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STATUTORY INSTRUMENTS

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**2020 No. 597**

**The Cyber (Sanctions) (EU Exit) Regulations 2020**

**PART 6**

Information and records

**Finance: reporting obligations**

- 23.**—(1) A relevant firm must inform the Treasury as soon as practicable if—
- (a) it knows, or has reasonable cause to suspect, that a person—
    - (i) is a designated person, or
    - (ii) has committed an offence under any provision of Part 3 (Finance) or regulation 21 (finance: licensing offences), and
  - (b) the information or other matter on which the knowledge or cause for suspicion is based came to it in the course of carrying on its business.
- (2) Where a relevant firm informs the Treasury under paragraph (1), it must state—
- (a) the information or other matter on which the knowledge or suspicion is based, and
  - (b) any information it holds about the person by which the person can be identified.
- (3) Paragraph (4) applies if—
- (a) a relevant firm informs the Treasury under paragraph (1) that it knows, or has reasonable cause to suspect, that a person is a designated person, and
  - (b) that person is a customer of the relevant firm.
- (4) The relevant firm must also state the nature and amount or quantity of any funds or economic resources held by it for the customer at the time when it first had the knowledge or suspicion.
- (5) A relevant institution must inform the Treasury without delay if that institution—
- (a) credits a frozen account in accordance with regulation 18(4) (finance: exceptions from prohibitions), or
  - (b) transfers funds from a frozen account in accordance with regulation 18(6).
- (6) A person who fails to comply with a requirement in paragraph (1), (2) or (4) commits an offence.
- (7) In this regulation—
- “designated person” has the same meaning as it has in Part 3 (Finance);
  - “frozen account” has the same meaning as it has in regulation 18;
  - “relevant firm” is to be read in accordance with regulation 24;
  - “relevant institution” has the same meaning as it has in regulation 18.

**“Relevant firm”**

24.—(1) The following are relevant firms for the purposes of regulation 23 (finance: reporting obligations)—

- (a) a person that has permission under Part 4A of the Financial Services and Markets Act 2000 (Permission to carry on regulated activities);
  - (b) an undertaking that by way of business—
    - (i) operates a currency exchange office,
    - (ii) transmits money (or any representation of monetary value) by any means, or
    - (iii) cashes cheques that are made payable to customers;
  - (c) a firm or sole practitioner that is—
    - (i) a statutory auditor within the meaning of Part 42 of the Companies Act 2006 (Statutory Auditors)(1), or
    - (ii) a local auditor within the meaning of section 4(1) of the Local Audit and Accountability Act 2014 (general requirements for audit)(2);
  - (d) a firm or sole practitioner that provides to other persons, by way of business—
    - (i) accountancy services,
    - (ii) legal or notarial services,
    - (iii) advice about tax affairs, or
    - (iv) trust or company services within the meaning of paragraph (2);
  - (e) a firm or sole practitioner that carries out, or whose employees carry out, estate agency work;
  - (f) the holder of a casino operating licence within the meaning given by section 65(2)(a) of the Gambling Act 2005 (nature of licence)(3);
  - (g) a person engaged in the business of making, supplying, selling (including selling by auction) or exchanging—
    - (i) articles made from gold, silver, platinum or palladium, or
    - (ii) precious stones or pearls.
- (2) In paragraph (1), “trust or company services” means any of the following services—
- (a) forming companies or other legal persons;
  - (b) acting, or arranging for another person to act—
    - (i) as a director or secretary of a company,
    - (ii) as a partner of a partnership, or
    - (iii) in a similar capacity in relation to other legal persons;
  - (c) providing a registered office, business address, correspondence or administrative address or other related services for a company, partnership or any other legal person or arrangement;
  - (d) acting, or arranging for another person to act, as—
    - (i) a trustee of an express trust or similar legal arrangement, or
    - (ii) a nominee shareholder for a person.

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(1) 2006 c.46.

(2) 2014 c.2.

(3) 2005 c.19.

(3) In paragraph (1)—

“estate agency work” is to be read in accordance with section 1 of the Estate Agents Act 1979(4), but as if references in that section to disposing of or acquiring an interest in land included (despite anything in section 2 of that Act) references to disposing of or acquiring an estate or interest in land outside the United Kingdom where that estate or interest is capable of being owned or held as a separate interest;

“firm” means any entity that, whether or not a legal person, is not an individual, and includes a body corporate and a partnership or other unincorporated body.

(4) Sub-paragraphs (a) and (b) of paragraph (1) are to be read with section 22 of the Financial Services and Markets Act 2000, any relevant order under that section and Schedule 2 to that Act.

(5) For the purposes of regulation 23(1), information or another matter comes to a relevant firm “in the course of carrying on its business” if the information or other matter comes to the firm—

- (a) in the case of a relevant firm within paragraph (1)(a), in the course of carrying on an activity in respect of which the permission mentioned in that provision is required;
- (b) in the case of a relevant firm within paragraph (1)(c)(i), in the course of carrying out statutory audit work within the meaning of section 1210 of the Companies Act 2006 (meaning of “statutory auditor” etc.)(5);
- (c) in the case of a relevant firm within paragraph (1)(c)(ii), in the course of carrying out an audit required by the Local Audit and Accountability Act 2014;
- (d) in the case of a relevant firm within paragraph (1)(f), in the course of carrying on an activity in respect of which the licence mentioned in that provision is required;
- (e) in the case of a relevant firm within any other provision of paragraph (1), in the course of carrying on an activity mentioned in that provision.

