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STATUTORY INSTRUMENTS

2018 No. 894

CUSTOMS

The Export Control (Burma Sanctions) (No. 2) Order 2018

<i>Made</i>	- - - -	<i>20th July 2018</i>
<i>Laid before Parliament</i>		<i>24th July 2018</i>
<i>Coming into force</i>	- -	<i>14th August 2018</i>

The Secretary of State is a Minister designated for the purposes of section 2(2) of the European Communities Act 1972(a) (“the 1972 Act”) in relation to measures relating to the interruption or reduction, in part or completely, of economic relations with one or more countries which are not member States(b).

This Order makes provision for a purpose mentioned in section 2(2) of the 1972 Act and it appears to the Secretary of State that it is expedient for references to Council Regulation (EU) No. 401/2013 of 2 May 2013 concerning restrictive measures in respect of Myanmar/Burma and repealing Regulation (EC) No 194/2008(c) to be construed as references to that Regulation as amended from time to time.

The Secretary of State makes this Order in exercise of the powers conferred by section 2(2) of, and paragraph 1A of Schedule 2 to, the 1972 Act(d) and by sections 1 to 5 and 7 of the Export Control Act 2002(e).

Citation and commencement

1. This Order may be cited as the Export Control (Burma Sanctions) (No. 2) Order 2018 and comes into force on 14th August 2018.

Extension of offences to extra-territorial activities

2. An offence under this Order can be committed by conduct wholly or partly outside the United Kingdom by a United Kingdom person (within the meaning given in section 11 of the Export Control Act 2002).

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- (a) 1972 c.68. Section 2(2) was amended by section 27(1) of the Legislative and Regulatory Reform Act 2006 (c.51) (“the 2006 Act”) and Part 1 of the Schedule to the European Union (Amendment) Act 2008 (c.7) (“the 2008 Act”).
- (b) S.I. 1994/757 to which there are amendments not relevant to this Order.
- (c) OJ No. L121, 3.5.2013, p.1, as amended by Council Regulation (EU) No. 2018/647 of 26 April 2018 (OJ No. L108, 27.4.2018, p.1).
- (d) Paragraph 1A of Schedule 2 was inserted by section 28 of the 2006 Act and amended by S.I. 2007/1388 and Part 1 of the Schedule to the 2008 Act.
- (e) 2002 c.28. Sections 1 to 5 and 7 were amended by S.I. 2011/1043. Section 5 was also amended by S.I. 2012/1809.

Interpretation

3.—(1) In this Order—

“the 1979 Act” means the Customs and Excise Management Act 1979(a);

“the Burma Regulation” means Council Regulation (EU) No. 401/2013 of 2 May 2013 concerning restrictive measures in respect of Myanmar/Burma and repealing Regulation (EC) No 194/2008 as amended from time to time.

(2) For the purposes of this Order, “relevant prohibition” means a prohibition in the Burma Regulation which is not a prohibition on the export of goods.

(3) Terms used in this Order and in the Burma Regulation have the same meaning in this Order as they have in that Regulation.

Licences

4.—(1) The Secretary of State may, in accordance with the Burma Regulation, by licence authorise an activity which would otherwise be prohibited by a listed provision.

(2) The prohibitions in the relevant listed provision do not apply to anything done under the authority of a licence under paragraph (1).

(3) In this article, “listed provision” means any of the following provisions of the Burma Regulation, Articles 2(1), 3(1)(a) and (b) and (2)(a) and (b), 3a(1) and (4)(a) and (b), 3b(1) and 3c(1)(a), (b) and (c).

(4) A licence must specify the activities authorised by it and may be—

- (a) general or granted to a category of persons or to a particular person;
- (b) subject to conditions;
- (c) of indefinite duration or subject to an expiry date.

(5) The Secretary of State may vary, suspend or revoke a licence at any time.

(6) On the grant, variation, suspension or revocation of a licence, the Secretary of State must—

- (a) in the case of a licence granted to a particular person, give written notice of its grant, variation, suspension or revocation to that person;
- (b) in the case of a general licence or a licence granted to a category of persons, take such steps as the Secretary of State considers appropriate to publicise the grant, variation, suspension or revocation of the licence.

(7) A person commits an offence who, for the purposes of obtaining a licence—

- (a) makes any statement or provides any document or information which the person knows to be false in a material respect, or
- (b) recklessly makes any statement or provides any document or information which is false in a material respect.

(8) A licence granted in the circumstances referred to in paragraph (7) is void from the time at which it was granted.

(9) A person who purports to act under the authority of a licence but who fails to comply with any condition included in the licence commits an offence.

Contravention of relevant prohibitions in the Burma Regulation

5.—(1) A person who contravenes a relevant prohibition in a provision of the Burma Regulation mentioned in paragraph (2) commits an offence.

(2) The provisions are—

(a) 1979 c.2.

