



Sanctions and Anti-Money Laundering Act 2018

2018 CHAPTER 13

PART 1

SANCTIONS REGULATIONS

CHAPTER 4

COURT REVIEWS

38 Court review of decisions

- (1) This section applies to—
- (a) any decision under section 23(3) or 24(2) (decision, following a request to or review by an appropriate Minister, on whether a designation of a person made under a designation power should be varied or revoked);
 - (b) any decision under section 27(3) or 28(2) (decision, following a request to or review by an appropriate Minister, on whether a ship specification should be revoked);
 - (c) any decision under section 25(4), 29(4), 36(4) or 37(4) not to comply with a request;
 - (d) any other decision of an appropriate Minister in connection with functions of that Minister under this Part or regulations under this Part, other than—
 - (i) a decision to make or vary, or not to revoke or vary, a designation under a designation power where the designated person has a right to make a request under section 23 or would have but for section 23(2),
 - (ii) a decision to make a ship specification, or not to revoke a ship specification, where a person has a right to make a request in respect of that specification under section 27 or would have but for section 27(2), or

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- (iii) a decision to give a direction under section 34(3)(a) where the person has a right to make a request under section 36 or would have but for section 36(3) or 37.
- (2) The appropriate person may apply to the High Court or, in Scotland, the Court of Session, for the decision to be set aside.
- (3) “The appropriate person” means—
 - (a) in relation to a decision within subsection (1)(a), the person named by the designation or, where the designation is of persons of a specified description, any person of that description;
 - (b) in relation to a decision within subsection (1)(b) or (d), any person affected by the decision;
 - (c) in relation to a decision within subsection (1)(c), the person who made the request.
- (4) In determining whether the decision should be set aside, the court must apply the principles applicable on an application for judicial review.
- (5) If the court decides that a decision should be set aside it may make any such order, or give any such relief, as could in the absence of this section be made or given in proceedings for judicial review of the decision; but this is subject to section 39(1) to (4).
- (6) In this section and section 39 “a ship specification” means a specification of a ship made under a power contained in regulations under section 1 by virtue of section 14.

39 Court reviews: further provision

- (1) Subsection (2) applies to the court in any of the following proceedings—
 - (a) any proceedings on an application under section 38 in respect of a decision mentioned in section 38(1)(a), (b) or (c) (“a relevant application”);
 - (b) any proceedings on a claim arising from any matter to which a relevant application relates;
 - (c) if—
 - (i) a designation made under a designation power contained in regulations under section 1 is revoked without an application under section 38 being made,
 - (ii) a ship specification (within the meaning of section 38) is revoked without such an application being made, or
 - (iii) a corrective direction is given under section 34(3)(b) without such an application being made,
 any proceedings on a relevant claim.
- (2) If the court would, in the absence of this subsection, have power to award damages, the court may not award damages unless—
 - (a) the reason (or one of the reasons) that the court would have that power is that it is satisfied that the tort of negligence was committed, or, in Scotland, that there has been negligence, or
 - (b) the court is satisfied that the decision concerned was made in bad faith.
- (3) In subsection (1)(c)—

a “corrective direction” means a direction given in respect of a person and a list following the giving of a direction under section 34(3)(a) in respect of that person and list;

a “relevant claim” means a claim made by (as the case may be)—

- (a) a person designated by the designation,
- (b) a person affected by the ship specification, or
- (c) the person in respect of whom the direction under section 34(3)(a) was given,

which arises from any matter relating to the designation, ship specification or direction.

- (4) In subsection (2) “the decision concerned” means—
- (a) in relation to proceedings within subsection (1)(a) or (b) where the relevant application was in respect of a decision mentioned in section 38(1)(a), the decision in respect of which the relevant application was made or the designation to which that decision related;
 - (b) in relation to any other proceedings within subsection (1)(a) or (b), the decision in respect of which the relevant application was made;
 - (c) in relation to proceedings within subsection (1)(c), the designation or ship specification or the decision to give the direction under section 34(3)(a).
- (5) A decision mentioned in sub-paragraph (i), (ii) or (iii) of section 38(1)(d) may not be questioned by way of proceedings for judicial review (and nor may a decision to which section 38 applies).

40 Rules of court

- (1) Sections 66 to 68 of the Counter-Terrorism Act 2008 (supplementary provisions relating to rules of court and special advocates) apply in relation to proceedings—
- (a) on an application under section 38 (court review of decisions), or
 - (b) on a claim arising from any matter to which such an application relates,
- as they apply in relation to financial restrictions proceedings within the meaning of section 65 of that Act, but with the following modification.
- (2) That modification is that any reference in those sections to the Treasury is to be read, in relation to proceedings on an application under section 38 of this Act in respect of a decision of the Secretary of State or a claim arising from any matter to which such an application relates, as a reference to the Secretary of State.
- (3) The first time after the passing of this Act that rules of court are made in exercise of the powers conferred by subsection (1) in relation to proceedings in England and Wales—
- (a) on an application under section 38, or
 - (b) on a claim arising from any matter to which such an application relates,
- those rules (together with any related rules of court) may be made by the Lord Chancellor instead of by the person who would otherwise make them.
- (4) The first time after the passing of this Act that rules of court are made in exercise of the powers conferred by subsection (1) in relation to proceedings in Northern Ireland—
- (a) on an application under section 38, or
 - (b) on a claim arising from any matter to which such an application relates,

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those rules (together with any related rules of court) may be made by the Lord Chancellor instead of by the person who would otherwise make them.

- (5) Before making rules of court under this section, the Lord Chancellor must consult—
 - (a) in relation to rules applicable to proceedings in England and Wales, the Lord Chief Justice of England and Wales;
 - (b) in relation to rules applicable to proceedings in Northern Ireland, the Lord Chief Justice of Northern Ireland.
- (6) The Lord Chancellor is not required to undertake any other consultation before making the rules.
- (7) The requirements of subsection (5)(a) and (b) may be satisfied by consultation that took place wholly or partly before the passing of this Act.
- (8) Rules of court made by the Lord Chancellor under this section—
 - (a) must be laid before Parliament, and
 - (b) if not approved by a resolution of each House before the end of 28 days beginning with the day on which they were made, cease to have effect at the end of that period.
- (9) In calculating a period of 28 days for the purposes of subsection (8), no account is to be taken of any time during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than 4 days.
- (10) If rules cease to have effect in accordance with subsection (8)(b)—
 - (a) that does not affect anything done under the rules, and
 - (b) subsection (3) or (as the case may be) (4) applies as if the rules had not been made.
- (11) The following provisions do not apply to rules of court made by the Lord Chancellor under this section—
 - (a) section 3(6) of the Civil Procedure Act 1997 (Parliamentary procedure for civil procedure rules);
 - (b) section 56(1), (2) and (4) of the Judicature (Northern Ireland) Act 1978 (statutory rules procedure).
- (12) Section 4(1) of the Statutory Instruments Act 1946 (statutory instruments which are required to be laid before Parliament) applies to any such rules applicable to proceedings in Northern Ireland as it applies to a statutory instrument which is required to be laid before Parliament after being made.
- (13) Until section 85 of the Courts Act 2003 (process for making civil procedure rules) comes into force, in subsection (11)(a) above “section 3(6)” is to be read as “section 3(2)”.
- (14) In this section—

“related rules of court” means rules of court that—

 - (a) are contained in the same instrument as the rules mentioned in subsection (3) or (as the case may be) (4), and
 - (b) relate specifically to the same kind of proceedings as those rules,

“rules of court” means rules for regulating the practice and procedure to be followed in the High Court or the Court of Appeal.