

Regulations made by the Secretary of State, laid before Parliament under section 55(3) of the Sanctions and Anti-Money Laundering Act 2018, for approval by resolution of each House of Parliament within sixty days beginning with the first day on which any provision of the Regulations comes into force (as provided for in section 56(5) of that Act), subject to extension for periods of dissolution, prorogation or adjournment for more than four days.

STATUTORY INSTRUMENTS

2020 No. 610

EXITING THE EUROPEAN UNION

SANCTIONS

The Nicaragua (Sanctions) (EU Exit) Regulations 2020

Made - - - - - *18th June 2020*

Laid before Parliament *22nd June 2020*

Coming into force in accordance with regulation 1(2)

CONTENTS

PART 1

General

1. Citation and commencement
2. Interpretation
3. Application of prohibitions and requirements outside the United Kingdom
4. Purposes

PART 2

Designation of persons

5. Power to designate persons
6. Designation criteria
7. Meaning of “owned or controlled directly or indirectly”
8. Notification and publicity where designation power used
9. Confidential information in certain cases where designation power used

PART 3

Finance

10. Meaning of “designated person” in Part 3
11. Asset-freeze in relation to designated persons
12. Making funds available to designated persons

13. Making funds available for benefit of designated persons
14. Making economic resources available to designated persons
15. Making economic resources available for benefit of designated persons
16. Circumventing etc. prohibitions

PART 4
Immigration

17. Immigration

PART 5
Exceptions and licences

18. Finance: exceptions from prohibitions
19. Exception for acts done for purposes of national security or prevention of serious crime
20. Treasury licences
21. Finance: licensing offences
22. Section 8B(1) to (3) of the Immigration Act 1971: directions

PART 6
Information and records

23. Finance: reporting obligations
24. "Relevant firm"
25. Finance: powers to request information
26. Finance: production of documents
27. Finance: information offences
28. Disclosure of information
29. Part 6: supplementary

PART 7
Enforcement

30. Penalties for offences
31. Liability of officers of bodies corporate etc.
32. Jurisdiction to try offences
33. Procedure for offences by unincorporated bodies
34. Time limit for proceedings for summary offences
35. Application of Chapter 1 of Part 2 of the Serious Organised Crime and Police Act 2005

PART 8
Supplementary and final provision

36. Notices
37. Revocations
38. Transitional provision: Treasury licences
39. Transitional provision: prior obligations etc.

SCHEDULES

SCHEDULE 1 — Rules for interpretation of regulation 7(2)

SCHEDULE 2 — Treasury licences: purposes

The Secretary of State^(a), in exercise of the powers conferred by sections 1(1)(c) and (3)(b), 3(1)(a) and (d)(i), 4, 9(2)(a), 10(2)(a) and (c), (3) and (4), 11, 15(2)(a) and (b), (3), (4)(b), (5) and (6), 16, 17(2) to (5) and (8), 21(1), 54(1) and (2), 56 and 62(4) and (5) of the Sanctions and Anti-Money Laundering Act 2018^(b), and having decided, upon consideration of the matters set out in sections 2(2) and 56(1) of that Act, that it is appropriate to do so, makes the following Regulations:

PART 1

General

Citation and commencement

1.—(1) These Regulations may be cited as the Nicaragua (Sanctions) (EU Exit) Regulations 2020.

(2) These Regulations come into force in accordance with regulations made under section 56 of the Act.

Interpretation

2. In these Regulations—

“the Act” means the Sanctions and Anti-Money Laundering Act 2018;

“arrangement” includes any agreement, understanding, scheme, transaction or series of transactions, whether or not legally enforceable (but see paragraph 12 of Schedule 1 for the meaning of that term in that Schedule);

“conduct” includes acts and omissions;

“document” includes information recorded in any form and, in relation to information recorded otherwise than in legible form, references to its production include producing a copy of the information in legible form;

“the EU Nicaragua Regulation” means Council Regulation (EU) 2019/1716 of 14 October 2019 concerning restrictive measures in view of the situation in Nicaragua^(c), as it has effect in EU law;

“serious human rights violation or abuse” means a serious violation or abuse of any of the human rights specified in regulation 4(c);

“Treasury licence” means a licence under regulation 20(1);

“United Kingdom person” has the same meaning as in section 21 of the Act.

(a) The power to make regulations under Part 1 of the Sanctions and Anti-Money Laundering Act 2018 (c.13) is conferred on an “appropriate Minister”. Section 1(9)(a) of that Act defines an “appropriate Minister” as including the Secretary of State.

(b) 2018 c.13.

(c) OJ No. L 262, 15.10.2019, p.1.

Application of prohibitions and requirements outside the United Kingdom

3.—(1) A United Kingdom person may contravene a relevant prohibition by conduct wholly or partly outside the United Kingdom.

(2) Any person may contravene a relevant prohibition by conduct in the territorial sea.

(3) In this regulation, a “relevant prohibition” means any prohibition imposed by—

- (a) regulation 9(2) (confidential information),
- (b) Part 3 (Finance), or
- (c) a condition of a Treasury licence.

(4) A United Kingdom person may comply, or fail to comply, with a relevant requirement by conduct wholly or partly outside the United Kingdom.

(5) Any person may comply, or fail to comply, with a relevant requirement by conduct in the territorial sea.

(6) In this regulation a “relevant requirement” means any requirement imposed—

- (a) by or under Part 6 (Information and records), or by reason of a request made under a power conferred by that Part, or
- (b) by a condition of a Treasury licence.

(7) Nothing in this regulation is to be taken to prevent a relevant prohibition or a relevant requirement from applying to conduct (by any person) in the United Kingdom.

Purposes

4. The purposes of the regulations contained in this instrument that are made under section 1 of the Act are to encourage the Government of Nicaragua to—

- (a) respect democratic principles and institutions, the separation of powers and the rule of law in Nicaragua;
- (b) refrain from actions, policies and activities which repress civil society in Nicaragua;
- (c) comply with international human rights law and to respect human rights, including in particular to—
 - (i) respect the right to life of persons in Nicaragua;
 - (ii) respect the right of persons not to be subjected to torture or cruel, inhuman or degrading treatment or punishment in Nicaragua, including inhuman and degrading conditions in prisons;
 - (iii) respect the right to liberty and security, including refraining from arbitrary arrest and detention of persons in Nicaragua;
 - (iv) afford persons in Nicaragua charged with criminal offences the right to a fair trial;
 - (v) afford journalists, human rights defenders and other persons in Nicaragua the right to freedom of expression, association and peaceful assembly;
 - (vi) secure the human rights of persons in Nicaragua without discrimination, including on the basis of a person’s sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

PART 2

Designation of persons

Power to designate persons

5.—(1) The Secretary of State may designate persons^(a) 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 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—
 - (i) the commission of a serious human rights violation or abuse in Nicaragua,
 - (ii) the repression of civil society or democratic opposition in Nicaragua, or
 - (iii) other actions, policies or activities which undermine democracy or the rule of law in Nicaragua,
- (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) Any reference in this regulation to being involved in an activity set out in paragraph (2)(a) above 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 supply to Nicaragua of goods or technology which could contribute to any such activity, or in providing financial services relating to such supply;
- (d) being involved in assisting the contravention or circumvention of any relevant provision.

