
STATUTORY INSTRUMENTS

2020 No. 1664

**The Conflict Minerals (Compliance)
(Northern Ireland) (EU Exit) Regulations 2020**

PART 1

Introduction

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Conflict Minerals (Compliance) (Northern Ireland) (EU Exit) Regulations 2020 and come into force on 1st January 2021.

(2) These Regulations extend to Northern Ireland only.

Interpretation

2.—(1) In these Regulations—

“body corporate” includes a limited liability partnership;

“civil sanction” has the meaning given by regulation 14;

“competent authority” for the purposes of these Regulations is the authority responsible for the functions of the “Member State competent authority” in the EU Regulation;

“compliance notice” has the meaning given by paragraph 1 of the Schedule;

“EU Regulation” means Regulation (EU) No 2017/821 of the European Parliament and of the Council of 17 May 2017 laying down supply chain due diligence obligations for Union importers of tin, tantalum and tungsten, their ores, and gold originating from conflict-affected and high risk areas⁽¹⁾;

“inspector” has the meaning given by regulation 9;

“non-compliance penalty” has the meaning given by paragraph 4 of the Schedule;

“officer” in relation to a body corporate, means any director, secretary or other similar officer of the body corporate;

“partnership” does not include a limited liability partnership;

“premises” includes any vehicle, vessel, aircraft, hovercraft, tent or moveable structure;

“Union importer” for the purposes of these Regulations has the same meaning as it does in the EU Regulation, except that it is applicable only to Union importers that import into Northern Ireland; and

“unincorporated association” does not include a partnership.

(2) In paragraph (1), “director”, in relation to a body corporate whose affairs are managed by its members, means a member of the body corporate.

⁽¹⁾ OJ No. L 130, 19.5.2017, p.1.

(3) Unless otherwise defined in this regulation, terms that are used in these Regulations and the EU Regulation have the meaning they bear in the EU Regulation.

PART 2

Competent authority and functions

Competent authority

3.—(1) The Secretary of State is the competent authority for the purposes of the EU Regulation in respect of Union importers.

(2) The Secretary of State may authorise in writing any person who appears suitable to act to carry out the functions of the Secretary of State as competent authority.

(3) For the purposes of these Regulations, except for regulations 3, 5, 9 and 17 a reference to the Secretary of State includes any person authorised by the Secretary of State under paragraph (2).

Functions

4. The Secretary of State must carry out the functions of the competent authority under the EU Regulation, in respect of Union importers.

5. The Secretary of State must carry out the functions of the Member State insofar as they relate to Northern Ireland under the EU Regulation, in respect of Union importers.

Information exchanges, reporting and disclosure of information

6.—(1) Subject to paragraph (2), information of any description may be disclosed by the Secretary of State to any person for the purpose of facilitating the carrying out by the Secretary of State of any of the Secretary of State's functions under these Regulations.

(2) Nothing in paragraph (1) authorises a disclosure of information which contravenes any express restriction on disclosure imposed by an enactment passed or any other instrument made in the United Kingdom, or in any part of the United Kingdom, which applies to Northern Ireland (ignoring any restriction which allows disclosure if authorised by an enactment or instrument).

(3) Information which—

(a) relates to a trade secret of any person; or

(b) otherwise is or might be commercially confidential in relation to any person,

and which is disclosed to a person under paragraph (1) may not be disclosed by that person to any other person otherwise than in accordance with the provisions of this regulation or the law of, or of any part of, the United Kingdom which applies to Northern Ireland and authorises or requires such disclosure.

(4) Any authorisation under paragraph (1) of the disclosure of information by or to any person also authorises the disclosure of that information by or to any officer of that person who is authorised to make a disclosure or to receive the information.

7.—(1) The Commissioners for Her Majesty's Revenue and Customs may disclose any information in their possession to the Secretary of State for the purpose of facilitating the carrying out by the Secretary of State of any of the Secretary of State's functions under these Regulations.

