
STATUTORY INSTRUMENTS

2020 No. 642

The Somalia (Sanctions) (EU Exit) Regulations 2020

PART 2

Designation of persons

Power to designate persons

5.—(1) The Secretary of State may designate persons⁽¹⁾ by name for the purposes of any of the following—

- (a) regulations 12 to 16 (asset freeze etc.);
- (b) regulation 18 (immigration);
- (c) regulations 28 to 34 (targeted arms embargo) and regulation 35 (enabling or facilitating the conduct of armed hostilities: designated persons).

(2) The Secretary of State may designate different persons for the purposes of different provisions mentioned in paragraph (1).

Criteria for designating a person

6.—(1) The Secretary of State may not designate a person under regulation 5 (power to designate persons) unless the Secretary of State—

- (a) has reasonable grounds to suspect that that person is an involved person, and
- (b) considers that the designation of that person is appropriate, having regard to—
 - (i) the purposes stated in regulation 4 (purposes), and
 - (ii) the likely significant effects of the designation on that person (as they appear to the Secretary of State to be on the basis of the information that the Secretary of State has).

(2) In this regulation, an “involved person” means a person who—

- (a) is or has been involved in a relevant activity,
- (b) is owned or controlled directly or indirectly (within the meaning of regulation 7) by a person who is or has been so involved,
- (c) is acting on behalf of or at the direction of a person who is or has been so involved, or
- (d) is a member of, or associated with, a person who is or has been so involved.

(3) In this regulation a “relevant activity” means—

- (a) the commission of a serious human rights violation or abuse, or violation of international humanitarian law in Somalia, including in particular, in relation to—
 - (i) deliberate targeting of civilians, schools and hospitals;

(1) “Person” is defined by section 9(5) of the Sanctions and Anti-Money Laundering Act 2018 to include (in addition to an individual and a body of persons corporate or unincorporate) any organisation and any association or combination of persons.

- (ii) rape and other forms of sexual and gender-based violence;
 - (iii) recruitment or use of children in armed conflicts;
 - (iv) abduction or enforced disappearances;
 - (v) the forced displacement of civilians;
 - (vi) any of the rights referred to in regulation 4(2)(f);
- (b) obstruction of the delivery or distribution of, or access to, humanitarian assistance in Somalia;
- (c) an attack against, or obstruction of, diplomatic personnel in Somalia, or the regional or international monitoring, peace-support or protection and training missions and mechanisms mentioned in sub-paragraphs (i) to (v) of regulation 4(2)(c);
- (d) the misappropriation of Somali state funds, or taking action that may lead to such misappropriation;
- (e) the resale, supply or delivery, transfer or making available of Somali military goods or technology to, or for use by, any person who is not a relevant entity;
- (f) the illicit export of charcoal from Somalia or the direct or indirect import of charcoal from Somalia;
- (g) any other acts that threaten the peace, security or stability of Somalia, including, in particular, acts that threaten the peace and reconciliation process in Somalia, or obstruct, undermine or threaten the Federal Government of Somalia and the political process in Somalia.
- (4) Any reference in this regulation to being involved in a relevant activity includes being so involved in whatever way, and wherever, any actions constituting the involvement take place, and in particular includes—
- (a) being responsible for, engaging in, providing support for, or promoting, any such activity;
 - (b) providing financial services, or making available funds or economic resources, that could contribute to any such activity;
 - (c) being involved in the unauthorised supply of military goods or military technology to Somalia, or in providing financial services or other assistance relating to such supply;
 - (d) being involved in any trade in goods which could contribute to acts which threaten the peace, security or stability of Somalia, including, in particular, trade via ports controlled by Al-Shabaab which benefits a designated person;
 - (e) assisting the contravention or circumvention of any relevant provision.
- (5) In this regulation—
- (a) “relevant provision” means—
 - (i) any provision of Part 3 (Finance) or Part 5 (Trade);
 - (ii) any provision of the law of a country other than the United Kingdom made for purposes corresponding to a purpose of any provision of Part 3 or Part 5;
 - (iii) any provision of the resolutions mentioned in regulation 4(3);
 - (b) “relevant entity” in relation to Somali military goods or technology, means—
 - (i) the intended original recipient of Somali military goods or technology,
 - (ii) any regional or international monitoring, peace-support or protection and training missions and mechanisms in Somalia including those mentioned in regulation 4(2)(c), or

- (iii) any person employed by, or otherwise acting under the direction or control of any of the entities mentioned in (i) or (ii);
- (c) “Somali military goods or technology” means military goods or military technology exported, supplied or delivered, transferred or made available, to or for the benefit of—
 - (i) the Somali National Security Forces, or
 - (ii) a Federal or other state security institution in Somalia providing security for the people of Somalia.
- (6) Nothing in any sub-paragraph of paragraphs (3) or (4) is to be taken to limit the meaning of any of the other sub-paragraphs of those paragraphs.
- (7) In this regulation, “military goods” and “military technology” have the meanings given by Part 5.

Meaning of “owned or controlled directly or indirectly”

- 7.—(1) A person who is not an individual (“C”) is “owned or controlled directly or indirectly” by another person (“P”) if either of the following two conditions is met (or both are met).
- (2) The first condition is that P—
 - (a) holds directly or indirectly more than 50% of the shares in C,
 - (b) holds directly or indirectly more than 50% of the voting rights in C, or
 - (c) holds the right directly or indirectly to appoint or remove a majority of the board of directors of C.
 - (3) Schedule 1 contains provision applying for the purpose of interpreting paragraph (2).
 - (4) The second condition is that it is reasonable, having regard to all the circumstances, to expect that P would (if P chose to) be able, in most cases or in significant respects, by whatever means and whether directly or indirectly, to achieve the result that affairs of C are conducted in accordance with P’s wishes.

