

Client Alert

International Trade

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For more information,
contact:

Christine E. Savage
+1 202 626 5541
csavage@kslaw.com

Aaron Stephens
+44 20 7551 2179
astephens@kslaw.com

Matthias Vangenechten
+44 20 7551 2185
mvangenechten@kslaw.com

Kanzanira Thorington
+1 202 626 9272
kthorington@kslaw.com

King & Spalding

London
8 Bishopsgate
London, EC2N 4BQ
United Kingdom
Tel. +44 20 7551 7500

Washington, D.C.
1700 Pennsylvania Avenue,
NW
Suite 900
Washington, D.C. 20006
Tel. +1 202 737 0500

UK Launches New Office of Trade Sanctions Implementation for Civil Enforcement of Trade Sanctions

SUMMARY

On 12 September 2024, the UK Government published [The Trade, Aircraft and Shipping Sanctions \(Civil Enforcement\) Regulations 2024](#) (“the Regulations”), which provide the regulatory framework for the Office of Trade Sanctions Implementation (“OTSI”) – a new unit responsible for the civil enforcement of trade sanctions, including those against Russia.

The Regulations empower OTSI to monitor and enforce compliance with certain trade sanctions. OTSI will investigate potential breaches, issue monetary penalties, and refer cases to HM Revenue and Customs (“HMRC”) for criminal enforcement, when necessary. OTSI will also have the power to compel the disclosure of information from a person where it believes the person subject to the request may be able to provide it.¹

OTSI’s civil enforcement powers will come into effect on **10 October 2024**, when the Regulations come into force.

The Regulations also provide for civil enforcement powers relating to aircraft and shipping sanctions, which will fall within the remit of the Department for Transport.



OFSI VS. OTSI

OTSI is distinct from the existing Office of Financial Sanctions Implementation (“OFSI”) which handles the enforcement of UK financial sanctions.

OFSI

Established in 2016, OFSI is part of HM Treasury and is responsible for the implementation and civil enforcement of UK financial sanctions. Financial sanctions include restrictions on designated persons, such as the asset freeze restrictions, as well as wider restrictions on investment and financial services.

Since Russia’s invasion of Ukraine, OFSI has broadened its financial sanctions to target several key individuals, institutions, and sectors in Russia.

OTSI

OTSI is part of the Department of Business and Trade (“DBT”) and is responsible for the implementation and civil enforcement of UK trade sanctions. Trade sanctions include controls on the import, export, transfer, movement, making available, and acquisition of goods and technology.

OTSI will be responsible for areas concerning:

- Provision or procurement of sanctioned trade services;
- Movement, making available, or acquisition of sanctioned goods outside the UK;
- Transferring, making available, or acquisition of sanctioned technology outside the UK;
- Providing ancillary services to the movement, making available, or acquisition of sanctioned goods outside the UK; and
- Providing ancillary services to the transfer, making available, or acquisition of sanctioned technology outside the UK.

In addition, OTSI will “[i]n due course” assume responsibility for the licensing of standalone services, such as professional and business services.

Certain cases may involve breaches of both trade and financial sanctions, such as the provision of a sanctioned trade service to a designated person. In such cases, OTSI will coordinate enforcement action with OFSI.

OTSI ENFORCEMENT POWERS

OTSI will also have powers to investigate and enforce breaches related to:

- Circumvention, such as intentionally facilitating the contravention of sanctions;
- Exceptions, such as failing to comply with the notification requirement of an exception;
- Information requests, such as intentionally obstructing an information request from OTSI;
- Licensing, such as failing to comply with the conditions of a licence; and
- Recordkeeping, such as failing to comply with recordkeeping requirements of a general licence.



Importantly, OTSI is responsible for the *civil enforcement of certain* trade sanctions. HMRC will remain responsible for the criminal enforcement of trade sanctions and the enforcement of trade sanctions relating to goods and technology that are subject to strategic export controls, such as military and dual-use items. The Export Control Joint Unit (“ECJU”) – which is also part of DBT – remains responsible for the licensing relating to such military and dual-use items.

Assessment of Breaches

OTSI has published [guidance](#) on how it will assess trade sanctions breaches. Pursuant to the Regulations, most trade sanctions breaches will be assessed on a “strict liability” basis, meaning that OTSI does not need to demonstrate that the individual or business acted knowingly or with intent when committing the breach. However, OTSI’s guidance notes that certain breaches, such as circumvention, will require OTSI to show that an individual or entity acted knowingly or with intent.

