Draft Regulations laid before Parliament under paragraph 8F of Schedule 7 to the European Union (Withdrawal) Act 2018 (c. 16), for approval by resolution of each House of Parliament.

D R A F T S T A T U T O R Y I N S T R U M E N T S

2020 No.

EXITING THE EUROPEAN UNION

The Conflict Minerals (Compliance) (Northern Ireland) (EU Exit) Regulations 2020

Made - - - -

Coming into force - - 1st January 2021

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The Secretary of State makes these Regulations in exercise of the powers conferred by section 8C(1)(a) and 8C(5) of the European Union (Withdrawal) Act 2018(**a**).

In accordance with paragraph 8F of Schedule 7 to that Act, a draft of this instrument has been laid before Parliament and approved by a resolution of each House.

PART 1

Introduction

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Conflict Minerals (Compliance) (Northern Ireland) (EU Exit) Regulations 2020 and come into force on 1st January 2021.

(2) These Regulations extend to Northern Ireland only.

Interpretation

2.—(1) In these Regulations—

"body corporate" includes a limited liability partnership;

"civil sanction" has the meaning given by regulation 14;

"competent authority" for the purposes of these Regulations is the authority responsible for the functions of the "Member State competent authority" in the EU Regulation;

"compliance notice" has the meaning given by paragraph 1 of the Schedule;

"EU Regulation" means Regulation (EU) No 2017/821 of the European Parliament and of the Council of 17 May 2017 laying down supply chain due diligence obligations for Union importers of tin, tantalum and tungsten, their ores, and gold originating from conflict-affected and high risk areas(**b**);

"inspector" has the meaning given by regulation 9;

"non-compliance penalty" has the meaning given by paragraph 4 of the Schedule;

"officer" in relation to a body corporate, means any director, secretary or other similar officer of the body corporate;

(**a**) 2018 c. 16, as amended by sections 21 and 42 of the European Union (Withdrawal Agreement) Act 2020 (c. 1).
(**b**) OJ No. L 130, 19.5.2017, p.1.

"partnership" does not include a limited liability partnership;

"premises" includes any vehicle, vessel, aircraft, hovercraft, tent or moveable structure;

"Union importer" for the purposes of these Regulations has the same meaning as it does in the EU Regulation, except that it is applicable only to Union importers that import into Northern Ireland; and

"unincorporated association" does not include a partnership.

(2) In paragraph (1), "director", in relation to a body corporate whose affairs are managed by its members, means a member of the body corporate.

(3) Unless otherwise defined in this regulation, terms that are used in these Regulations and the EU Regulation have the meaning they bear in the EU Regulation.

PART 2

Competent authority and functions

Competent authority

3.—(1) The Secretary of State is the competent authority for the purposes of the EU Regulation in respect of Union importers.

(2) The Secretary of State may authorise in writing any person who appears suitable to act to carry out the functions of the Secretary of State as competent authority.

(3) For the purposes of these Regulations, except for regulations 3, 5, 9 and 17 a reference to the Secretary of State includes any person authorised by the Secretary of State under paragraph (2).

Functions

4. The Secretary of State must carry out the functions of the competent authority under the EU Regulation, in respect of Union importers.

5. The Secretary of State must carry out the functions of the Member State insofar as they relate to Northern Ireland under the EU Regulation, in respect of Union importers.

Information exchanges, reporting and disclosure of information

6.—(1) Subject to paragraph (2), information of any description may be disclosed by the Secretary of State to any person for the purpose of facilitating the carrying out by the Secretary of State of any of the Secretary of State's functions under these Regulations.

(2) Nothing in paragraph (1) authorises a disclosure of information which contravenes any express restriction on disclosure imposed by an enactment passed or any other instrument made in the United Kingdom, or in any part of the United Kingdom, which applies to Northern Ireland (ignoring any restriction which allows disclosure if authorised by an enactment or instrument).

(3) Information which—

(a) relates to a trade secret of any person; or

(b) otherwise is or might be commercially confidential in relation to any person,

and which is disclosed to a person under paragraph (1) may not be disclosed by that person to any other person otherwise than in accordance with the provisions of this regulation or the law of, or of any part of, the United Kingdom which applies to Northern Ireland and authorises or requires such disclosure.

(4) Any authorisation under paragraph (1) of the disclosure of information by or to any person also authorises the disclosure of that information by or to any officer of that person who is authorised to make a disclosure or to receive the information.

