

---

STATUTORY INSTRUMENTS

---

**2019 No. 411**

The Democratic People's Republic of Korea  
(Sanctions) (EU Exit) Regulations 2019

PART 2

Designation of persons

**Power to designate persons**

5.—(1) The Secretary of State may designate persons, by name, for the purposes of any of the following—

- (a) regulations 13 to 17 (asset-freeze etc.) and regulations 23 (closure of representative offices) and 24 (business arrangements with designated persons);
- (b) regulation 34 (immigration);
- (c) regulations 58 (leasing or chartering of ships and aircraft) and 59 (crew services for ships and aircraft);
- (d) regulations 71 (ships: prohibition on port entry) and 73 (movement of ships).

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

**Criteria for designating a person**

6.—(1) The Secretary of State may not designate a person under regulation 5 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, 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 the facilitation of any of the DPRK's military programmes,
- (b) is owned or controlled directly or indirectly (within the meaning of regulation 7) by a person who is or has been so involved,
- (c) is acting on behalf of or at the direction of a person who is or has been so involved, or
- (d) is a member of, or associated with, a person who is or has been so involved.

(3) For the purposes of this regulation a person is “involved in the facilitation of any of the DPRK's military programmes” if the person—

- (a) is responsible for, engages in, provides support for, or promotes, any of the DPRK’s banned programmes,
  - (b) provides financial services<sup>(1)</sup>, or makes available funds or economic resources<sup>(2)</sup>, that could contribute to any of the DPRK’s banned programmes,
  - (c) is involved in the supply to or from the DPRK of arms or of material related to arms, or in providing financial services relating to such supply,
  - (d) is involved in the supply to the DPRK of items, materials, equipment, goods or technology which could contribute to any of the DPRK’s banned programmes, or in providing financial services relating to such supply, or
  - (e) is involved in assisting the contravention or circumvention of any relevant DPRK-related provisions.
- (4) In this regulation a “relevant DPRK-related provision” means—
- (a) any provision of Part 4 or Parts 6 to 8;
  - (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 4 or Parts 6 to 8;
  - (c) any provision of resolution 1718, 1874, 2087, 2094, 2270, 2321, 2356, 2371, 2375 and 2397.
- (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.
- (6) Any reference in this regulation to being involved in the facilitation of any of the DPRK’s military programmes includes being so involved wherever any actions constituting the involvement take place.

### **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, or
  - (b) has by virtue of section 22 of the Act varied or revoked a designation made under that regulation.

---

(1) “Financial services” is defined in section 61 of the Act.

(2) “Funds” and “economic resources” are defined in section 60 of the Act.

- (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) Where the Secretary of State considers that a person’s designation is required by paragraph 32 of resolution 2270 or by a provision mentioned in regulation 4(4), the statement of reasons must include a statement that in the Secretary of State’s opinion the designation is required by that paragraph or provision.
- (6) Matters that would otherwise be required by paragraph (4) or (5) 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.
- (7) 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.
- (8) 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.
- (9) Paragraph (10) 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.
- (10) 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(7)(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) 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.

### **Designation of persons named by or under UN Security Council Resolutions**

**10.**—(1) Each person for the time being named for the purposes of paragraph 8(d) of resolution 1718 by the Security Council or the Committee is a designated person for the purposes of—

- (a) regulations 13 to 17 (asset-freeze etc.) (whose purposes include compliance with the UN obligation mentioned in regulation 4(3)(a)(3) and regulations 23 (closure of representative offices) and 24 (business arrangements with designated persons) (whose purposes include compliance with the UN obligations mentioned in regulation 4(3)(e)),  
 (b) regulations 58 and 59 (services relating to ships and aircraft) (whose purposes include compliance with the UN obligations mentioned in regulation 4(3)(i)), and

---

(3) Section 13 of the Sanctions and Anti-Money Laundering Act 2018 requires that where the purposes of a provision of regulations under section 1 include compliance with a UN obligation to take particular measures in relation to UN-named persons (which is the case with the regulations mentioned in regulation 10), the regulations must provide for those persons to be designated persons for the purposes of that provision.

- (c) regulation 71 (ships: prohibition on port entry) (whose purposes include compliance with the UN obligation mentioned in regulation 4(3)(j)).
- (2) Nothing in this regulation affects the power under regulation 5 to designate persons (in addition to those designated by this regulation) for the purposes of any of the regulations mentioned in paragraph (1).