Once OTSI determines that a breach has occurred, it is authorised to take a range of enforcement action, including:

- Issue a warning letter, which may include a continuing obligation to keep OTSI informed of certain information, such as due diligence processes;
- Publicly disclose the breach where OTSI judges that sharing information about the breach is in the public interest;
- Refer a business to its regulator, the Insolvency Service, or Companies House, the latter of which has the power to remove a person as company director;
- Impose monetary penalties; and
- Refer the case to HMRC for criminal enforcement.

When assessing which enforcement action to take in a case, OTSI will consider mitigating factors, such as voluntary disclosure or prior sanctions breaches. Indeed, timely voluntary disclosure of a breach could inform OTSI’s decision to impose a monetary penalty or reduce the monetary penalty up to 50 percent.

Monetary Penalties

OTSI may impose a monetary penalty on a UK person if it is satisfied, on a balance of probabilities, that the person has breached a sanctions prohibition or failed to comply with an obligation imposed by certain trade sanctions regulations.

The maximum monetary penalty OTSI can impose is £1 million or 50 percent of the estimated value of the breach, whichever is greater. The amount of the monetary penalty will be determined by OTSI on a case-by-case basis, but the penalty may not exceed the maximum amount. OTSI’s penalty decisions will be subject to agency review and further appeal to the Upper Tribunal. In addition, OTSI cannot issue a civil monetary penalty if criminal proceedings are ongoing, or have taken place, against a UK person for the same breach.

In cases where there is a corporate breach, OTSI may hold officers of the corporation (e.g., director, manager, secretary) personally liable, as well as the corporation itself, if that officer is responsible for the breach through consent, involvement, or neglect. Accordingly, OTSI can impose separate penalties on a legal entity and its officers. This rule also applies to partners in a corporate partnership; members of unincorporated bodies that are managed by members; and members of governing bodies.



OTSI may publish reports with details of a case in which it imposes a civil monetary penalty, or in cases where it does not impose such a penalty but determines that a sanctions breach has occurred.

INFORMATION REQUESTS AND REPORTING OBLIGATIONS

The Regulations provide OTSI with the power to request information, including documents, to investigate suspected sanctions breaches or to monitor compliance with trade sanctions.

Failure to comply with an information request, such as refusal to comply within the time and manner specified, knowingly or recklessly providing false information, or destroying or concealing a document, is a criminal offense which may result in imprisonment or penalty.²

The Regulations also impose new reporting obligations on so-called “relevant persons”, *i.e.*, legal and financial service providers and money service businesses, which are required to report suspected breaches of trade sanctions as soon as practicable. Failure to report a suspected breach could result in a monetary penalty or criminal prosecution.³

Importantly, requests for information and reporting obligations do not apply to information protected by legal professional privilege, but OTSI “may challenge a blanket assertion of legal professional privilege where it is not satisfied that such careful consideration has been made.”⁴

IMPACT AND KEY CONSIDERATIONS

The launch of OTSI will strengthen the UK Government’s trade sanctions enforcement capabilities. Prior to the Regulations, trade sanctions could only be addressed through criminal enforcement by HMRC, which also handles enforcement of taxes and customs generally. With OTSI, the UK Government has created a designated authority for the civil enforcement of trade sanctions, which will bolster the UK’s resources to investigate trade sanctions breaches and complement HMRC’s criminal enforcement powers.

Similar to OFSI, Russia will be a key focus for OTSI, particularly efforts by businesses to evade Russia sanctions. OTSI’s information request powers and the reporting obligations for financial and legal service providers will equip OTSI to detect evasion of trade sanctions. Moreover, OTSI is expected to work closely with other government bodies on sanctions enforcement, such as HMRC, the ECJU, and OFSI, to crack down on trade sanctions evasion and enhance the UK’s overall Russia sanctions strategy. Accordingly, financial institutions and money service businesses facilitating trade transactions with a UK nexus, as well as UK businesses with trade dealings in jurisdictions with high risks of sanctions evasion should consider OTSI’s new enforcement and reporting powers and assess whether opportunities exist to further enhance their UK trade sanctions compliance and due diligence policies and procedures.



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¹ Trade, aircraft and shipping sanctions, civil enforcement: guidance (12 September 2024) (“Regulatory Guidance”), available at: <https://www.gov.uk/government/publications/trade-aircraft-and-shipping-sanctions-civil-enforcement-guidance/trade-aircraft-and-shipping-sanctions-civil-enforcement-guidance>.

² Guidance: Information you must provide in response to a trade sanctions information request (12 September 2024), available at: <https://www.gov.uk/guidance/information-you-must-provide-in-response-to-a-trade-sanctions-information-request>.

³ Guidance: Mandatory reporting for suspected breaches of trade sanctions (12 September 2024), available at: <https://www.gov.uk/guidance/mandatory-reporting-for-suspected-breaches-of-trade-sanctions>.

⁴ Regulatory Guidance.