
STATUTORY INSTRUMENTS

2019 No. 411

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

PART 9

Exceptions and licences

Asset-freeze etc.: exceptions from prohibitions

81.—(1) The prohibition in regulation 13 (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 13 to 15 (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 14 and 15 (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 14 and 15 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 13 to 15 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) The prohibitions in regulations 13 to 17 (asset-freeze etc.) do not apply to—

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

- (a) a transaction with the Foreign Trade Bank of the Democratic People’s Republic of Korea at any time when that bank is a designated person, or
- (b) a transaction with the Korean National Insurance Company at any time when that company is a designated person,

if the transaction is solely for an exempt purpose.

(8) For the purposes of paragraph (7), a transaction is for an exempt purpose if it is solely for the purposes of—

- (a) the operation of a diplomatic mission or consular post in the DPRK, or
- (b) any humanitarian assistance activities that are undertaken by, or in co-ordination with, the United Nations.

(9) Where a person—

- (a) is designated under regulation 5 for the purposes of regulations 13 to 17, and
- (b) is a person whose designation is required by paragraph 32 of resolution 2270 (certain entities etc. of the Government of the DPRK or the Worker’s Party of Korea),

the prohibitions in regulations 13 to 17 do not apply to anything done in relation to that person which is necessary for the operation of any of the DPRK’s missions.

(10) In paragraph (9) “the DPRK’s missions” means—

- (a) missions of the DPRK to the United Nations and its specialised agencies and related organisations, and
- (b) other diplomatic missions and consular posts of the DPRK.

(11) In this regulation—

- “designated person” has the same meaning as it has in Part 4 (Finance);
- “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 activity).

(12) The definition of “relevant institution” in paragraph (11) 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.

Land: exceptions from prohibitions

82.—(1) The prohibition in regulation 27(1)(a) (leasing or making available of land) is not contravened by the leasing or otherwise making available of land for the operation of a diplomatic mission or consular post.

(2) The prohibition in regulation 27(1)(c) (activities linked to the use of land) does not apply to the provision of goods or services which—

- (a) are necessary for the operation of a diplomatic mission or consular post, and

(3) Part 4A was inserted by the Financial Services Act 2012 (c.21), section 11(2) and amended most recently by S.I. 2015/910. Section 22 was amended by the Financial Services Act 2012 (c.21), section 7(1). Schedule 2 was amended by: the Dormant Bank and Building Society Accounts Act 2008 (c.31), section 15, Schedule 2, paragraph 1; the Regulation of Financial Services (Land Transactions) Act 2005 (c.24), section 1; the Financial Services Act 2012, section 7(2) to (5) and section 8; and by S.I. 2013/1881.

(4) Section 22 has been amended by; the Financial Guidance and Claims Act 2018 (c.10), Part 2, s.27(4); the Financial Services and Markets Act 2000 (Benchmarks) Regulations 2018 (S.I. 2018/135), Part 5, reg.38; and the Financial Services Act 2012 (c.21) Part 2, s.7.

(5) S.I. 2001/544, as amended by S.I. 2017/500.

- (b) cannot be used to generate income or profit directly or indirectly for the Government of the DPRK.

Transfers of funds: exceptions from prohibitions

83.—(1) The prohibitions in regulation 28 (transfers of funds etc.) are not contravened by a person making or receiving a transfer of funds which—

- (a) relates to a transaction mentioned in paragraph (2), and
- (b) is of a value of £13,000 or less.

(2) The transactions are—

- (a) a transaction relating to foodstuffs, healthcare or medical equipment;
- (b) a transaction for agricultural or humanitarian purposes;
- (c) a transaction which by virtue of this Part of a licence under this Part, does not contravene a prohibition in these Regulations;
- (d) a transaction which relates to an activity which is mentioned in Part 6, and which is neither prohibited by that Part nor relates to anything prohibited by that Part;
- (e) a transaction which is for the official purposes of a diplomatic or consular mission of the DPRK;
- (f) transactions required exclusively for the implementation of projects which are funded by any part of the Government of the United Kingdom which are for—
 - (i) development purposes directly addressing the needs of the civilian population of the DPRK, or
 - (ii) the promotion of denuclearisation of the DPRK.

(3) The prohibitions in regulation 28 are not contravened by a person making or receiving a transfer of funds which—

- (a) relates to a transaction regarding a personal remittance, and
- (b) is of a value of £4,000 or less.

(4) The prohibitions in regulations 28 are not contravened by a person making or receiving a transfer of funds or by a UK credit or financial institution carrying out any other transaction which is necessary for the official purposes of a diplomatic mission or consular post in the DPRK or an international organisation enjoying immunities in the DPRK in accordance with international law.