Notification and publicity where designation power used

- 8.—(1) Paragraph (2) applies where the Secretary of State—
- (a) has made a designation under regulation 5, or
 - (b) has by virtue of section 22 of the Act varied or revoked a designation made under that regulation.
- (2) The Secretary of State—
- (a) must without delay take such steps as are reasonably practicable to inform the designated person of the designation, variation or revocation, and
 - (b) must take steps to publicise the designation, variation or revocation.
- (3) The information given under paragraph (2)(a) where a designation is made must include a statement of reasons.
- (4) In this regulation, a “statement of reasons”, in relation to a designation, means a brief statement of the matters that the Secretary of State knows, or has reasonable grounds to suspect, in relation to the designated person which have led the Secretary of State to make the designation.
- (5) Matters that would otherwise be required by paragraph (4) to be included in a statement of reasons may be excluded from it where the Secretary of State considers that they should be excluded—
- (a) in the interests of national security or international relations,

- (b) for reasons connected with the prevention or detection of serious crime in the United Kingdom or elsewhere, or
 - (c) in the interests of justice.
- (6) The steps taken under paragraph (2)(b) must—
- (a) unless one or more of the restricted publicity conditions is met, be steps to publicise generally—
 - (i) the designation, variation or revocation, and
 - (ii) in the case of a designation, the statement of reasons;
 - (b) if one or more of those conditions is met, be steps to inform only such persons as the Secretary of State considers appropriate of the designation, variation or revocation and (in the case of a designation) of the contents of the statement of reasons.
- (7) The “restricted publicity conditions” are as follows—
- (a) the designation is of a person believed by the Secretary of State to be an individual under the age of 18;
 - (b) the Secretary of State considers that disclosure of the designation, variation or revocation should be restricted—
 - (i) in the interests of national security or international relations,
 - (ii) for reasons connected with the prevention or detection of serious crime in the United Kingdom or elsewhere, or
 - (iii) in the interests of justice.
- (8) Paragraph (9) applies if—
- (a) when a designation is made one or more of the restricted publicity conditions is met, but
 - (b) at any time when the designation has effect, it becomes the case that none of the restricted publicity conditions is met.
- (9) The Secretary of State must—
- (a) take such steps as are reasonably practicable to inform the designated person that none of the restricted publicity conditions is now met, and
 - (b) take steps to publicise generally the designation and the statement of reasons relating to it.

Confidential information in certain cases where designation power used

9.—(1) Where the Secretary of State in accordance with regulation 8(7)(b) informs only certain persons of a designation, variation or revocation and (in the case of a designation) of the contents of the statement of reasons, the Secretary of State may specify that any of that information is to be treated as confidential.

- (2) A person (“P”) who—
- (a) is provided with information that is to be treated as confidential in accordance with paragraph (1), or
 - (b) obtains such information,

must not, subject to paragraph (3), disclose it if P knows, or has reasonable cause to suspect, that the information is to be treated as confidential.

(3) The prohibition in paragraph (2) does not apply to any disclosure made by P with lawful authority.

- (4) For this purpose information is disclosed with lawful authority only if and to the extent that—
- (a) the disclosure is by, or is authorised by, the Secretary of State,

- (b) the disclosure is by or with the consent of the person who is or was the subject of the designation,
 - (c) the disclosure is necessary to give effect to a requirement imposed under or by virtue of these Regulations or any other enactment, or
 - (d) the disclosure is required, under rules of court, tribunal rules or a court or tribunal order, for the purposes of legal proceedings of any description.
- (5) This regulation does not prevent the disclosure of information that is already, or has previously been, available to the public from other sources.
- (6) A person who contravenes the prohibition in paragraph (2) commits an offence.
- (7) The High Court (in Scotland, the Court of Session) may, on the application of—
- (a) the person who is the subject of the information, or
 - (b) the Secretary of State,
- grant an injunction (in Scotland, an interdict) to prevent a breach of the prohibition in paragraph (2).
- (8) In paragraph (4)(c), “enactment” has the meaning given by section 54(6) of the Act.

Designation of persons named by or under UN Security Council Resolutions

10.—(1) Each person for the time being named by the Security Council or the Committee for the purposes of paragraph 3 of resolution 1844 is a designated person for the purposes of regulations 12 to 16 (asset-freeze etc.) (whose purposes include compliance with the UN obligations mentioned in regulation 4(3)(b)(2)).

(2) Each person for the time being named by the Security Council or the Committee for the purposes of paragraph 7 of resolution 1844 is a designated person for the purposes of regulations 28 to 34 (targeted arms embargo) and regulation 35 (enabling or facilitating the conduct of armed hostilities: designated persons) (whose purposes include compliance with the UN obligations mentioned in regulation 4(3)(d)).

(3) Nothing in this regulation affects the power under regulation 5 to designate persons (in addition to those designated by this regulation) for the purpose of those regulations mentioned in paragraphs (1) and (2).

(2) Section 13 of the Sanctions and Anti-Money Laundering Act 2018 requires that where the purposes of a provision of regulations under section 1 include compliance with a UN obligation to take particular measures in relation to UN-named persons (which is the case with the regulations mentioned in regulation 10), the regulations must provide for those persons to be designated persons for the purposes of that provision.