(4) In this regulation “relevant provision” means—

- (a) any provision of Part 3 (Finance);

(a) “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.

- (b) 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.

(5) 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.

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.

PART 3

Finance

Meaning of “designated person” in Part 3

10. In this Part a “designated person” means a person who is designated under regulation 5 (power to designate persons) for the purposes of regulations 11 to 15 (asset-freeze etc.).

Asset-freeze in relation to designated persons

11.—(1) A person (“P”) must not deal with funds or economic resources owned, held or controlled by a designated person if P knows, or has reasonable cause to suspect, that P is dealing with such funds or economic resources.

(2) Paragraph (1) is subject to Part 5 (Exceptions and licences).

(3) A person who contravenes the prohibition in paragraph (1) commits an offence.

(4) For the purposes of paragraph (1), a person “deals with” funds if the person—

- (a) uses, alters, moves, transfers or allows access to the funds,
- (b) deals with the funds in any other way that would result in any change in volume, amount, location, ownership, possession, character or destination, or
- (c) makes any other change, including portfolio management, that would enable use of the funds.

(5) For the purposes of paragraph (1), a person “deals with” economic resources if the person—

- (a) exchanges the economic resources for funds, goods or services, or
- (b) uses the economic resources in exchange for funds, goods or services (whether by pledging them as security or otherwise).

(6) The reference in paragraph (1) to funds or economic resources that are “owned, held or controlled” by a person includes, in particular, a reference to—

- (a) funds or economic resources in which the person has any legal or equitable interest, regardless of whether the interest is held jointly with any other person and regardless of whether any other person holds an interest in the funds or economic resources;
- (b) any tangible property (other than real property), or bearer security, that is comprised in funds or economic resources and is in the possession of the person.

(7) For the purposes of paragraph (1), funds or economic resources are to be treated as owned, held or controlled by a designated person if they are owned, held or controlled by a person who is owned or controlled directly or indirectly (within the meaning of regulation 7) by the designated person.

(8) For the avoidance of doubt, the reference in paragraph (1) to a designated person includes P if P is a designated person.

Making funds available to designated persons

12.—(1) A person (“P”) must not make funds available directly or indirectly to a designated person if P knows, or has reasonable cause to suspect, that P is making the funds so available.

(2) Paragraph (1) is subject to Part 5 (Exceptions and licences).

(3) A person who contravenes the prohibition in paragraph (1) commits an offence.

(4) The reference in paragraph (1) to making funds available indirectly to a designated person includes, in particular, a reference to making them available to a person who is owned or controlled directly or indirectly (within the meaning of regulation 7) by the designated person.

Making funds available for benefit of designated persons

13.—(1) A person (“P”) must not make funds available to any person for the benefit of a designated person if P knows, or has reasonable cause to suspect, that P is making the funds so available.

- (2) Paragraph (1) is subject to Part 5 (Exceptions and licences).
- (3) A person who contravenes the prohibition in paragraph (1) commits an offence.
- (4) For the purposes of this regulation—
 - (a) funds are made available for the benefit of a designated person only if that person thereby obtains, or is able to obtain, a significant financial benefit, and
 - (b) “financial benefit” includes the discharge (or partial discharge) of a financial obligation for which the designated person is wholly or partly responsible.

Making economic resources available to designated persons

14.—(1) A person (“P”) must not make economic resources available directly or indirectly to a designated person if P knows, or has reasonable cause to suspect—

- (a) that P is making the economic resources so available, and
 - (b) that the designated person would be likely to exchange the economic resources for, or use them in exchange for, funds, goods or services.
- (2) Paragraph (1) is subject to Part 5 (Exceptions and licences).
- (3) A person who contravenes the prohibition in paragraph (1) commits an offence.
- (4) The reference in paragraph (1) to making economic resources available indirectly to a designated person includes, in particular, a reference to making them available to a person who is owned or controlled directly or indirectly (within the meaning of regulation 7) by the designated person.

Making economic resources available for benefit of designated persons

15.—(1) A person (“P”) must not make economic resources available to any person for the benefit of a designated person if P knows, or has reasonable cause to suspect, that P is making the economic resources so available.

- (2) Paragraph (1) is subject to Part 5 (Exceptions and licences).
- (3) A person who contravenes the prohibition in paragraph (1) commits an offence.
- (4) For the purposes of paragraph (1)—
 - (a) economic resources are made available for the benefit of a designated person only if that person thereby obtains, or is able to obtain, a significant financial benefit, and
 - (b) “financial benefit” includes the discharge (or partial discharge) of a financial obligation for which the designated person is wholly or partly responsible.

Circumventing etc. prohibitions

16.—(1) A person must not intentionally participate in activities knowing that the object or effect of them is, whether directly or indirectly—

- (a) to circumvent any of the prohibitions in regulations 11 to 15 (asset-freeze etc.), or
 - (b) to enable or facilitate the contravention of any such prohibition.
- (2) A person who contravenes the prohibition in paragraph (1) commits an offence.

PART 4

Immigration

Immigration

17. A person who is designated under regulation 5 (power to designate persons) for the purposes of this regulation is an excluded person for the purposes of section 8B of the Immigration Act 1971(a).

PART 5

Exceptions and licences

Finance: exceptions from prohibitions

18.—(1) The prohibition in regulation 11 (asset-freeze in relation to designated persons) is not contravened by an independent person (“P”) transferring to another person a legal or equitable interest in funds or economic resources where, immediately before the transfer, the interest—

- (a) is held by P, and
- (b) is not held jointly with the designated person.

(2) In paragraph (1) “independent person” means a person who—

- (a) is not the designated person, and
- (b) is not owned or controlled directly or indirectly (within the meaning of regulation 7) by the designated person.

(3) The prohibitions in regulations 11 to 13 (asset-freeze in relation to, and making funds available to, or for the benefit of, designated persons) are not contravened by a relevant institution crediting a frozen account with interest or other earnings due on the account.

(4) The prohibitions in regulations 12 and 13 (making funds available to, or for the benefit of, designated persons) are not contravened by a relevant institution crediting a frozen account where it receives funds transferred to that institution for crediting to that account.

(5) The prohibitions in regulations 12 and 13 are not contravened by the transfer of funds to a relevant institution for crediting to an account held or controlled (directly or indirectly) by a designated person, where those funds are transferred in discharge (or partial discharge) of an obligation which arose before the date on which the person became a designated person.

(6) The prohibitions in regulations 11 to 13 are not contravened in relation to a designated person (“P”) by a transfer of funds from account A to account B, where—

- (a) account A is with a relevant institution which carries on an excluded activity within the meaning of section 142D of the Financial Services and Markets Act 2000(b),
- (b) account B is with a ring-fenced body within the meaning of section 142A of the Financial Services and Markets Act 2000(c), and
- (c) accounts A and B are held or controlled (directly or indirectly) by P.

(7) In this regulation—

“designated person” has the same meaning as it has in Part 3 (Finance);

(a) 1971 c.77. Section 8B was inserted by the Immigration and Asylum Act 1999 (c.33), section 8 and amended by the Immigration Act 2016 (c.19), section 76; and the Sanctions and Anti-Money Laundering Act 2018, section 59 and Schedule 3, Part 1.