### **Finance: powers to request information**

25.—(1) The Treasury may request a designated person to provide information about—

- (a) funds or economic resources owned, held or controlled by or on behalf of the designated person, or
- (b) any disposal of such funds or economic resources.

(2) The Treasury may request a designated person to provide such information as the Treasury may reasonably require about expenditure—

- (a) by the designated person, or
- (b) for the benefit of the designated person.

(3) For the purposes of paragraph (2), expenditure for the benefit of a designated person includes expenditure on the discharge (or partial discharge) of a financial obligation for which the designated person is wholly or partly responsible.

(4) The power in paragraph (1) or (2) is exercisable only where the Treasury believe that it is necessary for the purpose of monitoring compliance with or detecting evasion of any provision of Part 3 (Finance).

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(4) 1979 c.38. Section 1 was amended by the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c.73), Schedule 1, paragraph 40; the Planning (Consequential Provisions) Act 1990 (c.11), Schedule 2, paragraph 42; the Planning (Consequential Provisions) (Scotland) Act 1997 (c.11), Schedule 2, paragraph 28; the Planning Act (Northern Ireland) 2011 (c.25), Schedule 6, paragraph 21; the Enterprise and Regulatory Reform Act 2013 (c.24), section 70; S.I. 1991/1220; S.I. 1991/2684; S.I. 2000/121 and S.I. 2001/1283.

(5) Section 1210 was amended by S.I. 2005/1433; S.I. 2008/565; S.I. 2008/1950; S.I. 2011/99; S.I. 2012/1809; S.I. 2013/3115; S.I. 2017/516 and S.I. 2017/1164; and it is prospectively amended by S.I. 2019/177.

(5) The Treasury may request a person acting under a Treasury licence to provide information about—

- (a) funds or economic resources dealt with under the licence, or
- (b) funds or economic resources made available under the licence.

(6) The Treasury may request a person to provide information within paragraph (7) if the Treasury believe that the person may be able to provide the information.

(7) Information within this paragraph is such information as the Treasury may reasonably require for the purpose of—

- (a) establishing for the purposes of any provision of Part 3—
  - (i) the nature and amount or quantity of any funds or economic resources owned, held or controlled by or on behalf of a designated person,
  - (ii) the nature and amount or quantity of any funds or economic resources made available directly or indirectly to, or for the benefit of, a designated person, or
  - (iii) the nature of any financial transactions entered into by a designated person;
- (b) monitoring compliance with or detecting evasion of—
  - (i) any provision of Part 3,
  - (ii) regulation 23 (finance: reporting obligations), or
  - (iii) any condition of a Treasury licence;
- (c) detecting or obtaining evidence of the commission of an offence under Part 3 or regulation 21 (finance: licensing offences) or 23.

(8) The Treasury may specify the way in which, and the period within which, information is to be provided.

(9) If no such period is specified, the information which has been requested must be provided within a reasonable time.

(10) A request may include a continuing obligation to keep the Treasury informed as circumstances change, or on such regular basis as the Treasury may specify.

(11) Information requested under this regulation may relate to any period of time during which a person is, or was, a designated person.

(12) Information requested by virtue of paragraph (1)(b), (2) or (7)(a)(iii) may relate to any period before a person became a designated person (as well as, or instead of, any subsequent period).

(13) Expressions used in this regulation have the same meaning as they have in Part 3.

### **Finance: production of documents**

**26.**—(1) A request under regulation 25 may include a request to produce specified documents or documents of a specified description.

(2) Where the Treasury request that documents be produced, the Treasury may—

- (a) take copies of or extracts from any document so produced,
- (b) request any person producing a document to give an explanation of it, and
- (c) where that person is a body corporate, partnership or unincorporated body other than a partnership, request any person who is—
  - (i) in the case of a partnership, a present or past partner or employee of the partnership, or
  - (ii) in any other case, a present or past officer or employee of the body concerned,

to give such an explanation.

(3) Where the Treasury request a designated person or a person acting under a Treasury licence to produce documents, that person must—

- (a) take reasonable steps to obtain the documents (if they are not already in the person's possession or control);
  - (b) keep the documents under the person's possession or control (except for the purpose of providing them to the Treasury or as the Treasury may otherwise permit).
- (4) In this regulation "designated person" has the same meaning as it has in Part 3 (Finance).

### **Finance: information offences**

**27.**—(1) A person commits an offence if that person—

- (a) without reasonable excuse, refuses or fails within the time and in the manner specified (or, if no time has been specified, within a reasonable time) to comply with any request under regulation 25 (finance: powers to request information);
- (b) knowingly or recklessly gives any information, or produces any document, which is false in a material particular in response to such a request;
- (c) with intent to evade any provision of regulation 25 or 26 (finance: production of documents), destroys, mutilates, defaces, conceals or removes any document;
- (d) otherwise intentionally obstructs the Treasury in the exercise of their powers under regulation 25 or 26.

