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STATUTORY INSTRUMENTS

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**2020 No. 948**

**The Afghanistan (Sanctions) (EU Exit) Regulations 2020**

**PART 5**

Exceptions and licences

**Finance: exceptions from prohibitions**

**25.**—(1) The prohibition in regulation 8 (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 8 to 10 (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 9 and 10 (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 9 and 10 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 8 to 10 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(1),
- (b) account B is with a ring-fenced body within the meaning of section 142A of the Financial Services and Markets Act 2000(2), 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);

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

(2) 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(3) (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(4), any relevant order under that section(5) and Schedule 2 to that Act(6).

### **Exception for authorised conduct in a relevant country**

26.—(1) Where a person’s conduct in a relevant country would, in the absence of this regulation, contravene a prohibition in any of regulations 8 to 12 (asset-freeze etc.) (“the relevant prohibition”), the relevant prohibition is not contravened if the conduct is authorised by a licence or other authorisation which is issued—

(2) In this regulation, “relevant country” means—

- (a) any of the Channel Islands;
- (b) the Isle of Man;
- (c) any British overseas territory.

(3) Nothing in this regulation affects the application of a prohibition in a case where it would be incompatible with a UN obligation for the prohibition not to apply.

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

27.—(1) Where an act would, in the absence of this paragraph, be prohibited by any prohibition in Part 3 (Finance) or Part 4 (Trade), 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) or Part 8 (Maritime enforcement), 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.

(4) Nothing in this regulation affects the application of a prohibition or requirement in a case where it would be incompatible with a UN obligation for the prohibition or requirement not to apply.

(3) Part 4A was inserted by the Financial Services Act 2012 (c.21), section 11(2) and most recently amended by S.I. 2018/546; it is prospectively amended by S.I. 2019/632.

(4) Section 22 was amended by the Financial Guidance and Claims Act 2018 (c.10), section 27(4); the Financial Services Act 2012 (c.21), section 7(1); and S.I. 2018/135.

(5) S.I. 2001/544, as most recently amended by S.I. 2019/679; S.I. 2020/117; and S.I. 2020/480; it is amended and prospectively amended by S.I. 2019/632; and it is prospectively amended by S.I. 2019/710.

(6) 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; and S.I. 2018/135; and it is prospectively amended by S.I. 2019/632.

### **Treasury licences**

**28.**—(1) The prohibitions in regulations 8 to 12 (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 in relation to a designated 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.

(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**

**29.**—(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.