
STATUTORY INSTRUMENTS

2020 No. 1665

The Libya (Sanctions) (EU Exit) Regulations 2020

PART 8

Exceptions and licences

Finance: exceptions from prohibitions

43.—(1) The prohibitions in regulation 12 and 18 (asset-freeze and partial asset-freeze in relation to designated persons) are 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 12 to 14 (asset-freeze in relation to, and making funds available to or for the benefit of, designated persons) and 18 (partial-asset freeze in relation to designated persons) are not contravened by a relevant institution crediting a frozen account or a relevant account with interest or other earnings due on the account.

(4) The prohibitions in regulations 13 and 14 (making funds available to, or for the benefit of, designated persons) and 19 and 20 (making funds available to, or for the benefit of, designated persons in connection with a partial asset-freeze) are not contravened by a relevant institution crediting a frozen account or a relevant account where it receives funds transferred to that institution for crediting to that account.

(5) The prohibitions in regulations 13, 14, 19 and 20 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 12 to 14, and regulations 18 to 20, 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.

(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).

(7) In this regulation—

“designated person” means a designated person within the meaning of regulation 11 or 17;

“frozen account” means an account with a relevant institution which is held or controlled (directly or indirectly) by a designated person within the meaning of regulation 11;

“relevant account” means an account with a relevant institution which is held or controlled (directly or indirectly) by a designated person within the meaning of regulation 17;

“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).

(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).

Port access or entry for UN designated ships: exception from prohibitions

44.—(1) The prohibition in regulation 36(1) (port access or entry for UN designated ships) is not contravened by providing a ship with access to a port if the access is needed by the ship in a case of emergency.

(2) The prohibition in regulation 36(2) is not contravened by the entry into port of a ship if the entry is needed by the ship in a case of emergency.

Aircraft: exceptions

45.—(1) The prohibition in regulation 42(2)(c) (movement of aircraft) is not contravened by the landing of an 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 42(2)(b) is not contravened by the flight of an aircraft in UK airspace preparatory to a landing as mentioned in paragraph (1).

(3) A prohibition or requirement in regulations 42(3) to (6) is not contravened by conduct necessary to—

- (a) avoid endangering the lives of persons on board or the safety of the aircraft,
- (b) protect the safety of another aircraft, or
- (c) protect the safety of persons on the ground.

(4) In paragraph (2) “UK airspace” has the same meaning as in regulation 42(11).

Exception for authorised conduct in a relevant country

46.—(1) Where a person’s conduct in a relevant country would, in the absence of this regulation, contravene a relevant prohibition, the relevant prohibition is not contravened if the conduct is authorised by a licence or other authorisation which is issued—

- (a) under the law of the relevant country, and

(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; and it is prospectively amended by S.I. 2018/1149; S.I. 2108/1403; S.I. 2019/632; S.I. 2019/660; S.I. 2019/710; S.I. 2019/1361.

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

(b) for the purpose of disapplying a prohibition in that jurisdiction which corresponds to the relevant prohibition.

(2) In this regulation—

“relevant country” means—

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

“relevant prohibition” means a prohibition in any of—

- (d) regulations 12 to 16 (asset-freeze etc.),
- (e) regulations 18 to 20 (partial asset-freeze etc.),
- (f) Chapters 1 and 2 of Part 5 (Trade), or
- (g) regulations 35 (transporting etc. Libyan oil in relation to UN designated ships), 37 (bunkering or ship supply services), or 38 (financial transactions in relation to Libyan oil).

(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

47.—(1) Where an act would, in the absence of this paragraph, be prohibited by the prohibition in regulation 9(2) (confidentiality) or any prohibition in Part 3 (Finance), Part 5 (Trade), Part 6 (UN designated ships) or Part 7 (Aircraft), 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 7, Part 9 (Information and records) or Part 11 (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

48.—(1) The prohibitions in regulations 12 to 16 (asset-freeze etc.), 18 to 20 (partial asset-freeze etc.) and regulation 38 (financial transactions in relation to Libyan oil) 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 12 to 16.

(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 Chapter 1 of Part 1, or in Part 3 of, Schedule 4.

(4) The Treasury may issue a licence which authorises acts in relation to a UN designated person, other than the Libyan Investment Authority or the Libyan Africa Investment Portfolio, only where the Treasury consider that it is appropriate to issue the licence for a purpose set out in Chapter 1 of Part 1, or in Part 2 of Schedule 4.

(5) Paragraph (6) applies to the issuing of a licence which authorises acts which would otherwise be prohibited by regulations 18 to 20.

(6) The Treasury may issue a licence which authorises acts in relation to the Libyan Investment Authority or the Libyan Africa Investment Portfolio only where the Treasury consider that it is appropriate to issue the licence for a purpose set out in Part 1 of Schedule 4.

(7) The Treasury may issue a licence which authorises acts which would otherwise be prohibited by regulation 38 only where the Treasury consider that it is appropriate to issue the licence in order to give effect to an exception made by the Committee to paragraph 10(d) of resolution 2146.

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

- (a) a person who is a designated person for the purposes of regulations 12 to 16 or regulations 18 to 20 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 12 to 16 and whose designation is (in the opinion of the Secretary of State) required by paragraph 17 of resolution 1970 (read in accordance with regulation 4(4)).

Trade licences

49. The prohibitions in Chapters 1 and 2 of Part 5 (Trade), regulation 35 (transporting etc. Libyan oil in relation to UN designated ships) and regulation 37 (bunkering or ship supply services) do not apply to anything done under the authority of a licence issued by the Secretary of State under this regulation.

Port licences

50. The prohibitions in regulation 36 (port access or entry for UN designated ships) do not apply to anything done under the authority of a licence issued by the Secretary of State under this regulation.

Licences: general provisions

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

Finance: licensing offences

52.—(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.

Trade: licensing offences

53.—(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.

Port access or entry for UN designated ships: licensing offences

54.—(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 port licence (whether for P or anyone else).

(2) A person who purports to act under the authority of a port 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 the Immigration Act 1971: directions

55.—(1) The Secretary of State may direct that, in relation to any person within regulation 22 (immigration) 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.