- (a) Article 2(1) (prohibition on sale etc. of equipment listed in Annex I which might be used for internal repression directly or indirectly to any natural or legal person, entity or body in, or for use in, Myanmar/Burma);
- (b) in so far as it relates to the provision of technical assistance relating to goods or technology, Article 3(1)(a) (prohibition on provision of technical assistance related to military activities and to provision of arms etc. directly or indirectly to any natural or legal person, entity or body in, or for use in, Myanmar/Burma);
- (c) in so far as it relates to the provision of financing or financial assistance relating to goods, Article 3(1)(b) (prohibition on provision of financing or financial assistance related to military activities etc. directly or indirectly to any natural or legal person, entity or body in, or for use in, Myanmar/Burma);
- (d) Article 3(2)(a) (prohibition on provision of technical assistance related to the equipment listed in Annex I which might be used for internal repression directly or indirectly to any natural or legal person, entity or body in, or for use in, Myanmar/Burma);
- (e) in so far as it relates to the provision of financing or financial assistance relating to goods, Article 3(2)(b) (prohibition on provision of financing or financial assistance related to the equipment listed in Annex I directly or indirectly to any natural or legal person, entity or body in, or for use in, Myanmar/Burma);
- (f) Article 3a(1) (prohibition on sale etc. of dual-use goods and technology included in Annex I to Council Regulation (EC) No. 428/2009(a) directly or indirectly to any natural or legal person, entity or body in, or for use in, Myanmar/Burma);
- (g) in so far it relates to the provision of technical assistance or brokering services relating to goods or technology, Article 3a(4)(a) (prohibition on provision of technical assistance etc. related to dual-use goods and technology included in Annex I to Council Regulation (EC) No. 428/2009, and to provision etc. of those goods and technology directly or indirectly to any military end-user, the Border Guard Police or for military use in Myanmar/Burma);
- (h) in so far as it relates to the provision of financing or financial assistance relating to goods or the provision of financing or financial assistance relating to technical assistance relating to goods or technology, Article 3a(4)(b) (prohibition on provision of financing or financial assistance related to dual-use goods and technology listed in Annex I to Council Regulation (EC) No.428/2009 directly or indirectly to any military end-user, the Border Guard Police or for military use in Myanmar/Burma);
- (i) Article 3b(1) (prohibition on sale etc. of equipment, technology or software identified in Annex III directly or indirectly to any person, entity or body in, or for use in, Myanmar/Burma);
- (j) in so far as it relates to the provision of technical assistance or brokering services relating to goods or technology, Article 3c(1)(a) (prohibition on provision of technical assistance etc. related to the equipment, technology or software identified in Annex III, the installation etc. of the equipment and technology identified in Annex III or the provision etc. of any software identified in Annex III directly or indirectly to any person, entity or body in, or for use in, Myanmar/Burma);
- (k) in so far as it relates to the provision of financing or financial assistance relating to goods, Article 3c(1)(b) (prohibition on provision of financing or financial assistance related to the equipment, technology and software identified in Annex III, directly or indirectly to any person, entity or body in, or for use in, Myanmar/Burma);
- (l) Article 3c(1)(c) (prohibition on provision of telecommunication or internet monitoring or interception services of any kind to, or for the direct or indirect benefit of, the Government of Myanmar/Burma, public bodies, corporations and agencies or any person or entity acting on their behalf or at their direction).

(a) OJ No, L 134, 29.5.2009, p 1. This Regulation was last amended by Commission Delegated Regulation (EU) No. 2017/2268 of 26 September 2017 (OJ No. L334, 15.12.17, p.1).

(3) A person who contravenes a relevant prohibition in a provision of the Burma Regulation mentioned in paragraph (4) commits an offence.

(4) The provisions are—

- (a) in so far as it relates to an activity other than the provision of technical assistance relating to goods or technology, Article 3(1)(a);
- (b) in so far as it relates to an activity other than the provision of financing or financial assistance relating to goods, Article 3(1)(b);
- (c) in so far as it relates to an activity other than the provision of financing or financial assistance relating to goods, Article 3(2)(b);
- (d) in so far as it relates to an activity other than the provision of technical assistance or brokering services relating to goods or technology, Article 3a(4)(a);
- (e) in so far as it relates to an activity other than the provision of financing or financial assistance relating to goods or the provision of financing or financial assistance relating to technical assistance relating to goods or technology, Article 3a(4)(b);
- (f) in so far as it relates to an activity other than the provision of technical assistance or brokering services relating to goods or technology, Article 3c(1)(a);
- (g) in so far as it relates to an activity other than the provision of financing or financial assistance relating to goods, Article 3c(1)(b).