7.—(1) The Commissioners for Her Majesty's Revenue and Customs may disclose any information in their possession to the Secretary of State for the purpose of facilitating the carrying out by the Secretary of State of any of the Secretary of State's functions under these Regulations.

(2) Paragraph (1) is without prejudice to any other power of the Commissioners to disclose information.

(3) No person may disclose any information received from the Commissioners under paragraph (1) if—

(a) the information relates to a person whose identity is specified in the disclosure or can be deduced from the disclosure;

(b) the disclosure is for a purpose other than specified in paragraph (1); and

(c) the Commissioners have not given their prior consent to the disclosure.

(4) A person who breaches paragraph (3) is guilty of an offence.

(5) It is a defence for a person charged with an offence under paragraph (4) to prove that the person reasonably believed—

(a) that the disclosure was lawful; or

(b) that the information had already and lawfully been made available to the public.

(6) A prosecution for an offence under this section may be instituted only—

(a) by the Commissioners, or

(b) with the consent of the Director of Public Prosecutions for Northern Ireland.

(7) A person who is guilty of an offence under this regulation is liable—

(a) on conviction on indictment, to imprisonment for a term not exceeding two years, to a fine or both, or

(b) on summary conviction, to imprisonment for a term not exceeding six months, to a fine not exceeding the statutory maximum, or both.

PART 3

Enforcement

Power to require the production of information

8.—(1) Where the Secretary of State considers it necessary for the carrying out of the Secretary of State's functions under these Regulations, the Secretary of State may give notice to a person requiring the person to provide the Secretary of State the information specified in the notice.

(2) A notice under paragraph (1) must be in writing and specify the purpose for which the information is required.

(3) The notice—

(a) must specify the time within which the person to whom it is given must comply with it;

(b) may specify—

(i) the manner in which the person to whom it is given must comply with it; and

(ii) the form in which the information must be provided.

(4) The notice may require—

(a) the creation of documents, or documents of a description, specified in the notice; and

(b) the provision of those documents to the Secretary of State.

(5) A requirement to provide information or create a document is a requirement to do so in a legible form.

Inspectors

9. The Secretary of State may authorise in writing a person (an "inspector") to exercise the powers under regulations 10 and 11.

Powers of entry

10.—(1) An inspector may, on serving reasonable notice, enter the premises of a Union importer at any reasonable hour for the purpose of carrying out the Secretary of State's functions under these Regulations, except premises used wholly or mainly as a private dwelling house.

(2) The requirement to serve a notice under paragraph (1) does not apply—

(a) where reasonable efforts to agree an appointment have failed; or

(b) where an inspector reasonably believes that it would defeat the object of the entry.

(3) When entering premises under paragraph (1), an inspector —

(a) must, if requested, produce a duly authenticated authorisation document;

(b) may be accompanied by a representative of the Union importer; and

(c) may bring onto the premises such equipment as the inspector considers necessary.

Powers of inspection

11. An inspector who has entered the premises in exercise of a power under regulation 10, may—

(a) have access to, inspect, and copy documents, records or other information, in whatever form they are held, and remove them to enable them to be copied;

(b) require the production of, and inspect and check the data on, and operation of, any computer and any associated apparatus used in connection with such documents, records or other information, and require computer records to be produced in a form in which they may be easily accessed and taken away by the inspector; or

(c) require any person to provide any assistance as may be considered necessary by the Secretary of State for the purposes of carrying out the Secretary of State's functions under these Regulations.

Restrictions

12. The powers contained in these Regulations shall not be taken as—

(a) requiring a person to produce any document or information which that person would be entitled to refuse to produce in any proceedings in any court on the grounds that it is the subject of legal professional privilege; or

(b) authorising the Secretary of State to take possession of any document or information which is in the possession of a person who would be so entitled.

13. Nothing in these Regulations requires a person to answer any question or give any information if to do so might incriminate that person.

PART 4

Civil sanctions

Power to impose civil sanctions

14.—(1) The Secretary of State may impose a compliance notice or a non-compliance penalty (a "civil sanction") as set out in the Schedule.

(2) The Schedule (which provides for civil sanctions) has effect.

