
STATUTORY INSTRUMENTS

2005 No. 1526

CRIMINAL LAW

Burma (Financial Sanctions) Regulations 2005

<i>Made</i>	- - - -	<i>7th June 2005</i>
<i>Laid before Parliament</i>		<i>8th June 2005</i>
<i>Coming into force</i>	- -	<i>29th June 2005</i>

The Treasury are designated⁽¹⁾ for the purposes of section 2(2) of the European Communities Act 1972⁽²⁾ in relation to (i) measures relating to the movement of capital and to payments between Member States and between Member States and countries which are not Member States, and (ii) measures relating to the interruption or reduction, in part or completely, of economic relations with one or more countries which are not Member States;

The Treasury, in exercise of the powers conferred upon them by that section, make the following Regulations:

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Burma (Financial Sanctions) Regulations 2005 and come into force on 29th June 2005.

(2) In these Regulations—

“body corporate” includes a Scottish partnership and, in relation to such a partnership, any reference to a director of a body corporate is a reference to a partner;

“the EC Regulation” means Council Regulation (EC) No. 798/2004 of 26th April 2004⁽³⁾ concerning certain restrictive measures in respect of Burma, as amended by the instruments listed in Schedule 1 to these Regulations;

“the requesting authority” means the Treasury, the Bank of England or any person authorised by the Treasury of the Bank of England for the purpose of regulation 4 of and Schedule 2 to these Regulations.

Offences in Connection with breaches of the EC Regulation

2.—(1) A person who—

(1) S.I. 1994/757.

(2) 1972 c. 68.

(3) O.J. L.125, 28.4.2005, p.4.

(a) without reasonable excuse commits a breach of Article 6(1) of the EC Regulation; or
 (b) commits a breach of Article 6(2) or (3) of the EC Regulation,
 is guilty of an offence.

(2) Any person who commits a breach of Article 8a(1) or (2) of the EC Regulation⁽⁴⁾ is guilty of an offence.

(3) Any person who—
 (a) without reasonable excuse fails to comply with Article 9(1) of the EC Regulation; or
 (b) uses information in breach of Article 9(3) of the EC Regulation,
 is guilty of an offence.

Offences in connection with requests for authorisations

3. Any person who, in connection with a request for authorisation pursuant to Article 7(1) of the EC Regulation—

(a) makes any statement or furnishes any document or information which to his knowledge is false in a material particular;
 (b) recklessly makes any statement or furnishes any document or information which is false in a material particular; or
 (c) fails, without reasonable excuse, to make a statement or furnish any document or information which may be relevant to the request for authorisation,
 is guilty of an offence.

Information

4. Schedule 2 to these Regulations contains provisions relating to obtaining information.

Penalties

5.—(1) Any person guilty of an offence under regulation 2(1), 2(2) or 3 or paragraph 2(b) or (c) of Schedule 2 to these Regulations is liable—

(a) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or both;
 (b) on summary conviction, to imprisonment for a term not exceeding three months or to a fine not exceeding the statutory maximum or both.
 (2) Any person guilty of an offence under regulation 2(3), or paragraph 2(a) or 3(2) of Schedule 2 to these Regulations, is liable on summary conviction to imprisonment for a term not exceeding three months or to a fine not exceeding level 5 on the standard scale or both.

(3) Where—
 (a) any body corporate is guilty of an offence under these Regulation; and
 (b) that offence is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar office of the body corporate, or any person who was purporting to act in any such capacity,
 that person as well as the body corporate is guilty of that offence and is liable to be proceeded against and punished accordingly.

(4) Article 8a was inserted into the EC Regulation by Council Regulation (EC) No. 1853/2004 of 25th October 2004 (O.J. L.323, 26.10.2004, p.11).

Proceedings

6.—(1) Proceedings against any person for an offence under these Regulations may be taken before the appropriate court in the United Kingdom having jurisdiction in the place where that person is for the time being.

(2) No proceedings for an offence under these Regulations, other than a summary offence, shall be instituted in England and Wales or Northern Ireland except by or with the consent of the Secretary of State, the Treasury or the Attorney General or, as the case may be, the Attorney General for Northern Ireland.

(3) Paragraph (2) does not prevent—

- (a) the arrest or the execution of a warrant for the arrest of any person in respect of an offence under these Regulations; or
- (b) the remand in custody or on bail of any person charged with an offence under these Regulations,

notwithstanding that the necessary consent to the institution of proceedings for the offence has not been obtained.

Revocations

7.—(1) The Burma (Freezing of Funds and Economic Resources) Regulations 2004⁽⁵⁾ are revoked.

(2) The Burma (Prohibition on Financing) Regulations 2004⁽⁶⁾ are revoked.

7th June 2005

Gillian Merron
Joan Ryan
Two of the Lords Commissioners of Her
Majesty's Treasury

(5) S.I. 2004/1257.

(6) S.I. 2004/3100.

SCHEDULE 1

Regulation 1(2)

Instruments that amend Council Regulation (EC) No 798/2004 of 26th April 2004

1. Council Regulation (EC) No. 1853/2004 of 25th October 2004(7).
2. Commission Regulation (EC) No. 300/2005 of 22 February 2005(8).
3. Commission Regulation (EC) No. 667/2005 of 28th April 2005(9).