(b) 2000 c.8. Section 142D was inserted by the Financial Services (Banking Reform) Act 2013 (c.33), section 4(1).

(c) Section 142A was inserted by the Financial Services (Banking Reform) Act 2013, section 4(1).

“frozen account” means an account with a relevant institution which is held or controlled (directly or indirectly) by a designated person;

“relevant institution” means a person that has permission under Part 4A of the Financial Services and Markets Act 2000(a) (Permission to carry on regulated activities).

(8) The definition of “relevant institution” in paragraph (7) is to be read with section 22 of the Financial Services and Markets Act 2000(b), any relevant order under that section(c) and Schedule 2 to that Act(d).

Exception for acts done for purposes of national security or prevention of serious crime

19.—(1) Where an act would, in the absence of this paragraph, be prohibited by regulation 9(2) (confidentiality) or any prohibition in Part 3 (Finance), that prohibition does not apply to the act if the act is one which a responsible officer has determined would be in the interests of—

- (a) national security, or
- (b) the prevention or detection of serious crime in the United Kingdom or elsewhere.

(2) Where, in the absence of this paragraph, a thing would be required to be done under or by virtue of a provision of Part 6 (Information and records), that requirement does not apply if a responsible officer has determined that not doing the thing in question would be in the interests of—

- (a) national security, or
- (b) the prevention or detection of serious crime in the United Kingdom or elsewhere.

(3) In this regulation “responsible officer” means a person in the service of the Crown or holding office under the Crown, acting in the course of that person’s duty.

Treasury licences

20.—(1) The prohibitions in regulations 11 to 15 (asset-freeze etc.) do not apply to anything done under the authority of a licence issued by the Treasury under this paragraph.

(2) The Treasury may issue a licence which authorises acts by a particular person only where the Treasury consider that it is appropriate to issue the licence for a purpose set out in Schedule 2.

(3) A licence under paragraph (1)—

- (a) must specify the acts authorised by it;
- (b) may be general or may authorise acts by a particular person or persons of a particular description;
- (c) may—
 - (i) contain conditions;
 - (ii) be of indefinite duration or a defined duration.

(4) Where the Treasury issue a licence under paragraph (1), the Treasury may vary, revoke or suspend it at any time.

(5) Where the Treasury issue, vary, revoke or suspend a licence under paragraph (1) which authorises acts by a particular person, the Treasury must give written notice to that person of the issue, variation, revocation or suspension of the licence.

(a) Part 4A was inserted by the Financial Services Act 2012 (c.21), section 11(2) and amended by S.I. 2018/135.
(b) Section 22 was amended by the Financial Guidance and Claims Act 2018 (c.10), section 27(4); the Financial Services Act 2012, section 7(1); and S.I. 2018/135.
(c) S.I. 2001/544, as most recently amended by S.I. 2019/679; S.I. 2020/117; and S.I. 2020/480; and prospectively amended by S.I. 2019/710.
(d) Schedule 2 was amended by the Regulation of Financial Services (Land Transactions) Act 2005 (c.24), section 1; the Dormant Bank and Building Society Accounts Act 2008 (c.31), section 15 and Schedule 2, paragraph 1; the Financial Services Act 2012, sections 7(2) to (5) and 8; the Financial Guidance and Claims Act 2018, section 27(13); S.I. 2013/1881; S.I. 2018/135; and it is prospectively amended by S.I. 2019/632.

(6) Where the Treasury issue, vary, revoke or suspend a general licence or a licence which authorises acts by persons of a particular description under paragraph (1), the Treasury must take such steps as the Treasury consider appropriate to publicise the issue, variation, revocation or suspension of the licence.

Finance: licensing offences

21.—(1) A person (“P”) commits an offence if P knowingly or recklessly—

- (a) provides information that is false in a material respect, or
- (b) provides or produces a document that is not what it purports to be,

for the purpose of obtaining a Treasury licence (whether for P or anyone else).

(2) A person who purports to act under the authority of a Treasury licence but who fails to comply with any condition of the licence commits an offence.

Section 8B(1) to (3) of the Immigration Act 1971: directions

22.—(1) The Secretary of State may direct that, in relation to any person within regulation 17 (immigration) whose name is specified, or who is of a specified description, section 8B(1) and (2) of the Immigration Act 1971, or section 8B(3) of that Act, have effect subject to specified exceptions.

(2) A direction may contain conditions.

(3) A direction must be of a defined duration (and that duration may be expressed in any way, including, for example, being expressed in a way such that the direction ceases to have effect on, or within a specified period after, the occurrence of a specified event).

(4) The Secretary of State may vary, revoke or suspend a direction at any time.

(5) On the issue, variation, revocation or suspension of a direction, the Secretary of State may take such steps as the Secretary of State considers appropriate to publicise the issue, variation, revocation or suspension of the direction.

(6) In this regulation “specified” means specified in a direction.

PART 6

Information and records

Finance: reporting obligations

23.—(1) A relevant firm must inform the Treasury as soon as practicable if—

- (a) it knows, or has reasonable cause to suspect, that a person—
 - (i) is a designated person, or
 - (ii) has committed an offence under any provision of Part 3 (Finance) or regulation 21 (finance: licensing offences), and
- (b) the information or other matter on which the knowledge or cause for suspicion is based came to it in the course of carrying on its business.

(2) Where a relevant firm informs the Treasury under paragraph (1), it must state—

- (a) the information or other matter on which the knowledge or suspicion is based, and
- (b) any information it holds about the person by which the person can be identified.

(3) Paragraph (4) applies if—

- (a) a relevant firm informs the Treasury under paragraph (1) that it knows, or has reasonable cause to suspect, that a person is a designated person, and
- (b) that person is a customer of the relevant firm.

(4) The relevant firm must also state the nature and amount or quantity of any funds or economic resources held by it for the customer at the time when it first had the knowledge or suspicion.

(5) A relevant institution must inform the Treasury without delay if that institution—

(a) credits a frozen account in accordance with regulation 18(4) (finance: exceptions from prohibitions), or

(b) transfers funds from a frozen account in accordance with regulation 18(6).

(6) A person who fails to comply with a requirement in paragraph (1), (2) or (4) commits an offence.

(7) In this regulation—

“designated person” has the same meaning as it has in Part 3 (Finance);

“frozen account” has the same meaning as it has in regulation 18;

“relevant firm” is to be read in accordance with regulation 24 (“relevant firm”);

“relevant institution” has the same meaning as it has in regulation 18.

“Relevant firm”

24.—(1) The following are relevant firms for the purposes of regulation 23 (finance: reporting obligations)—

(a) a person that has permission under Part 4A of the Financial Services and Markets Act 2000 (Permission to carry on regulated activities);

(b) an undertaking that by way of business—

(i) operates a currency exchange office,

(ii) transmits money (or any representation of monetary value) by any means, or

(iii) cashes cheques that are made payable to customers;

(c) a firm or sole practitioner that is—

(i) a statutory auditor within the meaning of Part 42 of the Companies Act 2006 (Statutory Auditors)(a), or

(ii) a local auditor within the meaning of section 4(1) of the Local Audit and Accountability Act 2014 (general requirements for audit)(b);

(d) a firm or sole practitioner that provides to other persons, by way of business—

(i) accountancy services,

(ii) legal or notarial services,

(iii) advice about tax affairs, or

(iv) trust or company services within the meaning of paragraph (2);

(e) a firm or sole practitioner that carries out, or whose employees carry out, estate agency work;

(f) the holder of a casino operating licence within the meaning given by section 65(2)(a) of the Gambling Act 2005 (nature of licence)(c);

(g) a person engaged in the business of making, supplying, selling (including selling by auction) or exchanging—

(i) articles made from gold, silver, platinum or palladium, or

(ii) precious stones or pearls.