(5) In this regulation—

- (a) a reference to an amount in pounds sterling includes a reference to the equivalent amount in another currency;
- (b) a reference to a transfer of funds of a particular amount includes a transfer executed in several linked operations which appear to be linked, as well as a transfer executed in a single operation; and
- (c) a reference to a transfer of funds includes the clearing of funds.

Trade: exceptions from prohibitions

84.—(1) The prohibitions in regulations 45(1)(a), 46(1) and 47(1) are not contravened by the export, supply, delivery or making available of aviation fuel—

- (a) in a third country, and
- (b) exclusively for use—
 - (i) in a civilian passenger aircraft, and

- (ii) for consumption by that aircraft in a flight to the DPRK from a place outside the DPRK, or the return flight from the DPRK to its airport of origin.
- (2) The prohibition in regulation 45(1)(f) and the prohibitions in regulations 46(1), 47(1), 48(1) and (2), 49(1) and 50(1) in respect of luxury goods are not contravened by the import, export, supply, delivery, making available or acquisition of—
- (a) the personal effects of a person travelling to or from the DPRK;
 - (b) goods of a non-commercial nature for the personal use of a person travelling to or from the DPRK and contained in that person’s luggage;
 - (c) goods which are necessary for the official purposes of a diplomatic mission or consular post in the DPRK, or of an international organisation enjoying immunities in the DPRK in accordance with international law;
 - (d) the personal effects of a member of a diplomatic mission or consular post in the DPRK.
- (3) The prohibition in regulation 56(1)(e) (provision of computer and related services) is not contravened by the provision of computer and related services —
- (a) exclusively for the official purposes of a diplomatic mission or consular post in the DPRK, or of an international organisation enjoying immunities in the DPRK in accordance with international law;
 - (b) provided by persons that receive funding from any part of the Government of the United Kingdom to provide those services for—
 - (i) development purposes directly addressing the needs of the civilian population of the DPRK, or
 - (ii) the promotion of denuclearisation of the DPRK.
- (4) The prohibition in regulation 61(1) is not contravened by the provision of bunkering or ship supply services where a failure to do so would endanger the lives of persons on board a ship.
- (5) In this regulation—
- (a) the following terms have the same meaning as they have in Part 6—
 - “aviation fuel”;
 - “bunkering or ship supply services”;
 - “luxury goods”;
 - “computer and related services”;
 - (b) “third country” means a country that is not the United Kingdom, the Isle of Man or the DPRK.

Aircraft: exceptions from prohibition

85.—(1) The prohibition in regulation 65(1)(b) is not contravened by the landing of a DPRK aircraft in the United Kingdom if failing to land would endanger the lives of persons on board or the safety of the aircraft.

(2) The prohibition in regulation 65(1)(a) is not contravened by the flight of a DPRK aircraft in the airspace over the United Kingdom preparatory to a landing as mentioned in paragraph (1).

(3) In this regulation, “DPRK aircraft” has the same meaning as it has in Part 7 (Aircraft).

Ships: exceptions from prohibitions on port entry

86.—(1) The prohibition in regulation 71(1) is not contravened by providing a ship with access to a port if—

- (a) a port entry direction has been given in relation to the ship under regulation 73 (movement of ships), or
 - (b) the access is needed by the ship in a case of emergency.
- (2) The prohibition in regulation 71(2) is not contravened by the entry into port of a ship if—
- (a) a port entry direction has been given in relation to the ship under regulation 73, or
 - (b) the entry is needed by the ship in a case of emergency.

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

87.—(1) Where an act would, in the absence of this paragraph, be prohibited by regulation 9(2) (confidentiality) or 101(2) (proliferation financing) or any prohibition in Part 4 (Finance), 6 (Trade), 7 (Aircraft) or 8 (Ships), 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 Chapter 2 of Part 4 (Investment, financial services and financial markets), Part 7 (Aircraft), 8 (Ships), 10 (Information) or 12 (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.

Treasury licences

88.—(1) The prohibitions in regulations 13 to 17 (asset-freeze etc.), regulation 70 (dealing with UN-designated ships subject to asset-freeze) and in the financial services provisions do not apply to anything done under the authority of a licence issued by the Treasury under this paragraph.

(2) Paragraphs (3) and (4) apply to the issuing of a licence which authorises acts which would otherwise be prohibited by regulations 13 to 17.

(3) The Treasury may issue a licence which authorises acts by a particular person in relation to a non-UN designated person only where the Treasury consider that it is appropriate to issue the licence for a purpose set out in Schedule 3.

(4) The Treasury may issue a licence which authorises acts in relation to a UN designated person only where the Treasury consider that it is appropriate to issue the licence for a purpose set out in Part 1 of Schedule 3.

