

## (Wh)OTSI's new?

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15 October 2024

OTSI's new civil enforcement powers came into force on 10 October 2024. We look at what's new, what stays the same and who will now enforce what.

### What's new?

Last week OTSI (or the Office of Trade Sanctions Implementation) opened the doors of its new office in the DBT's Old Admiralty Building, published the first post on its new blog and (we imagine) had a few minutes to put the kettle on before opening the online portal through which it will now receive licensing applications, reports of suspected breaches, notifications for use of exceptions to the prohibitions and general trade sanctions queries.

OTSI's enforcement powers were settled last month by the [Trade, Aircraft and Shipping Sanctions \(Civil Enforcement\) Regulations 2024](#) ("TASSCER") and are now in force in relation to conduct occurring on or after 10 October 2024. Broadly, they give OTSI powers (via the Secretary of State for DBT), to:

- Award fines (civil monetary penalties capped at the greater of 50% of the estimated value of the breach or £1 million) for breaches of certain trade sanctions and aircraft and shipping sanctions.
- Impose such civil monetary penalties on a 'strict liability' basis. OTSI will only need to prove on the balance of probabilities that the relevant trade sanctions breach occurred. There will not be a defence available where the person (or company) did not know or have reasonable cause to suspect that the relevant facts existed.
- Publish details of all breaches of trade sanctions where monetary penalties were either imposed or could have been imposed. Sanctions Minister Stephen Doughty [referred](#) to OTSI's new powers as being vital tools not only in helping businesses to comply with sanctions, but to deter (and impose costs upon) those looking to breach them. While OFSI has been publishing details of monetary penalties in relation to financial sanctions breaches since 2019, HMRC does not name the parties whose trade sanctions breaches result in compound settlements.
- Demand information which will allow it to investigate suspected breaches and share it with other sanctions enforcement agencies, with failure to comply attracting criminal penalties.

- Refer a relevant person’s failure to report a suspected breach to HMRC for criminal investigation.

**What stays the same?**

- OFSI’s civil enforcement powers in relation to financial sanctions and Ofcom’s in relation to the provision of internet services contrary to sanctions prohibitions remain unchanged.
- HMRC remains responsible for criminal enforcement of trade sanctions and import/ export of goods at the UK border, including matters referred to it by OTSI for criminal investigation.
- OTSI’s enforcement powers (like OFSI’s) can apply to conduct (including a failure to report by a relevant person) which occurs outside of the UK. The TASSCER does not change the extra-territorial application of sanctions measures made under the 2018 Sanctions and Anti-Money Laundering Act.
- “Relevant persons” subject to the requirement to report suspicions include providers of regulated financial services who will already be accustomed to grappling with reporting obligations to OFSI, the NCA and FCA. The additional complexity introduced by the TASSCER is that the reporting obligation only applies to suspicions of breaches that HMRC is not entitled to investigate on its own initiative. Whether a reporting obligation applies will therefore require analysis on a case-by-case basis, by reference to the regulations implementing the measure that may have been breached.

**Who enforces what now?**

*The table below sets out the various UK government departments and their roles and responsibilities with regards to the enforcement of sanctions.*

Government department	Role and Responsibility
<i>Trade, aircraft and shipping sanctions</i>	
HMRC <b>(HM Revenue and Customs)</b>	<b>Criminal</b> enforcement of trade sanctions and breaches of the reporting and information requirements in the TASSCER
OTSI  (within the Department for Business and Trade)	<b>Civil</b> enforcement of certain trade sanctions
National Crime Agency	<b>Criminal</b> investigation of aircraft and shipping sanctions offences
Government department	Role and Responsibility
Department for Transport	<b>Civil</b> enforcement of aircraft and shipping sanctions offences
Crown Prosecution Service	<b>Criminal</b> prosecution of trade sanctions offences investigated by HMRC or National Crime Agency

***Financial sanctions***

National Crime Agency

**OFSI** (Office of Financial Sanctions Implementation, within HM Treasury)

Crown Prosecution Service

***Internet services sanctions***

Ofcom

**Criminal** investigation of financial sanctions offences

**Civil** enforcement of financial sanctions

**Criminal** prosecution of financial sanctions offences investigated by National Crime Agency

**Civil** enforcement of sanctions measures in relation to internet services