(2) In paragraph (1), “trust or company services” means any of the following services—

(a) 2006 c.46.

(b) 2014 c.2.

(c) 2005 c.19.

- (a) forming companies or other legal persons;
- (b) acting, or arranging for another person to act—
 - (i) as a director or secretary of a company,
 - (ii) as a partner of a partnership, or
 - (iii) in a similar capacity in relation to other legal persons;
- (c) providing a registered office, business address, correspondence or administrative address or other related services for a company, partnership or any other legal person or arrangement;
- (d) acting, or arranging for another person to act, as—
 - (i) a trustee of an express trust or similar legal arrangement, or
 - (ii) a nominee shareholder for a person.

(3) In paragraph (1)—

“estate agency work” is to be read in accordance with section 1 of the Estate Agents Act 1979^(a), but as if references in that section to disposing of or acquiring an interest in land included (despite anything in section 2 of that Act) references to disposing of or acquiring an estate or interest in land outside the United Kingdom where that estate or interest is capable of being owned or held as a separate interest;

“firm” means any entity that, whether or not a legal person, is not an individual, and includes a body corporate and a partnership or other unincorporated body.

(4) Sub-paragraphs (a) and (b) of paragraph (1) are to be read with section 22 of the Financial Services and Markets Act 2000, any relevant order under that section and Schedule 2 to that Act.

(5) For the purposes of regulation 23(1), information or another matter comes to a relevant firm “in the course of carrying on its business” if the information or other matter comes to the firm—

- (a) in the case of a relevant firm within paragraph (1)(a), in the course of carrying on an activity in respect of which the permission mentioned in that provision is required;
- (b) in the case of a relevant firm within paragraph (1)(c)(i), in the course of carrying out statutory audit work within the meaning of section 1210 of the Companies Act 2006 (meaning of “statutory auditor” etc.)^(b);
- (c) in the case of a relevant firm within paragraph (1)(c)(ii), in the course of carrying out an audit required by the Local Audit and Accountability Act 2014;
- (d) in the case of a relevant firm within paragraph (1)(f), in the course of carrying on an activity in respect of which the licence mentioned in that provision is required;
- (e) in the case of a relevant firm within any other provision of paragraph (1), in the course of carrying on an activity mentioned in that provision.

Finance: powers to request information

25.—(1) The Treasury may request a designated person to provide information about—

- (a) funds or economic resources owned, held or controlled by or on behalf of the designated person, or
- (b) any disposal of such funds or economic resources.

(2) The Treasury may request a designated person to provide such information as the Treasury may reasonably require about expenditure—

(a) 1979 c.38. Section 1 was amended by the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c.73), Schedule 1, paragraph 40; the Planning (Consequential Provisions) Act 1990 (c.11), Schedule 2, paragraph 42; the Planning (Consequential Provisions) (Scotland) Act 1997 (c.11), Schedule 2, paragraph 28; the Planning Act (Northern Ireland) 2011 (c.25), Schedule 6, paragraph 21; the Enterprise and Regulatory Reform Act 2013 (c.24), section 70; S.I. 1991/2684; S.S.I. 2000/121 and S.I. 2001/1283.

(b) Section 1210 was amended by S.I. 2005/1433; S.I. 2008/565; S.I. 2008/1950; S.I. 2011/99; S.I. 2012/1809; S.I. 2013/3115; S.I. 2017/516; and S.I. 2017/1164; and it is prospectively amended by S.I. 2019/177.

- (a) by the designated person, or
- (b) for the benefit of the designated person.

(3) For the purposes of paragraph (2), expenditure for the benefit of a designated person includes expenditure on the discharge (or partial discharge) of a financial obligation for which the designated person is wholly or partly responsible.

(4) The power in paragraph (1) or (2) is exercisable only where the Treasury believe that it is necessary for the purpose of monitoring compliance with or detecting evasion of any provision of Part 3 (Finance).

(5) The Treasury may request a person acting under a Treasury licence to provide information about—

- (a) funds or economic resources dealt with under the licence, or
- (b) funds or economic resources made available under the licence.

(6) The Treasury may request a person to provide information within paragraph (7) if the Treasury believe that the person may be able to provide the information.

(7) Information within this paragraph is such information as the Treasury may reasonably require for the purpose of—

- (a) establishing for the purposes of any provision of Part 3—
 - (i) the nature and amount or quantity of any funds or economic resources owned, held or controlled by or on behalf of a designated person,
 - (ii) the nature and amount or quantity of any funds or economic resources made available directly or indirectly to, or for the benefit of, a designated person, or
 - (iii) the nature of any financial transactions entered into by a designated person;
- (b) monitoring compliance with or detecting evasion of—
 - (i) any provision of Part 3,
 - (ii) regulation 23 (finance: reporting obligations), or
 - (iii) any condition of a Treasury licence;
- (c) detecting or obtaining evidence of the commission of an offence under Part 3 or regulation 21 (finance: licensing offences) or 23.

(8) The Treasury may specify the way in which, and the period within which, information is to be provided.

(9) If no such period is specified, the information which has been requested must be provided within a reasonable time.

(10) A request may include a continuing obligation to keep the Treasury informed as circumstances change, or on such regular basis as the Treasury may specify.

(11) Information requested under this regulation may relate to any period of time during which a person is, or was, a designated person.

(12) Information requested by virtue of paragraph (1)(b), (2) or (7)(a)(iii) may relate to any period before a person became a designated person (as well as, or instead of, any subsequent period).

(13) Expressions used in this regulation have the same meaning as they have in Part 3.

Finance: production of documents

26.—(1) A request under regulation 25 (finance: powers to request information) may include a request to produce specified documents or documents of a specified description.

- (2) Where the Treasury request that documents be produced, the Treasury may—
 - (a) take copies of or extracts from any document so produced,
 - (b) request any person producing a document to give an explanation of it, and

- (c) where that person is a body corporate, partnership or unincorporated body other than a partnership, request any person who is—
 - (i) in the case of a partnership, a present or past partner or employee of the partnership, or
 - (ii) in any other case, a present or past officer or employee of the body concerned,
 to give such an explanation.
- (3) Where the Treasury request a designated person or a person acting under a Treasury licence to produce documents, that person must—
 - (a) take reasonable steps to obtain the documents (if they are not already in the person’s possession or control);
 - (b) keep the documents under the person’s possession or control (except for the purpose of providing them to the Treasury or as the Treasury may otherwise permit).
- (4) In this regulation “designated person” has the same meaning as it has in Part 3 (Finance).

