

The UK has finally laid the foundation for the new OTSI, announced in December 2023, to ensure even stricter enforcement of existing UK sanctions against Russia, and to crack down on companies that circumvent Russian sanctions.

OTSI will enhance sanctioning powers for non-compliance with trade sanctions and refer criminal enforcement cases to HM Revenue and Customs (HMRC) when necessary. Thus, it will also be responsible for civil enforcement of trade sanctions by assisting companies with compliance to sanctions and investigating possible breaches, as well as issuing civil penalties and referring cases to HMRC.

The UK government has also released the new Trade, Aircraft and Shipping Sanctions (Civil Enforcement) Regulations 2024 (Regulations), which came into force on 10 October 2024, and grants OTSI new civil enforcement powers against trade sanctions breaches.

As a result, from 10 October 2024 OTSI is responsible for the implementation and enforcement of trade sanctions concerning the:

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

In this regard, OTSI has been granted the following enforcement powers:

Power To Impose Monetary Penalties

OTSI will have the power to impose civil monetary penalties up to £1 million, or 50% of the estimated value of the breach, whichever is the greater. Breaches will be assessed on a strict liability basis, meaning that when determining whether there has been a breach of sanctions, it will not be a valid defense to plead ignorance, reasonable suspicion or belief that no offence had been committed. Where the value of the violation or non-compliance can be estimated, the higher of the two figures above will apply. Where it is not possible to estimate the value, the upper limit remains £1 million.

Powers To Report and Disclose Breaches:

OTSI may publish reports of cases where civil monetary penalties have been imposed, detailing against whom the penalty has been imposed, an overview of the facts, the reasons for imposing the penalty, the total value of the breaching transactions and the corresponding penalty for each person. Additionally, the person concerned is obliged to report the information on which the knowledge or suspicion is based, as well as any relevant information about the offender. Failure to do so is an offence punishable on summary conviction in England and Wales by imprisonment for up to six months, or a fine or both.

Power to Require the Provision of Information and To Enforce the Reporting Obligations in Certain Sectors

New reporting obligations will apply to those deemed "relevant persons"; *inter alia*, financial services companies, lawyers, notaries and money transmitting companies. Relevant persons will be required to report any known or suspected breaches as soon as practicable that have become apparent during the course of their business. Failure to comply with these obligations is a criminal offence punishable by a fine, imprisonment or both.

OTSI may require information from any person it considers able to provide it, provided that such information is reasonably necessary to: (i) perform its functions under the Regulations; (ii) monitor compliance with or detect evasion of sanctions regulations; or (iii) investigate a suspected breach of a prohibition, or a failure to comply with an obligation imposed under sanctions regulations.

It is for OTSI to specify how and when the information is to be provided and, if unspecified, the information must in any event be provided within a reasonable time. Moreover, the Regulations empower OTSI impose a continuing obligation to provide information as circumstances change or at specified intervals.

OTSI also has the power to request certain documents and may obtain copies and extracts thereof or require persons to provide explanations in relation to them. Requested persons should take reasonable steps to obtain and retain the documents if they are not already in their control or possession.

OTSI will consider several mitigating factors when assessing a breach, including, *inter alia*:

1. Voluntary and timely disclosure of the alleged breach by the responsible firm or individual
2. Mandatory and timely disclosure of the alleged breach by a financial or legal service provider;
3. Cooperation with relevant requests for information
4. Compliance with recordkeeping requirements
5. No history of previous breaches of sanctions provisions
6. Adequate knowledge of sanctions regimes, with a level of compliance systems proportionate to the size of the business, its resources and its exposure to sanctions

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