

New Civil Monetary Penalty Regime for UK Trade Sanctions

The Trade, Aircraft and Shipping Sanctions (Civil Enforcement) Regulations 2024 empower OTSI to enforce UK trade sanctions through civil monetary penalties, building on the role of OFSI, which has enforced UK financial sanctions since 2016.

This Client Alert is published in the context of ongoing developments and should be read in conjunction with Latham's [previous sanctions updates](#). This Client Alert is not intended to take the form of official legal advice. Given the frequency with which different jurisdictions impose new sanctions, and the detailed and nuanced nature of the sanctions updates, businesses exposed to sanctions-related developments should obtain up-to-date legal advice before taking any steps that may have legal consequences.

On 11 September 2024, the UK introduced the Trade, Aircraft and Shipping Sanctions (Civil Enforcement) Regulations 2024 (the Civil Enforcement Regulations), which come into force on 10 October 2024. The Civil Enforcement Regulations were made by the Secretary of State under the Sanctions and Anti-Money Laundering Act 2018 (SAML) and provide a framework for the civil enforcement of the UK's aircraft, shipping sanctions, and certain trade sanctions (Trade Sanctions) made under Section 1 of SAML. Previously, civil enforcement powers did not extend to most Trade Sanctions, and breaches of these sanctions were addressed through criminal enforcement by His Majesty's Revenue and Customs (HMRC).

The Civil Enforcement Regulations grant a range of powers to the Secretary of State, including to request information, share information with other parties, impose civil monetary penalties for breaches of Trade Sanctions on a strict liability basis, and publish information about breaches of sanctions where a civil monetary penalty has, or could have been, imposed. The Civil Enforcement Regulations also establish new civil and criminal offences for "relevant persons" who fail to comply with sanctions reporting obligations and information requests made by the Secretary of State. These new powers are similar to those of the Office of Financial Sanctions Implementation (OFSI) under Regulations 70 and 78 of the [Russia \(Sanctions\) \(EU Exit\) Regulations 2019](#) (as amended).

The Department for Transport will be the lead government body for civil enforcement of Trade Sanctions relating to aircraft and shipping restrictions. The Department for Business and Trade through the Office of Trade Sanctions Implementation (OTSI) will be the body responsible for civil enforcement of all other aspects of the UK Trade Sanctions. Importantly, both departments will have powers to enforce civil

monetary penalties on a strict liability basis, meaning that a person can no longer defend themselves by claiming that they had no knowledge or reasonable cause to a breach of the UK Trade Sanctions.

Key Changes

The accompanying [Explanatory Memorandum](#) explains that the Civil Enforcement Regulations' purpose is to "strengthen" the UK government's "enforcement capability". The government recognised that the criminal framework for enforcing breaches of trade, aircraft, and shipping sanctions is a "strong deterrent" but may not always be a "proportionate approach to enforcement". The Civil Enforcement Regulations introduce a civil enforcement mechanism for sanctions breaches to complement the existing regime.

Enforcement Bodies

On 11 December 2023, the UK government [announced](#) the creation of OTSI, which will operate within the Department for Business and Trade, and aims to ensure that the UK's "sanctions regimes are as impactful as possible" and "crack down on companies that breach trade sanctions". OTSI's intended role includes leading on the civil enforcement of Trade Sanctions and providing guidance to businesses and supporting compliance. The Department for Transport will enforce Trade Sanctions relating to aircraft and shipping.

Regulation 2 of the Civil Enforcement Regulations excludes certain trade sanctions from OTSI's remit because OFSI — operating within His Majesty's Treasury — and the Office of Communications already have civil enforcement powers. These include:

- Regulations 46Z9B to 49Z9D (Maritime transportation of certain oil and oil products) of the [Russia \(Sanctions\) \(EU Exit\) Regulations 2019](#) (as amended);
- Regulation 54A (Preventing provision of internet services to or for the benefit of designated persons) of the [Russia \(Sanctions\) \(EU Exit\) Regulations 2019](#) (as amended);
- Regulation 27P (Preventing provision of internet services to or for the benefit of designated persons) of the [Republic of Belarus \(Sanctions\) \(EU Exit\) Regulations 2019](#) (as amended); and
- any supplemental provisions relating to the regulations set out above.

Regulation 26 of the Civil Enforcement Regulations expands HMRC's powers under the Customs and Excise Management Act 1979 and provides HMRC with the ability to determine whether an offence concerns a failure to comply with a reporting obligation, or whether an information offence has been committed. HMRC will continue to be responsible for the criminal prosecutions of all Trade Sanctions.

Strict Liability and Civil Monetary Penalties

Regulation 5 of the Civil Enforcement Regulations empowers the Secretary of State to enforce sanctions regulations by imposing a civil monetary penalty if they are satisfied on the balance of probabilities that either: (1) the activity carried out was prohibited by sanctions regulations; or (2) a person has failed to comply with an obligation required by the sanctions regulations.

Under Regulations 6 and 7, penalties are imposed on a strict liability basis, meaning that for breaches of Trade Sanctions "any defence that a person did not know and had no reasonable cause to suspect that an offence had been committed, will be ignored".

Therefore, breaches of the extensive trade sanctions imposed on Russia since February 2022 under the UK's [Russia \(Sanctions\) \(EU Exit\) Regulations 2019](#) (as amended) will now be considered strict liability offences (unless they relate to matters within the scope of HMRC's role as the UK's customs authority).