Finance: information offences

- 27.**—(1) A person commits an offence if that person—
- (a) without reasonable excuse, refuses or fails within the time and in the manner specified (or, if no time has been specified, within a reasonable time) to comply with any request under regulation 25 (finance: powers to request information);
 - (b) knowingly or recklessly gives any information, or produces any document, which is false in a material particular in response to such a request;
 - (c) with intent to evade any provision of regulation 25 or 26 (finance: production of documents), destroys, mutilates, defaces, conceals or removes any document;
 - (d) otherwise intentionally obstructs the Treasury in the exercise of their powers under regulation 25 or 26.
- (2) Where a person is convicted of an offence under this regulation, the court may make an order requiring that person, within such period as may be specified in the order, to comply with the request.

Disclosure of information

- 28.**—(1) The Secretary of State or the Treasury may, in accordance with this regulation, disclose—
- (a) any information obtained under or by virtue of Part 5 (Exceptions and licences) or this Part, or
 - (b) any information held in connection with—
 - (i) anything done under or by virtue of Part 2 (Designation of persons) or Part 3 (Finance), or
 - (ii) any exception or licence under Part 5 or anything done in accordance with such an exception or under the authority of such a licence.
- (2) Information referred to in paragraph (1) may be disclosed for, or in connection with, any of the following purposes—
- (a) any purpose stated in regulation 4 (purposes);
 - (b) the exercise of functions under these Regulations;
 - (c) facilitating, monitoring or ensuring compliance with these Regulations;
 - (d) taking any action with a view to instituting, or otherwise for the purposes of, any proceedings in the United Kingdom—
 - (i) for an offence under any provision of these Regulations, or

- (ii) in relation to a monetary penalty under section 146 of the Policing and Crime Act 2017 (breach of financial sanctions legislation)(a);
 - (e) taking any action with a view to instituting, or otherwise for the purposes of, any proceedings in any of the Channel Islands, the Isle of Man or any British overseas territory, for an offence under a provision in any such jurisdiction that is similar to a provision of these Regulations;
 - (f) compliance with an international obligation(b);
 - (g) facilitating the exercise by an authority outside the United Kingdom or by an international organisation of functions which correspond to functions under these Regulations.
- (3) Information referred to in paragraph (1) may be disclosed to the following persons—
- (a) a police officer;
 - (b) any person holding or acting in any office under or in the service of—
 - (i) the Crown in right of the Government of the United Kingdom,
 - (ii) the Crown in right of the Scottish Government, the Northern Ireland Executive or the Welsh Government,
 - (iii) the States of Jersey, Guernsey or Alderney or the Chief Pleas of Sark,
 - (iv) the Government of the Isle of Man, or
 - (v) the Government of any British overseas territory;
 - (c) any law officer of the Crown for Jersey, Guernsey or the Isle of Man;
 - (d) the Scottish Legal Aid Board;
 - (e) the Financial Conduct Authority, the Prudential Regulation Authority, the Bank of England, the Jersey Financial Services Commission, the Guernsey Financial Services Commission or the Isle of Man Financial Services Authority;
 - (f) any other regulatory body (whether or not in the United Kingdom);
 - (g) any organ of the United Nations;
 - (h) the Council of the European Union, the European Commission or the European External Action Service;
 - (i) the Government of any country;
 - (j) any other person where the Secretary of State or the Treasury (as the case may be) consider that it is appropriate to disclose the information.
- (4) Information referred to in paragraph (1) may be disclosed to any person with the consent of a person who, in their own right, is entitled to the information.
- (5) In paragraph (4) “in their own right” means not merely in the capacity as a servant or agent of another person.
- (6) In paragraph (1)(b)—
- (a) the reference to information includes information obtained at a time when any provision of these Regulations is not in force, and
 - (b) the reference to a licence under Part 5 includes—
 - (i) a licence which is treated as if it were a licence which had been issued under that Part, and
 - (ii) a licence which is deemed to have been issued under that Part.

(a) 2017 c.3.

(b) Section 1(8) of the Sanctions and Anti-Money Laundering Act 2018 defines an “international obligation” as an obligation of the United Kingdom created or arising by or under any international agreement.

Part 6: supplementary

29.—(1) A disclosure of information under regulation 28 (disclosure of information) does not breach any restriction on such disclosure imposed by statute or otherwise.

(2) But nothing in that regulation authorises a disclosure that—

- (a) contravenes the data protection legislation, or
- (b) is prohibited by any of Parts 1 to 7 or Chapter 1 of Part 9 of the Investigatory Powers Act 2016(a).

(3) Nothing in this Part is to be read as requiring a person who has acted or is acting as counsel or solicitor for any person to disclose any privileged information in their possession in that capacity.

(4) Regulation 28 does not limit the circumstances in which information may be disclosed apart from that regulation.

(5) Nothing in this Part limits any conditions which may be contained in a Treasury licence.

(6) In this regulation—

“the data protection legislation” has the same meaning as in the Data Protection Act 2018 (see section 3 of that Act)(b);

“privileged information” means information with respect to which a claim to legal professional privilege (in Scotland, to confidentiality of communications) could be maintained in legal proceedings.

PART 7

Enforcement

Penalties for offences

30.—(1) A person who commits an offence under any provision of Part 3 (Finance) or regulation 21 (finance: licensing offences) is liable—

- (a) on summary conviction in England and Wales, to imprisonment for a term not exceeding 12 months or a fine (or both);
- (b) on summary conviction in Scotland, to imprisonment for a term not exceeding 12 months or a fine not exceeding the statutory maximum (or both);
- (c) on summary conviction in Northern Ireland, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum (or both);
- (d) on conviction on indictment, to imprisonment for a term not exceeding 7 years or a fine (or both).

(2) A person who commits an offence under regulation 9(6) (confidentiality) is liable—

- (a) on summary conviction in England and Wales, to imprisonment for a term not exceeding 12 months or a fine (or both);
- (b) on summary conviction in Scotland, to imprisonment for a term not exceeding 12 months or a fine not exceeding the statutory maximum (or both);
- (c) on summary conviction in Northern Ireland, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum (or both);

(a) 2016 c.25. Amendments have been made by the Policing and Crime Act 2017, Schedule 9, paragraph 74; the Data Protection Act 2018 (c.12), Schedule 19, paragraphs 198-203; S.I. 2018/652 and S.I. 2018/1123. Saving provisions are made by S.I. 2017/859.

(b) 2018 c.12. There are amendments to this Act that are not relevant to these Regulations.

- (d) on conviction on indictment, to imprisonment for a term not exceeding 2 years or a fine (or both).

(3) A person who commits an offence under regulation 23(6) or 27 (information offences in connection with Part 3) is liable—

- (a) on summary conviction in England and Wales, to imprisonment for a term not exceeding 6 months or a fine (or both);
- (b) on summary conviction in Scotland, to imprisonment for a term not exceeding 6 months or a fine not exceeding level 5 on the standard scale (or both);
- (c) on summary conviction in Northern Ireland, to imprisonment for a term not exceeding 6 months or a fine not exceeding level 5 on the standard scale (or both).

(4) In relation to an offence committed before section 154(1) of the Criminal Justice Act 2003^(a) comes into force, the reference in each of paragraphs (1)(a) and (2)(a) to 12 months is to be read as a reference to 6 months.