(2) Paragraph (1) is without prejudice to any other power of the Commissioners to disclose information.

- (3) No person may disclose any information received from the Commissioners under paragraph (1) if—
- (a) the information relates to a person whose identity is specified in the disclosure or can be deduced from the disclosure;
 - (b) the disclosure is for a purpose other than specified in paragraph (1); and
 - (c) the Commissioners have not given their prior consent to the disclosure.
- (4) A person who breaches paragraph (3) is guilty of an offence.
- (5) It is a defence for a person charged with an offence under paragraph (4) to prove that the person reasonably believed—
- (a) that the disclosure was lawful; or
 - (b) that the information had already and lawfully been made available to the public.
- (6) A prosecution for an offence under this section may be instituted only—
- (a) by the Commissioners, or
 - (b) with the consent of the Director of Public Prosecutions for Northern Ireland.
- (7) A person who is guilty of an offence under this regulation is liable—
- (a) on conviction on indictment, to imprisonment for a term not exceeding two years, to a fine or both, or
 - (b) on summary conviction, to imprisonment for a term not exceeding six months, to a fine not exceeding the statutory maximum, or both.

PART 3

Enforcement

Power to require the production of information

8.—(1) Where the Secretary of State considers it necessary for the carrying out of the Secretary of State's functions under these Regulations, the Secretary of State may give notice to a person requiring the person to provide the Secretary of State the information specified in the notice.

(2) A notice under paragraph (1) must be in writing and specify the purpose for which the information is required.

(3) The notice—

- (a) must specify the time within which the person to whom it is given must comply with it;
- (b) may specify—
 - (i) the manner in which the person to whom it is given must comply with it; and
 - (ii) the form in which the information must be provided.

(4) The notice may require—

- (a) the creation of documents, or documents of a description, specified in the notice; and
- (b) the provision of those documents to the Secretary of State.

(5) A requirement to provide information or create a document is a requirement to do so in a legible form.

Inspectors

9. The Secretary of State may authorise in writing a person (an “inspector”) to exercise the powers under regulations 10 and 11.

Powers of entry

10.—(1) An inspector may, on serving reasonable notice, enter the premises of a Union importer at any reasonable hour for the purpose of carrying out the Secretary of State’s functions under these Regulations, except premises used wholly or mainly as a private dwelling house.

- (2) The requirement to serve a notice under paragraph (1) does not apply—
 - (a) where reasonable efforts to agree an appointment have failed; or
 - (b) where an inspector reasonably believes that it would defeat the object of the entry.
- (3) When entering premises under paragraph (1), an inspector —
 - (a) must, if requested, produce a duly authenticated authorisation document;
 - (b) may be accompanied by a representative of the Union importer; and
 - (c) may bring onto the premises such equipment as the inspector considers necessary.

Powers of inspection

11. An inspector who has entered the premises in exercise of a power under regulation 10, may—
- (a) have access to, inspect, and copy documents, records or other information, in whatever form they are held, and remove them to enable them to be copied;
 - (b) require the production of, and inspect and check the data on, and operation of, any computer and any associated apparatus used in connection with such documents, records or other information, and require computer records to be produced in a form in which they may be easily accessed and taken away by the inspector; or
 - (c) require any person to provide any assistance as may be considered necessary by the Secretary of State for the purposes of carrying out the Secretary of State’s functions under these Regulations.

Restrictions

12. The powers contained in these Regulations shall not be taken as—
- (a) requiring a person to produce any document or information which that person would be entitled to refuse to produce in any proceedings in any court on the grounds that it is the subject of legal professional privilege; or
 - (b) authorising the Secretary of State to take possession of any document or information which is in the possession of a person who would be so entitled.
13. Nothing in these Regulations requires a person to answer any question or give any information if to do so might incriminate that person.

PART 4

Civil sanctions

Power to impose civil sanctions

14.—(1) The Secretary of State may impose a compliance notice or a non-compliance penalty (a “civil sanction”) as set out in the Schedule.