By contrast, since 15 June 2022, a breach of financial sanctions / asset freeze prohibitions has been considered a strict liability offence under UK sanctions (see our previous [Client Alert](#)). However, according to [OFSI's guidance](#), whether a person knew or suspected that their conduct amounted to a breach, whilst not a defence to liability, is still relevant to OFSI's assessment of the severity of the breach and its determination of a proportionate response. Whether similar guidance will be published in relation to the new strict liability offences under the Civil Enforcement Regulations remains to be seen.

Under Regulation 13, the Secretary of State may publish a report setting out the civil monetary penalties imposed. In addition, the Secretary of State may, in appropriate cases, publish such reports when a civil monetary penalty has not been imposed, but the Secretary of State is satisfied that, on the balance of probabilities, the person had breached a prohibition or failed to comply with an obligation imposed by sanctions regulations.

Under Regulation 9, the amount of the penalty for breaches of Trade Sanctions is determined by the Secretary of State. If the value of the breach of the prohibition or failure to comply with an obligation can be estimated, the permitted maximum is the greater of £1,000,000 and 50% of the estimated value of the breach or failure to comply (or 50% of the estimated value of the aircraft or ship involved if its value can be estimated). [Government guidance](#) suggests that OTSI will review the amount of penalty "on a case-by-case basis, but it cannot exceed this maximum amount". Relevant mitigating factors that OTSI may consider according to [guidance](#) include "timely mandatory disclosure" by a "relevant person" (defined below), with the result that a penalty may be reduced by up to 50% if a "timely voluntary disclosure" is made. Penalties will be paid into the Consolidated Fund (i.e., the government's general bank account) and will be recoverable as civil debt. OFSI's civil monetary penalties operate in a similar way.

Criminal Prosecution

Criminal prosecution for offences under the Civil Enforcement Regulations, namely the failure to report violations or comply with information requests, have specific time limits. Regulation 25(1) states that proceedings need to be brought within 12 months from the date on which sufficient evidence in the opinion of the prosecutor to justify the proceedings comes to the prosecutor's knowledge. However, under Regulation 25(2), such proceedings may not be brought more than three years after the commission of the offence.

The associated penalties are set out in Regulation 22, which provides that on summary conviction a person can receive a prison term not exceeding six months, or a fine, or both. Regulation 12 clarifies that no proceedings may be brought against a person for conduct amounting to an offence if that person has already been given a monetary penalty in respect of that conduct.

HMRC will lead on criminal enforcement if these offences relate to trade sanctions, and the National Crime Agency will lead on criminal enforcement if these offences relate to aircraft and shipping sanctions.

Reporting Obligation for "Relevant Persons" and New Offence

Regulations 15 and 16 introduce a mandatory legal obligation for "relevant persons" to inform the Secretary of State as soon as practicable if, through the course of carrying on their business, they know or have cause to suspect that a person has committed a breach of Trade Sanctions. A "relevant person" is obliged to inform the Secretary of State on the basis of knowledge or suspicion of a breach and is

required to provide information about the identity of the person who is known or suspected to have committed the breach.

Regulation 15 (4) defines “relevant person” as including: financial service providers, legal service providers, and money services businesses. For shipping and aircraft sanctions, Regulation 16 (4) extends “relevant person” to include, among others, aircraft pilots and operators, and masters and pilots of ships, and these individuals must report regardless of whether they are being paid to perform those functions or whether they are doing so during business or leisure time.

[Government guidance](#) emphasises that a failure to comply with the mandatory reporting obligation will result in either a civil monetary penalty or a criminal prosecution.

Information Requests and New Offence

Regulation 17 gives the Secretary of State general powers to request information that it reasonably requires to: (1) exercise its functions under the Civil Enforcement Regulations, (2) monitor compliance with sanctions regulations or detect evasion of sanctions regulation, and (3) investigate a suspected breach of a prohibition, or a suspected failure to comply with an obligation, imposed by or under sanctions regulations. Pursuant to Regulation 21, refusing or failing to comply with an information request without a reasonable excuse is a criminal offence.

Regulation 20 allows the Secretary of State to request the production of a “specified document or documents of a specified description” for the purposes of an information request outlined in Regulations 17 to 19.

[Government guidance](#) provides a non-exhaustive list of examples of the type of information that must be provided to OTSI for a trade sanctions information request and includes a commercial invoice, due diligence report, end use certification, proof of insurance, licences, risk assessment, and sale contract. Regulations 18 and 19 give the Secretary of State the power to request from a person operating under a trade, aircraft, or shipping licence, any information to which the licence relates.

Legal Professional Privilege

Regulation 29 clarifies that reporting obligations and requests for information do not apply to information that is covered by legal professional privilege. The approach the government will take to legal professional privilege is yet to be tested. [Government guidance](#) suggests that “[l]egally privileged information is exempt from having to be disclosed under the above obligations and requirements, and nothing in the regulations is to be read as requiring you to disclose privileged information”. Whereas the [statutory guidance](#) states that legal professionals are expected to “carefully ascertain whether legal privilege applies, and which information it applies to.” The enforcing body “may challenge a blanket assertion of legal professional privilege where it is not satisfied that such careful consideration has been made”.

What's Next?

Latham & Watkins actively tracks sanctions developments across all regions closely and is well positioned to advise on the legal and practical impacts of these measures.

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