Imposition of civil sanctions

15. Civil sanctions may be imposed upon a Union importer if, when a power is exercised under regulations 8, 10 or 11, that Union importer—

(a) without reasonable excuse, fails to comply with a notice under regulation 8(1) or 10(1);

(b) without reasonable excuse, fails to provide the Secretary of State with any other information or assistance that the Secretary of State may reasonably require;

(c) without reasonable excuse fails to produce a document or record when reasonably required to do so by the Secretary of State;

(d) knowingly or recklessly provides false or misleading information to the Secretary of State;

(e) knowingly or recklessly makes a statement that is false or misleading in a material respect;

(f) intentionally obstructs, including by preventing entry without reasonable excuse, the Secretary of State; or

(g) otherwise fails to cooperate with the Secretary of State without reasonable excuse.

PART 5

Miscellaneous provisions

Service of notices

16.—(1) Any notice served under these Regulations must be in writing and may be amended, suspended, or withdrawn in writing at any time.

(2) A notice may be served on a person by—

(a) personal delivery;

(b) leaving it at the person's proper address; or

(c) sending it by post or by electronic means to a person's proper address.

(3) In the case of a body corporate, a notice may be served on an officer of that body.

(4) In the case of a partnership, a notice may be served on a partner or person who has control or management of the partnership business.

(5) In the case of an unincorporated association, a notice may be served on an officer of the association or a member of its governing body.

(6) For the purposes of this regulation, "proper address" means—

(a) in the case of a body corporate or an officer of that body—

(i) the registered or principal office of the body; or

(ii) the email address of the officer.

(b) in the case of a partnership or a partner or person who has control or management of the partnership business—

(i) the principal office of the partnership; or

(ii) the email address of the partner or person who has that control or management.

(c) in the case of an unincorporated association or an officer of the association or member of its governing body—

(i) the principal office of the association; or

(ii) the email address of the officer or member;

(d) in any other case, a person's last known address, which may be an email address.

(7) For the purposes of paragraph (6), the principal office of a company registered outside Northern Ireland or a partnership or unincorporated association carrying on business outside Northern Ireland is its principal office in Northern Ireland.

(8) If the name or address of any occupier of premises on whom a notice is to be served under these Regulations cannot, after reasonable inquiry, be ascertained, the notice may be served by leaving it conspicuously affixed to a building or object on the premises.

Review

17.—(1) The Secretary of State must, from time to time—

(a) carry out a review of the regulatory provision contained in these Regulations; and

(b) publish a report setting out the conclusions of the review.

(2) The first report must be published before 1 January 2026.

(3) Subsequent reports must be published at intervals not exceeding five years.

(4) Section 30(3) of the Small Business, Enterprise and Employment Act 2015(**a**) requires that a review carried out under this regulation must, so far as is reasonable, have regard to how the EU Regulation is implemented and enforced by Member States of the European Union.

(5) Section 30(4) of the Small Business, Enterprise and Employment Act 2015 requires that a report published under this regulation must, in particular—

(a) set out the objectives intended to be achieved by the regulatory provision referred to in paragraph (1)(a);

(b) assess the extent to which those objectives are achieved;

(c) assess whether those objectives remain appropriate; and

(d) if those objectives remain appropriate, assess the extent to which they could be achieved in a way which involves less onerous regulatory provision.

(6) In this regulation, "regulatory provision" has the same meaning as in sections 28 to 32 of the Small Business, Enterprise and Employment Act 2015 (see section 32 of that Act).

Name
Minister of State
Date Foreign, Commonwealth and Development Office

(**a**) 2015 c. 26. Section 30(3) was amended by section 19 of the Enterprise Act 2016 (c. 12) and the European Union (Withdrawal) Act 2018 (c. 16), Schedule 8(2), paragraph 36.

SCHEDULE

Regulation 14(2)

Civil sanctions

PART 1

Compliance notices

Imposition of a compliance notice

1.—(1) The Secretary of State may by notice (a "compliance notice") impose on any Union importer in relation to any conduct falling within regulation 15(a)-(g), requirements to ensure that the conduct does not continue or recur.

(2) Before issuing a compliance notice under paragraph (1), the Secretary of State must be satisfied on the balance of probabilities that a Union importer has engaged in conduct falling within regulation 15(a)-(g).

(3) A compliance notice may specify the period or periods within which the requirements referred to in paragraph (1) must be met.

(4) The Secretary of State may at any time in writing—

(a) withdraw a compliance notice; or

(b) amend the requirements contained in a compliance notice.