Liability of officers of bodies corporate etc.

31.—(1) Where an offence under these Regulations, committed by a body corporate—

- (a) is committed with the consent or connivance of any director, manager, secretary or other similar officer of the body corporate, or any person who was purporting to act in any such capacity, or
- (b) is attributable to any neglect on the part of any such person,

that person as well as the body corporate is guilty of the offence and is liable to be proceeded against and punished accordingly.

(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.

(3) Paragraph (1) also applies in relation to a body that is not a body corporate, with the substitution for the reference to a director of the body of a reference—

- (a) in the case of a partnership, to a partner;
- (b) in the case of an unincorporated body other than a partnership—
 - (i) where the body’s affairs are managed by its members, to a member of the body;
 - (ii) in any other case, to a member of the governing body.

Jurisdiction to try offences

32.—(1) Wherever an offence under these Regulations is committed (whether in the United Kingdom or outside the United Kingdom)—

- (a) proceedings for the offence may be taken at any place in the United Kingdom, and
- (b) the offence may for all incidental purposes be treated as having been committed at any such place.

(2) In the application of paragraph (1) to Scotland, where an offence is committed outside the United Kingdom any such proceedings against a person may be taken—

- (a) in any sheriff court district in which the person is apprehended or is in custody, or
- (b) in such sheriff court district as the Lord Advocate may determine.

(3) In paragraph (2) “sheriff court district” is to be read in accordance with the Criminal Procedure (Scotland) Act 1995 (see section 307(1) of that Act)^(b).

(a) 2003 c.44. Amendments have been made to section 154 that are not relevant to these Regulations.

(b) 1995 c.46.

Procedure for offences by unincorporated bodies

33.—(1) Paragraphs (2) and (3) apply if it is alleged that an offence under these Regulations has been committed by an unincorporated body (as opposed to by a member of the body).

(2) Proceedings in England and Wales or Northern Ireland for such an offence must be brought against the body in its own name.

(3) For the purposes of proceedings for such an offence brought against an unincorporated body—

- (a) rules of court relating to the service of documents have effect as if the body were a body corporate;
- (b) the following provisions apply as they apply in relation to a body corporate—
 - (i) section 33 of the Criminal Justice Act 1925^(a) and Schedule 3 to the Magistrates' Courts Act 1980^(b);
 - (ii) section 18 of the Criminal Justice Act (Northern Ireland) 1945^(c) and Article 166 of, and Schedule 4 to, the Magistrates' Courts (Northern Ireland) Order 1981^(d).

(4) A fine imposed on an unincorporated body on its conviction of an offence under these Regulations is to be paid out of the funds of the body.

Time limit for proceedings for summary offences

34.—(1) Proceedings for an offence under these Regulations which is triable only summarily may be brought within the period of 12 months beginning with the date on which evidence sufficient in the opinion of the prosecutor to justify the proceedings comes to the prosecutor's knowledge.

(2) But such proceedings may not be brought by virtue of paragraph (1) more than 3 years after the commission of the offence.

(3) A certificate signed by the prosecutor as to the date on which the evidence in question came to the prosecutor's knowledge is conclusive evidence of the date on which it did so; and a certificate to that effect and purporting to be so signed is to be treated as being so signed unless the contrary is proved.

(4) In relation to proceedings in Scotland—

- (a) section 136(3) of the Criminal Procedure (Scotland) Act 1995 (date of commencement of summary proceedings) applies for the purposes of this regulation as it applies for the purposes of that section, and
- (b) references in this regulation to the prosecutor are to be treated as references to the Lord Advocate.

Application of Chapter 1 of Part 2 of the Serious Organised Crime and Police Act 2005

35. Chapter 1 of Part 2 of the Serious Organised Crime and Police Act 2005 (Investigatory powers)^(e) applies to any offence under Part 3 (Finance) or regulation 21 (finance: licensing offences).

(a) 1925 c.86. Section 33 was amended by the Statute Law (Repeals) Act 2004 (c.14), section 1(1) and Schedule 1, Part 17. Other amendments have been made to section 33 that are not relevant to these Regulations.

(b) 1980 c.43. Amendments have been made to Schedule 3 that are not relevant to these Regulations.

(c) 1945 c.15 (N.I.).

(d) S.I. 1981/1675 (N.I. 26).

(e) 2005 c.15. Chapter 1 of Part 2 has been amended by the Terrorism Act 2006 (c.11), section 33(3) and (4); the Northern Ireland (Miscellaneous Provisions) Act 2006 (c.33), sections 26(2) and 30(2) and Schedules 3 and 5; the Bribery Act 2010 (c.23), section 17(2) and Schedule 1; the Criminal Justice and Licensing (Scotland) Act 2010 (asp.13), section 203 and Schedule 7, paragraph 77; the Crime and Courts Act 2013 (c.22), section 15 and Schedule 8, paragraphs 157 and 159; the Criminal Finances Act 2017 (c.22), section 51(1); the Sanctions and Anti-Money Laundering Act 2018, section 59(4) and Schedule 3, paragraph 4; and S.I. 2014/834.

PART 8

Supplementary and final provision

Notices

36.—(1) This regulation applies in relation to a notice required by regulation 20 (Treasury licences) to be given to a person.

(2) The notice may be given to an individual—

- (a) by delivering it to the individual,
- (b) by sending it to the individual by post addressed to the individual at his or her usual or last-known place of residence or business, or
- (c) by leaving it for the individual at that place.

(3) The notice may be given to a person other than an individual—

- (a) by sending it by post to the proper officer of the body at its principal office, or
- (b) by addressing it to the proper officer of the body and leaving it at that office.

(4) The notice may be given to the person by other means, including by electronic means, with the person's consent.

(5) In this regulation, the reference in paragraph (3) to a "principal office"—

- (a) in relation to a registered company, is to be read as a reference to the company's registered office;
- (b) in relation to a body incorporated or constituted under the law of a country other than the United Kingdom, includes a reference to the body's principal office in the United Kingdom (if any).

(6) In this regulation—

"proper officer"—

- (a) in relation to a body other than a partnership, means the secretary or other executive officer charged with the conduct of the body's general affairs, and
- (b) in relation to a partnership, means a partner or a person who has the control or management of the partnership business;

"registered company" means a company registered under the enactments relating to companies for the time being in force in the United Kingdom.

Revocations

37.—(1) Council Regulation (EU) 2019/1716 of 14 October 2019 concerning restrictive measures in view of the situation in Nicaragua is revoked.

(2) The Nicaragua (Asset-Freezing) Regulations 2019(a) are revoked.

Transitional provision: Treasury licences

38.—(1) Paragraphs (2) to (4) apply to a licence which—

- (a) was granted by the Treasury under regulation 9 of the 2019 Regulations,
- (b) was in effect immediately before the relevant date, and
- (c) authorises conduct which would (on and after the relevant date, and in the absence of paragraphs (2) to (4)) be prohibited under Part 3 (Finance),

and such a licence is referred to in this regulation as "an existing financial sanctions licence".

(a) S.I. 2019/1353.

(2) An existing financial sanctions licence which authorises an act which would otherwise be prohibited has effect on and after the relevant date as if it had been issued by the Treasury under regulation 20(1) (Treasury licences).

