
STATUTORY INSTRUMENTS

2020 No. 1468

The Misappropriation (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 11 to 15 (asset-freeze etc.);
- (b) regulation 17 (immigration).

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

Designation criteria

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 purpose stated in regulation 4 (purpose), 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 misappropriation,
- (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) For the purposes of this regulation a person is involved in misappropriation if—

- (a) the person is responsible for or engages in misappropriation;
- (b) the person facilitates or provides support for misappropriation;
- (c) the person conceals the proceeds of misappropriation;
- (d) the person conceals evidence of misappropriation;

(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.

- (e) the person provides financial services, or makes available funds, economic resources, goods or technology, knowing or having reasonable cause to suspect that those financial services, funds, economic resources, goods or technology will or may contribute to misappropriation;
 - (f) the person profits financially or obtains any other benefit from misappropriation; or
 - (g) the person contravenes, or assists with the contravention of, any provision of Part 3 of these Regulations.
- (4) Nothing in any sub-paragraph of paragraph (3) is to be taken to limit the meaning of any of the other sub-paragraphs of that paragraph.
- (5) Any reference in this regulation to being involved in misappropriation includes being so involved wherever any actions constituting the involvement take place.
- (6) In this regulation—
“misappropriation” means misappropriation of State funds from a country outside the United Kingdom.

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 (power to designate persons), 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(6)(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) otherwise 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.