Provisional notices

2.—(1) Where the Secretary of State considers that it is appropriate to issue a compliance notice under paragraph 1(1), the Secretary of State must first by notice (a "provisional notice") inform the relevant Union importer of the—

(a) grounds for the proposed compliance notice;

(b) requirements that the compliance notice would contain; and the

(c) Union importer's right to make representations to the Secretary of State under paragraph (2).

(2) A Union importer may within 28 days beginning on the day a provisional notice issued under paragraph (1) is served make written representations to the Secretary of State in relation to the proposed imposition of a compliance notice.

Compliance notices

3.—(1) Where the Secretary of State has—

(a) issued a provisional notice under paragraph 2(1); and

(b) the period referred to in paragraph 2(2) has expired,

the Secretary of State may issue a compliance notice to the relevant Union importer.

(2) A compliance notice issued under paragraph (1) must inform the relevant Union importer of—

(a) the Secretary of State's position in respect of any written representations made by the Union importer under paragraph 2(2);

(b) the grounds for the compliance notice, which must have been contained in the provisional notice issued under paragraph 2(1);

(c) the requirements of the compliance notice;

(d) the period or periods within which the requirements specified in the compliance notice must be met;

(e) the Union importer's right to appeal under paragraph (3); and

(f) the consequences of failing to comply with a compliance notice.

(3) A Union importer which has been issued a compliance notice under paragraph (1) may, within 28 days beginning on the day that that compliance notice is served, apply to the Secretary of State for a review of the compliance notice on the following grounds—

(a) the issuing of a compliance notice was based on a material error of fact;

(b) the issuing of a compliance notice is wrong in law; or

(c) the requirements that are specified in the compliance notice are unreasonable.

(4) On an application for a review of the compliance notice under paragraph (3), the Secretary of State must decide whether to vary, revoke or uphold the compliance notice.

PART 2

Non-compliance penalties

4.—(1) Where the Secretary of State has—

(a) issued a compliance notice under paragraph 3(1); and

(b) within the period specified at paragraph 3(2)(d) the Union importer has failed to comply with the requirements specified in the compliance notice; and—

(i) the period referred to in paragraph 3(3) has expired and no application for review under that paragraph has been made; or

(ii) an application for review has been made under paragraph 3(3) and the Secretary of State has upheld the compliance notice,

the Secretary of State may serve a notice on the Union importer imposing a monetary penalty (a "non-compliance penalty").

(2) The amount of any individual non-compliance penalty may not exceed £25,000.

(3) The Secretary of State shall publish guidance concerning the basis on which the amount of a non-compliance penalty will be determined.

(4) The Secretary of State must have regard to the guidance published under paragraph (3) when determining the amount of a non-compliance penalty.

(5) A notice served under paragraph (1) must include the following information—

(a) the grounds for imposing the non-compliance penalty;

(b) the amount to be paid;

(c) how payment must be made;

(d) the period, which shall be no less than 28 days, within which payment must be made;

(e) the Union importer's rights of appeal;

(f) the consequences of failure to make payment in the specified period;

(g) any actions which the Union importer might take which the Secretary of State may consider appropriate to reduce the amount of the penalty.

(6) If the requirements of the compliance notice with which the Union importer has failed to comply are fulfilled before the end of the period specified within which payment of the non-compliance penalty must be made, the penalty is not payable.

(7) The Secretary of State may at any time in writing—

(a) withdraw a non-compliance penalty; or

(b) reduce the amount of a non-compliance penalty.

(8) Where the Secretary of State has—

(a) imposed a non-compliance penalty under paragraph 4(1);

(b) the period specified in paragraph (5)(d) has expired; and

(c) payment has not been made,

the Secretary of State may impose an additional non-compliance penalty in respect of the same failure to comply with a compliance notice.

(9) There is no limit to the number of non-compliance penalties that the Secretary of State may impose.

(10) The Secretary of State may recover a non-compliance penalty imposed under paragraph (1) as if payable under order of the court.

PART 3

Appeals

5.—(1) A Union importer served with a notice imposing a non-compliance penalty may appeal the non-compliance penalty, on the grounds that—

(a) the decision to serve the notice was based on a material error of fact;

(b) the decision was wrong in law;

(c) the decision was unfair or unreasonable; or

(d) the amount of the penalty was unreasonable.

(2) An appeal under paragraph (1) shall be made to the First-tier Tribunal(**a**).

(3) The Tribunal shall determine the standard of proof.

(4) Any notice which is subject to an appeal is suspended pending the determination or withdrawal of the appeal.