(2) Where a person is convicted of an offence under this regulation, the court may make an order requiring that person, within such period as may be specified in the order, to comply with the request.

### **Disclosure of information**

**28.**—(1) The Secretary of State or the Treasury may, in accordance with this regulation, disclose—

- (a) any information obtained under or by virtue of Part 5 (Exceptions and licences) or this Part, or
- (b) any information held in connection with—
  - (i) anything done under or by virtue of Part 2 (Designation of persons) or Part 3 (Finance), or
  - (ii) any exception or licence under Part 5 or anything done in accordance with such an exception or under the authority of such a licence.

(2) Information referred to in paragraph (1) may be disclosed for, or in connection with, any of the following purposes—

- (a) the exercise of functions under these Regulations;
- (b) the purpose stated in regulation 4;
- (c) facilitating, monitoring or ensuring compliance with these Regulations;
- (d) taking any action with a view to instituting, or otherwise for the purposes of, any proceedings in the United Kingdom—
  - (i) for an offence under any provision of these Regulations, or

- (ii) in relation to a monetary penalty under section 146 of the Policing and Crime Act 2017 (breach of financial sanctions legislation)(6);
  - (e) taking any action with a view to instituting, or otherwise for the purposes of, any proceedings in any of the Channel Islands, the Isle of Man or any British overseas territory, for an offence under a provision in any such jurisdiction that is similar to a provision of these Regulations;
  - (f) compliance with an international obligation(7);
  - (g) facilitating the exercise by an authority outside the United Kingdom or by an international organisation of functions which correspond to functions under these Regulations.
- (3) Information referred to in paragraph (1) may be disclosed to the following persons—
- (a) a police officer;
  - (b) any person holding or acting in any office under or in the service of—
    - (i) the Crown in right of the Government of the United Kingdom,
    - (ii) the Crown in right of the Scottish Government, the Northern Ireland Executive or the Welsh Government,
    - (iii) the States of Jersey, Guernsey or Alderney or the Chief Pleas of Sark,
    - (iv) the Government of the Isle of Man, or
    - (v) the Government of any British overseas territory;
  - (c) any law officer of the Crown for Jersey, Guernsey or the Isle of Man;
  - (d) the Scottish Legal Aid Board;
  - (e) the Financial Conduct Authority, the Prudential Regulation Authority, the Bank of England, the Jersey Financial Services Commission, the Guernsey Financial Services Commission or the Isle of Man Financial Services Authority;
  - (f) any other regulatory body (whether or not in the United Kingdom);
  - (g) any organ of the United Nations;
  - (h) the Council of the European Union, the European Commission or the European External Action Service;
  - (i) the Government of any country;
  - (j) any other person where the Secretary of State or the Treasury (as the case may be) consider that it is appropriate to disclose the information.
- (4) Information referred to in paragraph (1) may be disclosed to any person with the consent of a person who, in their own right, is entitled to the information.
- (5) In paragraph (4) “in their own right” means not merely in the capacity as a servant or agent of another person.
- (6) In paragraph (1)(b)—
- (a) the reference to information includes information obtained at a time when any provision of these Regulations is not in force, and
  - (b) the reference to a licence under Part 5 includes a licence which has effect or is treated as if it were a licence which had been issued under that Part.

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(6) 2017 c.3.

(7) Section 1(8) of the Sanctions and Anti-Money Laundering Act 2018 defines an “international obligation” as an obligation of the United Kingdom created or arising by or under any international agreement.

## **Part 6: supplementary**

**29.**—(1) A disclosure of information under regulation 28 does not breach any restriction on such disclosure imposed by statute or otherwise.

(2) But nothing in that regulation authorises a disclosure that—

- (a) contravenes the data protection legislation, or
- (b) is prohibited by any of Parts 1 to 7 or Chapter 1 of Part 9 of the Investigatory Powers Act 2016<sup>(8)</sup>.

(3) Nothing in this Part is to be read as requiring a person who has acted or is acting as counsel or solicitor for any person to disclose any privileged information in their possession in that capacity.

(4) Regulation 28 does not limit the circumstances in which information may be disclosed apart from that regulation.

(5) Nothing in this Part limits any conditions which may be contained in a Treasury licence.

(6) In this regulation—

“the data protection legislation” has the same meaning as in the Data Protection Act 2018 (see section 3 of that Act)<sup>(9)</sup>;

“privileged information” means information with respect to which a claim to legal professional privilege (in Scotland, to confidentiality of communications) could be maintained in legal proceedings.

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(8) 2016 c.25. Amendments have been made by the Policing and Crime Act 2017, Schedule 9, paragraph 74; the Data Protection Act 2018 (c.12), Schedule 19, paragraphs 198-203; S.I. 2018/652 and S.I. 2018/1123. Saving provisions are made by S.I. 2017/859.

(9) 2018 c.12. There are amendments to this Act that are not relevant to these Regulations.