(3) Any reference in an existing financial sanctions licence to the 2019 Regulations is to be treated on and after the relevant date as a reference to these Regulations.

(4) Any reference in an existing financial sanctions licence to a prohibition in—

- (a) the 2019 Regulations, or
- (b) the EU Nicaragua Regulation,

is to be treated on and after the relevant date as a reference to the corresponding prohibition in Part 3.

(5) Paragraph (6) applies where—

- (a) an application for a licence, or for the variation of a licence, under the 2019 Regulations was made before the relevant date,
- (b) the application is for the authorisation of conduct which would (on and after the relevant date) be prohibited under Part 3, and
- (c) a decision to grant or refuse the application has not been made before that date.

(6) The application is to be treated on and after the relevant date as an application for a licence, or for the variation of a licence (as the case may be), under regulation 20(1) (Treasury licences).

(7) In this regulation—

“the 2019 Regulations” means the Nicaragua (Asset-Freezing) Regulations 2019;

“the relevant date” means—

- (a) where regulations under section 56 of the Act provide that Part 3 comes into force at a specified time on a day, that time on that day, and
- (b) otherwise, the date on which Part 3 comes into force.

Transitional provision: prior obligations etc.

39.—(1) Where—

- (a) a person was named in Annex I of the EU Nicaragua Regulation immediately before the relevant date, and
- (b) the person is a designated person immediately before the relevant date,

any reference in a provision mentioned in paragraph (2) to the date on which a person became a designated person is a reference to the date on which the person was so named.

(2) The provisions referred to in paragraph (1) are—

- (a) regulation 18(5) (finance: exceptions from prohibitions), and
- (b) paragraphs 6(b)(i) and 10(a) of Schedule 2 (Treasury licences: purposes).

(3) In this regulation—

“designated person” has the same meaning as it has in Part 3 (Finance);

“the relevant date” means—

- (a) where regulations under section 56 of the Act provide that Part 3 comes into force at a specified time on a day, that time on that day, and
- (b) otherwise, the date on which Part 3 comes into force.

18th June 2020

Ahmad
Minister of State
Foreign and Commonwealth Office

SCHEDULES

SCHEDULE 1

Regulation 7(3)

Rules for interpretation of regulation 7(2)

Application of Schedule

1.—(1) The rules set out in the following paragraphs of this Schedule apply for the purpose of interpreting regulation 7(2).

(2) They also apply for the purpose of interpreting this Schedule.

Joint interests

2. If two or more persons each hold a share or right jointly, each of them is treated as holding that share or right.

Joint arrangements

3.—(1) If shares or rights held by a person and shares or rights held by another person are the subject of a joint arrangement between those persons, each of them is treated as holding the combined shares or rights of both of them.

(2) A “joint arrangement” is an arrangement between the holders of shares or rights that they will exercise all or substantially all the rights conferred by their respective shares or rights jointly in a way that is pre-determined by the arrangement.

(3) “Arrangement” has the meaning given by paragraph 12.

Calculating shareholdings

4.—(1) In relation to a person who has a share capital, a reference to holding “more than 50% of the shares” in that person is to holding shares comprised in the issued share capital of that person of a nominal value exceeding (in aggregate) 50% of that share capital.

(2) In relation to a person who does not have a share capital—

- (a) a reference to holding shares in that person is to holding a right or rights to share in the capital or, as the case may be, profits of that person;
- (b) a reference to holding “more than 50% of the shares” in that person is to holding a right or rights to share in more than 50% of the capital or, as the case may be, profits of that person.

Voting rights

5.—(1) A reference to the voting rights in a person is to the rights conferred on shareholders in respect of their shares (or, in the case of a person not having a share capital, on members) to vote at general meetings of the person on all or substantially all matters.

(2) In relation to a person that does not have general meetings at which matters are decided by the exercise of voting rights—

- (a) a reference to holding voting rights in the person is to be read as a reference to holding rights in relation to the person that are equivalent to those of a person entitled to exercise voting rights in a company;
- (b) a reference to holding “more than 50% of the voting rights” in the person is to be read as a reference to holding the right under the constitution of the person to block changes to the overall policy of the person or to the terms of its constitution.

6. In applying regulation 7(2) and this Schedule, the voting rights in a person are to be reduced by any rights held by the person itself.

Rights to appoint or remove members of the board

7. A reference to the right to appoint or remove a majority of the board of directors of a person is to the right to appoint or remove directors holding a majority of the voting rights at meetings of the board on all or substantially all matters.

8. A reference to a board of directors, in the case of a person who does not have such a board, is to be read as a reference to the equivalent management body of that person.

Shares or rights held “indirectly”

9.—(1) A person holds a share “indirectly” if the person has a majority stake in another person and that other person—

- (a) holds the share in question, or
- (b) is part of a chain of persons—
 - (i) each of whom (other than the last) has a majority stake in the person immediately below it in the chain, and
 - (ii) the last of whom holds the share.

(2) A person holds a right “indirectly” if the person has a majority stake in another person and that other person—

- (a) holds that right, or
- (b) is part of a chain of persons—
 - (i) each of whom (other than the last) has a majority stake in the person immediately below it in the chain, and
 - (ii) the last of whom holds that right.

(3) For these purposes, a person (“A”) has a “majority stake” in another person (“B”) if—

- (a) A holds a majority of the voting rights in B,
- (b) A is a member of B and has the right to appoint or remove a majority of the board of directors of B,
- (c) A is a member of B and controls alone, pursuant to an agreement with other shareholders or members, a majority of the voting rights in B, or
- (d) A has the right to exercise, or actually exercises, dominant influence or control over B.

(4) In the application of this paragraph to the right to appoint or remove a majority of the board of directors, a person (“A”) is to be treated as having the right to appoint a director if—

- (a) any person’s appointment as director follows necessarily from that person’s appointment as director of A, or
- (b) the directorship is held by A itself.

Shares held by nominees

10. A share held by a person as nominee for another is to be treated as held by the other (and not by the nominee).

Rights treated as held by person who controls their exercise

11.—(1) Where a person controls a right, the right is to be treated as held by that person (and not by the person who in fact holds the right, unless that person also controls it).

(2) A person “controls” a right if, by virtue of any arrangement between that person and others, the right is exercisable only—

- (a) by that person,
- (b) in accordance with that person's directions or instructions, or
- (c) with that person's consent or concurrence.

12. "Arrangement" includes—

- (a) any scheme, agreement or understanding, whether or not it is legally enforceable, and
- (b) any convention, custom or practice of any kind.

Rights exercisable only in certain circumstances etc.

13.—(1) Rights that are exercisable only in certain circumstances are to be taken into account only—

- (a) when the circumstances have arisen, and for so long as they continue to obtain, or
- (b) when the circumstances are within the control of the person having the rights.

(2) But rights that are exercisable by an administrator or by creditors while a person is subject to relevant insolvency proceedings are not to be taken into account while the person is subject to those proceedings.

(3) "Relevant insolvency proceedings" means—

- (a) administration within the meaning of the Insolvency Act 1986(a),
- (b) administration within the meaning of the Insolvency (Northern Ireland) Order 1989(b), or
- (c) proceedings under the insolvency law of another country during which a person's assets and affairs are subject to the control or supervision of a third party or creditor.