(5) On determination of an appeal, the Tribunal may withdraw, confirm, suspend or vary a notice imposing a non-compliance penalty, or otherwise—

(a) take such action as the Secretary of State may take in relation to an act or omission giving rise to a notice; or

(b) remit the decision to impose the non-compliance penalty, or any matter relating to that decision, to the Secretary of State.

(6) The Tribunal may (in addition to any other order it may make as to costs or expenses) order the Union importer to reimburse the Secretary of State for any expenditure the Secretary of State has reasonably incurred in relation to the imposition of civil sanctions under regulation 15, including expenditure incurred in the exercise of any powers under regulations 8, 10 or 11.

PART 4

Guidance and publicity

Guidance on the use of civil sanctions

6.—(1) The Secretary of State must publish guidance on the use of civil sanctions under these Regulations.

(2) Guidance published under paragraph (1) must contain the following information—

(a) the circumstances in which the Secretary of State is likely to impose civil sanctions; and

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(**a**) The Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009 (S.I. 2009/1976) govern the practice and procedure to be followed by the First-tier Tribunal in proceedings allocated to the Tribunal's General Regulatory Chamber.

(b) the matters to be taken into account by the Secretary of State in determining what actions might be required to ensure that non-compliance does not continue or recur.

(3) The Secretary of State must consult such persons as the Secretary of State considers appropriate before publishing any guidance.

(4) The Secretary of State must have regard to the guidance published under paragraph 6(1) in carrying out the Secretary of State's functions under these Regulations.

Publication of enforcement action

7. The Secretary of State may publish, as the Secretary of State considers appropriate, information concerning the exercise of the Secretary of State's functions under these Regulations.

EXPLANATORY NOTE

(This note is not part of the Order)

These Regulations enforce in respect of Northern Ireland Regulation (EU) No 2017/821 of the European Parliament and of the Council of 17 May 2017 laying down supply chain due diligence obligations for Union importers of tin, tantalum and tungsten, their ores, and gold originating from conflict-affected and high risk areas (OJ No. L 130, 19.5.2017) ("the EU Regulation"). Article 5(4) of the Northern Ireland Protocol to the Withdrawal Agreement between the United Kingdom and the European Union ("the Northern Ireland Protocol") provides that the EU regulations contained in Annex 2 to the Northern Ireland Protocol will apply to and in the UK, in respect of Northern Ireland. The EU Regulation is included in Annex 2. The EU Regulation aims to ensure that importers carry out supply chain due diligence to limit the acquisition of tin, tantalum and tungsten, their ores, and gold originating from conflict-affected and high risk areas. It imposes obligations on importers: in respect of their supply chain management systems; to identify risks of adverse impacts in their mineral supply chains and develop and implement strategies to respond to those risks; to carry out third-party audits of their activities, processes and systems used to implement supply chain due diligence regarding minerals or metals; and disclose to competent authorities the results of those audits.

Part 2 of these Regulations sets out the Secretary of State's functions which are those of the competent authority in respect of Union importers into Northern Ireland, and of a Member State insofar as they relate to Northern Ireland, under the EU Regulation. It also provides that the Secretary of State may authorise any person to carry out the Secretary of State's functions as competent authority, and for the disclosure and exchange of information.

Part 3 deals with enforcement, and provides for the production of information, entering premises, and inspection of documents or information for the purposes of carrying out the Secretary of State's functions under these Regulations.

Part 4 and the Schedule provide for the Secretary of State to impose civil sanctions where Union importers fail to comply with a notice requiring the production of information or otherwise knowingly, recklessly or without reasonable excuse fail to cooperate with the Secretary of State in the exercise of the powers under Part 3.

Part 5 makes provision for the service of notices and requires the Secretary of State to review these Regulations within five years and at intervals of five years thereafter.

The Schedule also requires the Secretary of State to publish guidance about the use of civil sanctions under these Regulations.

An impact assessment has not been carried out for these Regulations as impact assessments are not required in respect of statutory instruments necessary to meet the terms of the Northern Ireland Protocol. However, a "de minimis" assessment was conducted to understand the impact of the Regulations on business and no significant costs to business or the voluntary sector are foreseen as a result of the Regulations. A full impact assessment of the EU Regulation was carried out at an EU level. A Justice Impact Assessment has been conducted with the Department of Justice for

Northern Ireland. The Explanatory Memorandum is published alongside these Regulations on www.legislation.gov.uk.

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