
STATUTORY INSTRUMENTS

2020 No. 1665

The Libya (Sanctions) (EU Exit) Regulations 2020

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 12 to 16 (asset-freeze etc.);
- (b) regulation 22 (immigration).

(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 (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 Libya;
 - (ii) the commission of a violation of international humanitarian law in Libya, including in particular attacking civilian populations or facilities in violation of international law;
 - (iii) activities carried out on behalf of the former regime of Muammar Qadhafi implementing or connected to the repressive policies of that regime;
 - (iv) any other activity which threatens the peace, stability and security of Libya or undermines its transition to a democratic, peaceful and independent country, including in particular—
 - (aa) attacking a port, airport, or other infrastructure, a foreign mission, or United Nations personnel, in Libya;
 - (bb) illicitly exploiting oil or any other natural resources in Libya for the purposes of providing support to armed groups or criminal networks;

- (cc) threatening or coercing the Libyan National Oil Company or Libyan state financial institutions;
 - (dd) misappropriating Libyan state funds, or taking action that may lead to such misappropriation,
 - (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) 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⁽¹⁾, or making available funds or economic resources⁽²⁾, that could contribute to any such activity;
 - (c) being involved in the supply to Libya of restricted goods or restricted technology or of material related to such goods or technology, or in providing financial services relating to such supply;
 - (d) being involved in the supply to Libya of goods or technology which could contribute to any such activity, or in providing financial services relating to such supply;
 - (e) assisting the contravention or circumvention of any relevant provision.
- (4) For the purposes of this regulation, being “involved in” misappropriating Libyan state funds includes owning or controlling Libyan state funds which were misappropriated during the former regime of Muammar Qadhafi.
- (5) In this regulation—
- “relevant provision” means—
- (a) any provision of Part 3 (Finance), Part 5 (Trade), Part 6 (Trade, transport and finance measures related to UN designated ships), or Part 7 (Aircraft);
 - (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 or Parts 5 to 7;
 - (c) any provision of resolution 1970, resolution 1973 or resolution 2146;
- “restricted goods” and “restricted technology” have the meanings given by Part 5.
- (6) 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.

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

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

(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) Where the Secretary of State considers that a person's designation is required by paragraph 17 of resolution 1970, the statement of reasons must include a statement that in the Secretary of State's opinion the designation is required by that paragraph.

(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) Any person falling within paragraph (2), other than the Libyan Investment Authority and the Libyan Africa Investment Portfolio, is a designated person for the purposes of regulations 12 to 16 (asset-freeze etc.) (whose purposes include compliance with the UN obligations mentioned in regulation 4(3)(a))(3).

(2) A person falls within this paragraph if that person is—

- (a) for the time being named by the Security Council or the Committee for the purposes of paragraph 17 of resolution 1970;
- (b) for the time being named by the Security Council or the Committee for the purposes of paragraph 19 of resolution 1973.

(3) The Libyan Investment Authority and the Libyan Africa Investment Portfolio named in Annex II of resolution 1973 are designated persons for the purposes of regulations 18 to 20 (partial asset-freeze etc.) (whose purpose is compliance with the UN obligations mentioned in regulation 4(3)(a) and in particular regulation 4(4)(b)(ii)).

(4) 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 regulations 12 to 16.

(3) Section 13 of the Act 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.