(5) The Treasury may issue a licence which authorises acts which would otherwise be prohibited by regulation 28 only where it considers it appropriate in the following circumstances—

- (a) for a transfer of funds of a value over £13,000, which relates to a transaction mentioned in regulation 83(2),
- (b) for a transfer of funds of a value over £4,000, which relates to a transaction regarding a personal remittance, or
- (c) to enable anything to be done in connection with the performance of—

- (i) any humanitarian assistance activity, or
- (ii) any activity whose purpose is consistent with the objectives of resolution 1718, 1874, 2087, 2094, 2270, 2321, 2356, 2371, 2375 or 2397.

(6) In paragraph (1) “the financial services provisions” means regulations 18, 20 to 22 and 24 to 30, excluding regulation 26(7).

(7) In paragraph (4) “UN designated person” means—

- (a) a person who is a designated person for the purposes of regulations 13 to 17 by reason of regulation 10 (designation of persons named by or under UN Security Council Resolutions), or
- (b) a person who is designated under regulation 5 (power to designate persons) for the purposes of regulations 13 to 17 and whose designation is (in the opinion of the Secretary of State) required by paragraph 32 of resolution 2270 or a provision mentioned in regulation 4(4).

Treasury directions

89. The requirements in regulations 19 (severance of existing financial relationships), 23 (closure of representative offices) and 26(7) (closure of joint venture or co-operative entity) have effect subject to any exceptions specified in a direction issued by the Treasury under this regulation.

Trade licences

90. The prohibitions in Chapters 1, 2 and 3 of Part 6 (Trade) do not apply to anything done under the authority of a licence issued by the Secretary of State under this regulation.

Aircraft licences

91. The prohibition in regulation 65(1) does not apply to anything done under the authority of a licence issued by the Secretary of State under this regulation.

Ship licences

92.—(1) The prohibitions in the regulations mentioned in paragraph (2) do not apply to anything done under the authority of a licence issued by the Secretary of State under this regulation.

(2) The regulations are—

- (a) regulation 69 (ownership etc. of DPRK ships),
- (b) regulation 74 (DPRK ships: transfers of goods), and
- (c) regulation 76 (registration etc. of ships in the DPRK).

Licences: general provisions

93.—(1) This regulation applies in relation to Treasury licences, trade licences and transport licences.

(2) A licence must specify the acts authorised by it.

(3) A licence may be general or may authorise acts by a particular person or persons of a particular description.

(4) A licence may—

- (a) contain conditions;
- (b) be of indefinite duration or a defined duration.

(5) A person who issues a licence may vary, revoke or suspend it at any time.

(6) A person who issues, varies, revokes or suspends a licence which authorises acts by a particular person must give written notice to that person of the issue, variation, revocation or suspension of the licence.

(7) A person who issues, varies, revokes or suspends a general licence or a licence which authorises acts by persons of a particular description must take such steps as that person considers appropriate to publicise the issue, variation, revocation or suspension of the licence.

Treasury directions: general provisions

94.—(1) This regulation applies in relation to Treasury directions.

(2) A direction may be general or may except conduct by a particular person or persons of a particular description.

(3) A direction may—

- (a) contain conditions;
- (b) be of indefinite duration or a defined duration.

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

(5) On the issue, variation, revocation or suspension of a direction, the Treasury must—

- (a) in the case of a direction which excepts conduct by a particular person, give written notice to that person of the issue, variation, revocation or suspension of the direction;
- (b) in the case of a general direction or a direction which excepts conduct by persons of a particular description, take such steps as the Treasury consider appropriate to publicise the issue, variation, revocation or suspension of the direction.

Finance: licensing offences

95.—(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 or Treasury direction (whether for P or anyone else).

(2) A person who purports to act under the authority of a Treasury licence, or who is excepted from a requirement by a Treasury direction, but who fails to comply with any condition of the licence or direction commits an offence.

Trade: licensing offences

96.—(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 trade licence (whether for P or anyone else).

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

(3) A licence in respect of which an offence under paragraph (1) has been committed is to be treated as void from the time at which it was issued.

Ships and aircraft: licensing offences

97.—(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 transport licence (whether for P or anyone else).

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

(3) A licence in respect of which an offence under paragraph (1) has been committed is to be treated as void from the time at which it was issued.

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

98.—(1) The Secretary of State may direct that, in relation to any person within regulation 34 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 under this regulation—

- (a) may contain conditions;
- (b) 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).

(3) The Secretary of State may vary, revoke or suspend a direction under this regulation at any time.

(4) On the issue, variation, revocation or suspension of a direction under this regulation, 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.

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