SCHEDULE 2

Regulation 4

Information obtained by the requesting authority

1.—(1) The requesting authority may, either generally or in a particular case, request any person in or resident in the United Kingdom—

- (a) to furnish to the requesting authority any information in his possession or control; or
- (b) to produce to the requesting authority any document in his possession or control,

which the requesting authority may require for the purpose of ensuring compliance with the EC Regulation.

(2) The power conferred by this paragraph to request any person to produce documents includes power—

- (a) to take copies of or extracts from any document so produced; and
- (b) to request that person or, where that person is a body corporate, any other person who is a present or past officer of, or is employed by, the body corporate to provide an explanation of any such document.

(3) Any person to whom a request is made must comply with it within such time and in such manner as may be specified in the request.

(4) Where a person is convicted of an offence under paragraph 2 of this Schedule of failing to furnish any information or produce any document, the court may make an order requiring him, within such period as may be specified in the order, to furnish the information or produce the document.

(5) Nothing in paragraph (1) requires any person who has acted as counsel or solicitor for any person to disclose any privileged document or information in his possession in that capacity.

2. Any person who—

- (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 made under this Schedule;
- (b) intentionally furnishes false information or a false explanation to any person exercising his powers under this Schedule; or
- (c) with intent to evade the provision of this Schedule, destroys, mutilates, defaces, secretes or removes any documents,

is guilty of an offence.

(7) O.J. L.323, 26.10.2004, p.11

(8) O.J. L.51, 24.2.2005, p.13

(9) O.J. L.108, 29.4.2005, p.35.

3.—(1) The requesting authority may not disclose to a third party any information furnished or document produced (including any copy or extract made of any document produced) in pursuance of a request made under this Schedule except—

- (a) with the consent of the person by whom the information was furnished or the document was produced, provided that a person who has obtained information or is in possession of a document only in his capacity as servant or agent of another person may not give consent for the purposes of this paragraph but such consent may instead be given by any person who is entitled to that information or to possession of that document in his own right;
- (b) to any person who would have been empowered under this Schedule to request that it be furnished or produced or any person holding or acting in any office under or in the service of the Crown in respect of the Government of the United Kingdom;
- (c) on the authority of the Treasury to the European Commission or to any of the competent authorities listed in Annex II to the EC Regulation, for the purpose of assisting the Commission or that competent authority to ensure compliance with the EC Regulations; or
- (d) with a view to the institution of, or otherwise for the purpose of, any proceedings for an offence under these Regulations.

(2) Any person who, without reasonable excuse, discloses information in contravention of paragraph (1) is guilty of an offence.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations provide that breaches of certain provisions of Council Regulation (EC) No 798/2004 of 26th April 2004 (the “EC Regulation”) relating to financial sanctions are criminal offences.

The enforcement of other provisions of the EC Regulation are dealt with in the Burma (Sale, Supply, Export, Technical Assistance, Financing and Financial Assistance and Shipments of Equipment) (Penalties and Licences) Regulations 2004 (S.I.2004/1315).

The EC Regulation has had various amendments, most recently by Commission Regulation (EC) No. 667/2005 of 28th April 2005. Schedule 1 to these Regulations lists the amending instruments.

Regulation 2 provides that breaches of the following provisions of the EC Regulation are criminal offences:—

- Article 6(1) which provides for the freezing of funds and economic resources belonging to individual members of the Burmese Government and person or entities associated with them as listed in Annex III to the EC Regulation as amended;
- Article 6(2) which prohibits the making available of funds or economic resources directly or indirectly to or for the benefit of persons listed in Annex III to the EC Regulation as amended;
- Article 6(3) which prohibits the knowing and intentional participation in activities the object or effect of which is, directly or indirectly, to circumvent the prohibitions in Article 6(1) and (2);
- Article 8a(1) which prohibits the granting of any financial loan or credit to Burmese state-owned enterprises as listed in Annex IV to the EC Regulation as amended; the acquisition

Status: This is the original version (as it was originally made).

of bonds, certificates of deposit, warrants or debentures issued by such enterprises; and the acquisition or extension of a participation in such enterprises;

- Article 8a(2) which prohibits the knowing and intentional participation in activities the object or effect of which is, directly or indirectly, to circumvent the provisions in Article 8a(1); and
- Article 9, which requires all persons to immediately provide to the Treasury or the Bank of England and to the European Commission any information, which would facilitate compliance with the EC Regulation, but requires such information to be used only for the purposes for which it was provided or received.

Regulation 3 makes it an offence to provide false information in connection with a request for authorisation under Article 7(1) of the EC Regulation.

Regulation 4 and Schedule 2 make provision for information to be requested by or on behalf of the Treasury or the Bank of England for the purpose of ensuring compliance with the EC Regulation. Failure to provide such information, the provision of false information or the suppression of evidence is a criminal offence. Unauthorised disclosure of information acquired under Schedule 2 is also a criminal offence.

Regulations 5 and 6 proscribe the penalties and procedures for breaches of regulations 2, 3, 4 and Schedule 2 to the Regulations.

Regulation 7 revokes the Regulations that previously enforced the financial sanctions in the EC Regulation.

A regulatory impact assessment has not been prepared for these Regulations, as they have no [minimal] impact on the cost of business.