CIVIL PENALTY
Contravention of section 8(1) (record of nominated officer – record keeping)	£1,000
Contravention of section 9(3) (duty of legal owners – to give required details to the nominated officer)	£1,000
Contravention of section 10(2) (duty of beneficial owners and intermediate owners to assist)	£1,000
Contravention of section 12(1) (changes to required details – notice of changes to be notified to the nominated officer)	£1,000
Contravention of section 13 (preservation of required details and verifying information)	£1,000
Contravention of section 15(2) (disclosure of beneficial ownership information by nominated officer – to a competent authority)	£5,000
Contravention of paragraph 7(3) of Schedule 1 to the Act (offences in connection with oversight) by a relevant person	£5,000
Each contravention of the Act in which a relevant person has knowingly or recklessly furnished the Authority or the Department, as the case may be, with	£5,000

information that is false, inaccurate or misleading in a material particular	
Each contravention of the Act by a relevant person that is – a) not specified in paragraph 8(1) or (2) of Schedule 1 to the Act, and b) which is an offence under the Act, in circumstances in which the Authority determines that it is proportionate and appropriate to impose a civil penalty in lieu of criminal proceedings under the Act.	£5,000

Explanatory Note

These regulations revoke and replace the Beneficial Ownership (Civil Penalties) Regulations 2018 and provide for civil penalties to cover a wider range of contraventions.