(4) Rights that are normally exercisable but are temporarily incapable of exercise are to continue to be taken into account.

Rights attached to shares held by way of security

14. Rights attached to shares held by way of security provided by a person are to be treated for the purposes of this Schedule as held by that person—

- (a) where apart from the right to exercise them for the purpose of preserving the value of the security, or of realising it, the rights are exercisable only in accordance with that person's instructions, and
- (b) where the shares are held in connection with the granting of loans as part of normal business activities and apart from the right to exercise them for the purpose of preserving the value of the security, or of realising it, the rights are exercisable only in that person's interests.

SCHEDULE 2

Regulation 20(2)

Treasury licences: purposes

Interpretation

1. In this Schedule—

"designated person" has the same meaning as it has in Part 3 (Finance);

"frozen funds or economic resources" means funds or economic resources frozen by virtue of regulation 11, and any reference to a person's frozen funds or economic resources is to funds

(a) 1986 c.45.

(b) S.I. 1989/2045 (N.I. 19).

or economic resources frozen as a consequence of the designation of that person for the purpose of that regulation.

Basic needs

2.—(1) To enable the basic needs of a designated person, or (in the case of an individual) any dependent family member of such a person, to be met.

(2) In the case of an individual, in sub-paragraph (1), “basic needs” includes—

- (a) medical needs;
- (b) needs for—
 - (i) food;
 - (ii) payment of insurance premiums;
 - (iii) payment of tax;
 - (iv) rent or mortgage payments;
 - (v) utility payments.

(3) In the case of a person other than an individual, in sub-paragraph (1), “basic needs” includes needs for—

- (a) payment of insurance premiums;
- (b) payment of reasonable fees for the provision of property management services;
- (c) payment of remuneration, allowances or pensions of employees;
- (d) payment of tax;
- (e) rent or mortgage payments;
- (f) utility payments.

(4) In sub-paragraph (1)—

“dependent” means financially dependent;

“family member” includes—

- (a) the wife or husband of the designated person;
- (b) the civil partner of the designated person;
- (c) any parent or other ascendant of the designated person;
- (d) any child or other descendant of the designated person;
- (e) any person who is a brother or sister of the designated person, or a child or other descendant of such a person.

Legal services

3. To enable the payment of—

- (a) reasonable professional fees for the provision of legal services, or
- (b) reasonable expenses associated with the provision of legal services.

Maintenance of frozen funds and economic resources

4. To enable the payment of—

- (a) reasonable fees, or
- (b) reasonable service charges,

arising from the routine holding or maintenance of frozen funds or economic resources.

Extraordinary expenses

5. To enable an extraordinary expense of a designated person to be met.

Pre-existing judicial decisions etc.

6. To enable, by the use of a designated person's frozen funds or economic resources, the implementation or satisfaction (in whole or in part) of a judicial, administrative or arbitral decision or lien, provided that—

- (a) the funds or economic resources so used are the subject of the decision or lien,
- (b) the decision or lien—
 - (i) was made or established before the date on which the person became a designated person, and
 - (ii) is enforceable in the United Kingdom, and
- (c) the use of the frozen funds or economic resources does not directly or indirectly benefit any other designated person.

Diplomatic missions etc.

7.—(1) To enable anything to be done in order that the functions of a diplomatic mission or consular post or of an international organisation enjoying immunities in accordance with international law may be carried out.

(2) In this paragraph—

“consular post” has the same meaning as in the Vienna Convention on Consular Relations done at Vienna on 24 April 1963^(a), and any reference to the functions of a consular post is to be read in accordance with that Convention;

“diplomatic mission” and any reference to the functions of a diplomatic mission are to be read in accordance with the Vienna Convention on Diplomatic Relations done at Vienna on 18 April 1961^(b).

Humanitarian assistance activities

8.—(1) To enable anything to be done in connection with the performance of any humanitarian assistance activity.

(2) In sub-paragraph (1), “humanitarian assistance activity” includes the work of international and non-governmental organisations carrying out relief activities in Nicaragua for the benefit of the civilian population there.

Extraordinary situation

9. To enable anything to be done to deal with an extraordinary situation.

Prior obligations

10. To enable, by the use of a designated person's frozen funds or economic resources, the satisfaction of an obligation of that person (whether arising under a contract, other agreement or otherwise), provided that—

- (a) the obligation arose before the date on which the person became a designated person, and
- (b) no payments are made to another designated person, whether directly or indirectly.

(a) United Nations Treaty Series, vol. 596, p.261.

(b) United Nations Treaty Series, vol. 500, p. 95.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are made under the Sanctions and Anti-Money Laundering Act 2018 (c.13) to establish a sanctions regime in relation to Nicaragua for the purposes of encouraging the Government of Nicaragua to: respect democratic principles and institutions, the separation of powers and the rule of law, refrain from the repression of civil society, and comply with international human rights law and respect human rights. Following the UK's withdrawal from the European Union, these Regulations replace the EU sanctions regime implemented via EU Council Decision (CFSP) 2019/1720 of 14 October 2019 concerning restrictive measures in view of the situation in Nicaragua and Council Regulation (EU) 2019/1716 of 14 October 2019 concerning restrictive measures in view of the situation in Nicaragua ("the EU Nicaragua Regulation").

The Regulations confer a power on the Secretary of State to designate persons who are, or have been, involved in certain activities. Designated persons may be excluded from the United Kingdom and may be made subject to financial sanctions, including having their funds and/or economic resources frozen. The Regulations provide for certain exceptions to this sanctions regime, in particular in relation to financial sanctions (for example to allow for frozen accounts to be credited with interest or other earnings) and also acts done for the purpose of national security or the prevention of serious crime. The Regulations also confer powers on the Treasury to issue licenses in respect of activities that would otherwise be prohibited under the financial sanctions imposed by these Regulations. Schedule 2 to these Regulations sets out the purposes for which the Treasury will issue such licences.

These Regulations make it a criminal offence to contravene, or circumvent, any of the financial sanctions prohibitions in these Regulations and prescribe the mode of trial and penalties that apply to such offences. The Regulations prescribe powers for the provision and sharing of information to enable the effective implementation and enforcement of the sanctions regime.

The EU Nicaragua Regulation is revoked by these Regulations. The Nicaragua (Asset-Freezing) Regulations 2019 (S.I. 2019/1353) are also revoked.

An Impact Assessment has not been produced for these Regulations, as the instrument is intended to ensure the existing sanctions regime remains in place following the United Kingdom's withdrawal from the European Union. An impact assessment was, however, produced for the Sanctions and Anti-Money Laundering Act 2018 and can be found at:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/653271/Sanctions_and_Anti-Money_Laundering_Bill_Impact_Assessment_18102017.pdf.

© Crown copyright 2020

Printed and published in the UK by The Stationery Office Limited under the authority and superintendence of Jeff James, Controller of Her Majesty's Stationery Office and Queen's Printer of Acts of Parliament.

£6.90

UK202006191009 06/2020 19585

<http://www.legislation.gov.uk/id/uksi/2020/610>

ISBN 978-0-34-820870-2



9 780348 208702