(2) The Schedule (which provides for civil sanctions) has effect.

Imposition of civil sanctions

15. Civil sanctions may be imposed upon a Union importer if, when a power is exercised under regulations 8, 10 or 11, that Union importer—

- (a) without reasonable excuse, fails to comply with a notice under regulation 8(1) or 10(1);
- (b) without reasonable excuse, fails to provide the Secretary of State with any other information or assistance that the Secretary of State may reasonably require;
- (c) without reasonable excuse fails to produce a document or record when reasonably required to do so by the Secretary of State;
- (d) knowingly or recklessly provides false or misleading information to the Secretary of State;
- (e) knowingly or recklessly makes a statement that is false or misleading in a material respect;
- (f) intentionally obstructs, including by preventing entry without reasonable excuse, the Secretary of State; or
- (g) otherwise fails to cooperate with the Secretary of State without reasonable excuse.

PART 5

Miscellaneous provisions

Service of notices

16.—(1) Any notice served under these Regulations must be in writing and may be amended, suspended, or withdrawn in writing at any time.

(2) A notice may be served on a person by—

- (a) personal delivery;
- (b) leaving it at the person’s proper address; or
- (c) sending it by post or by electronic means to a person’s proper address.

(3) In the case of a body corporate, a notice may be served on an officer of that body.

(4) In the case of a partnership, a notice may be served on a partner or person who has control or management of the partnership business.

(5) In the case of an unincorporated association, a notice may be served on an officer of the association or a member of its governing body.

(6) For the purposes of this regulation, “proper address” means—

- (a) in the case of a body corporate or an officer of that body—
 - (i) the registered or principal office of the body; or
 - (ii) the email address of the officer.

- (b) in the case of a partnership or a partner or person who has control or management of the partnership business—
 - (i) the principal office of the partnership; or
 - (ii) the email address of the partner or person who has that control or management.
- (c) in the case of an unincorporated association or an officer of the association or member of its governing body—
 - (i) the principal office of the association; or
 - (ii) the email address of the officer or member;
- (d) in any other case, a person’s last known address, which may be an email address.

(7) For the purposes of paragraph (6), the principal office of a company registered outside Northern Ireland or a partnership or unincorporated association carrying on business outside Northern Ireland is its principal office in Northern Ireland.

(8) If the name or address of any occupier of premises on whom a notice is to be served under these Regulations cannot, after reasonable inquiry, be ascertained, the notice may be served by leaving it conspicuously affixed to a building or object on the premises.

Review

17.—(1) The Secretary of State must, from time to time—

- (a) carry out a review of the regulatory provision contained in these Regulations; and
- (b) publish a report setting out the conclusions of the review.

(2) The first report must be published before 1 January 2026.

(3) Subsequent reports must be published at intervals not exceeding five years.

(4) Section 30(3) of the Small Business, Enterprise and Employment Act 2015⁽²⁾ requires that a review carried out under this regulation must, so far as is reasonable, have regard to how the EU Regulation is implemented and enforced by Member States of the European Union.

(5) Section 30(4) of the Small Business, Enterprise and Employment Act 2015 requires that a report published under this regulation must, in particular—

- (a) set out the objectives intended to be achieved by the regulatory provision referred to in paragraph (1)(a);
- (b) assess the extent to which those objectives are achieved;
- (c) assess whether those objectives remain appropriate; and
- (d) if those objectives remain appropriate, assess the extent to which they could be achieved in a way which involves less onerous regulatory provision.

(6) In this regulation, “regulatory provision” has the same meaning as in sections 28 to 32 of the Small Business, Enterprise and Employment Act 2015 (see section 32 of that Act).

(2) 2015 c. 26. Section 30(3) was amended by section 19 of the Enterprise Act 2016 (c. 12) and the European Union (Withdrawal) Act 2018 (c. 16), Schedule 8(2), paragraph 36.

31st December 2020

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