

## **Powers of OTSI and the new reporting requirements for suspected breaches of UK trade sanctions**

*Of particular interest to: All UK Firms*

### **In brief**

On 12 September 2024, the UK Government published guidance on the Trade, Aircraft and Shipping Sanctions (Civil Enforcement) Regulations 2024 (the “regulations”), which covers prohibitions, requirements, compliance with the regulations and enforcement information. The regulations set out the powers for the new trade sanctions enforcement agency, the Office of Trade Sanctions Implementation (“OTSI”). The agency has been granted with powers to impose monetary penalties, the authority to request information and the enforcement of criminal and civil sanctions. The regulations also introduce the doctrine of strict liability for trade sanctions violations, meaning individuals and organisations can be held liable for sanction breaches irrespective of knowledge or intention.

The regulations took effect on 10 October 2024.

### **Summary**

Section 43 of the [Sanctions and Anti-Money Laundering Act 2018](#) (“the Sanctions Act”) requires the UK Government to provide guidance to assist in the implementation and compliance with the regulations. The latest guidance notes that OTSI, which is part of the Department for Business and Trade (“DBT”), have been granted the power to investigate and enforce suspected trade sanctions breaches that relate to:

- Providing or procuring sanctioned services.
- Making available, moving or acquiring sanctioned goods and or technology outside the UK.
- Making available, acquiring or providing ancillary services to the movement of sanctioned goods and or technology outside the UK.

A new requirement for a ‘relevant person’ has been introduced under the regulations, requiring such persons to as soon as practically possible to inform the Secretary of State, if they know or of have cause to suspect a person has breached trade sanctions. A ‘relevant person’ is defined under regulation 15(4) as:

- Financial services providers: persons with permissions under Part 4A of the Financial Services and Markets Act 2000(a) to carry on a regulated activity.
- Money service businesses: business operating a currency exchange office, transmits money (or any representation of monetary value) by any means, or cashes cheques that are made payable to customers.
- Legal service providers: a firm or sole practitioner that provides legal or notarial services.

The regulations also provide that failure to comply with the new reporting obligations (outlined above) and information requests is a criminal offence, whereby civil monetary penalties can be imposed for such breaches. Breaches will be determined on a strict liability basis, meaning the defences of no knowledge or no reasonable cause to suspect a breach had been committed under the trade sanctions would not suffice. The guidance also provides that OTSI can impose these civil monetary penalties of 50% of the value of the breach, or £1 million, or whichever is greater.

Regulation 17 outlines the Secretary of State’s power to acquire information, and regulation 20 provides that such a request can include the requirement of a person to provide documents of a specified description or specified documents. As such, a recipient of an information request is obliged under the regulation to take reasonable steps to obtain any documentation requested, regardless of whether they are currently in possession or control of it.

Failure to comply with a Secretary of State's information request is rendered a criminal offence. This is where a person:

- Fails to execute the request within the given time frame.
- Recklessly or knowingly provides or shares information that is false.
- Destroys, defaces or conceals documents with intention to evade the information request.
- Intentionally obstructs OTSI in exercising its information request powers.

This offence is punishable by imprisonment for a term not exceeding six months, or a fine, or both.

The wide jurisdictional reach of the regulations extends to the conduct of UK persons and businesses wherever they are located, meaning trade sanctions apply to all UK nationals and businesses established under UK law and individuals or businesses within the territory and territorial sea of the UK. OTSI therefore has the power to investigate suspected breaches committed by these individuals and entities, irrespective of where in the world the breach takes place. As a result of the broad jurisdictional reach of the regulations, all legal entities and individuals subject to UK sanctions will need to review, and may need enhance their compliance controls to ensure the new reporting obligations are incorporated into their policies and procedures.

The guidance also outlines mitigating factors that the enforcement agency will consider when determining the enforcement action to be taken following of a breach, this includes but is not limited to:

- No record of previously breaching sanctions legislation.
- Compliance with recordkeeping obligations in line with UK sanctions regulations.
- Compliance with OTSI information requests.
- Timely voluntary disclosure of the suspected breach by the person or business responsible.
- Timely mandatory disclosure of the suspected breach by a provider of legal or financial services.

As documented within the UK Government's guidance, suspected breaches are to be reported using the online reporting portal or OTSI should be contacted at [DBT-OTSI@businessandtrade.gov.uk](mailto:DBT-OTSI@businessandtrade.gov.uk).

### **Useful Links**

[Trade, aircraft and shipping sanctions, civil enforcement: guidance - GOV.UK \(www.gov.uk\)](https://www.gov.uk/guidance/trade-aircraft-and-shipping-sanctions-civil-enforcement)

[How suspected breaches of trade sanctions are assessed by the Office of Trade Sanctions Implementation \(OTSI\) - GOV.UK \(www.gov.uk\)](https://www.gov.uk/guidance/how-suspected-breaches-of-trade-sanctions-are-assessed-by-the-office-of-trade-sanctions-implementation-otsi)

[The Trade, Aircraft and Shipping Sanctions \(Civil Enforcement\) Regulations 2024 \(legislation.gov.uk\)](https://www.legislation.gov.uk/uksi/2024/1000/regulations)

[Sanctions and Anti-Money Laundering Act 2018 \(legislation.gov.uk\)](https://www.legislation.gov.uk/ukpga/2018/18)

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