Circumvention of relevant prohibitions in the Burma Regulation

6. A person who participates, knowingly and intentionally, in an activity the object or effect of which is—

- (a) to circumvent any relevant prohibition in a provision of the Burma Regulation mentioned in article 5(2) or (4) of this Order; or
- (b) to enable or facilitate the circumvention of any such prohibition,

commits an offence.

Defence

7. It is a defence for a person charged with an offence under article 5 of this Order to show that they did not know and had no reasonable cause to suspect that their actions would contravene the relevant prohibition in the Burma Regulation.

Offences under this Order: Penalties

8.—(1) A person guilty of an offence under a provision of this Order specified in paragraph (2) this Order is liable—

- (a) on summary conviction in England and Wales, to imprisonment for a term not exceeding 12 months or a fine (or both);
- (b) on summary conviction in Scotland, to imprisonment for a term not exceeding 12 months or a fine not exceeding the statutory maximum (or both);
- (c) on summary conviction in Northern Ireland, to imprisonment for a term not exceeding six months or a fine not exceeding the statutory maximum (or both);
- (d) on conviction on indictment, to imprisonment for a term not exceeding 10 years or a fine (or both).

(2) The provisions are—

- (a) article 5(2);
- (b) article 6 in so far as it relates to, or relates to the enabling or facilitating of, the circumvention of any relevant prohibition in a provision of the Burma Regulation mentioned in article 5(2).

- (3) A person otherwise guilty of an offence under any provision of this Order is liable—
- (a) on summary conviction in England and Wales, to a term of imprisonment not exceeding three months or a fine (or both);
 - (b) on summary conviction in Scotland, to a term of imprisonment not exceeding 12 months or a fine not exceeding the statutory maximum (or both);
 - (c) on summary conviction in Northern Ireland, to a term of imprisonment not exceeding three months or a fine not exceeding the statutory maximum (or both);
 - (d) on conviction on indictment, to a term of imprisonment not exceeding two years or a fine (or both).

(4) In relation to an offence committed before section 154(1) of the Criminal Justice Act 2003(a) comes into force, the reference in paragraph (1)(a) to “12 months” is to be read as a reference to six months.

Offences under the 1979 Act in connection with the Burma Regulation: Penalties

9.—(1) Paragraph (2) applies where a person is guilty of an offence under section 68(2) of the 1979 Act(b) in connection with a Burma export prohibition.

(2) Where this paragraph applies, the reference to 7 years in section 68(3)(b) of the 1979 Act(c) is to be read as a reference to 10 years.

(3) Paragraph (4) applies where a person is guilty of an offence under section 170(2) of the 1979 Act(d) in connection with a Burma export prohibition.

(4) Where this paragraph applies, the reference to 7 years in section 170(3)(b) of the 1979 Act(e) is to be read as a reference to 10 years.

(5) In this article, “Burma export prohibition” means a prohibition on exportation imposed by Article 2(1), 3a(1) or 3b(1) of the Burma Regulation.

Application of the 1979 Act for the purposes of this Order

10.—(1) Where the Commissioners for Her Majesty’s Revenue and Customs investigate or propose to investigate any matter with a view to determining—

- (a) whether there are grounds for believing that an offence under this Order has been committed, or
- (b) whether a person should be prosecuted for such an offence,

the matter is to be treated as an assigned matter.

(2) In this article “assigned matter” has the meaning given in section 1(1) of the 1979 Act(f).

(3) Section 77A(g) of the 1979 Act applies to a person concerned in a relevant activity as it applies to a person concerned in the importation or exportation of goods but with the modifications specified in paragraph (4).

(4) The modifications are that—

- (a) the reference in subsection (1) to a person concerned in the importation or exportation of goods for which for that purpose an entry is required by regulation 5 of the Customs Controls on Importation of Goods Regulations 1991 or an entry or specification is required by or under the 1979 Act is to be read as a reference to a person concerned in a relevant activity;

(a) 2003 c.44.

(b) Section 68(2) was amended by section 114(1) of the Police and Criminal Evidence Act 1984 (c.60).

(c) The words “7 years” were inserted by section 12 of the Finance Act 1988 (c.39).

(d) Section 170(2) was amended by section 114(1) of the Police and Criminal Evidence Act 1984.

(e) The words “7 years” were inserted by section 12 of the Finance Act 1988.

(f) The definition was amended by paragraph 22(a) of Schedule 4 to the Commissioners for Revenue and Customs Act 2005 (c.11) (“the 2005 Act”), section 24(7) of the Scotland Act 2012 (c.11) and section 7(1) of the Wales Act 2014 (c.29).

(g) Section 77A was inserted by section 10 of the Finance Act 1987 (c.16) and amended by S.I. 1992/3095.

(b) any other reference to importation or exportation is to be read as a reference to a relevant activity.

(5) For the purposes of paragraphs (3) and (4), “relevant activity” means an activity (other than the importation or exportation of goods) which, if not authorised by a licence under this Order, would contravene Article 2(1), 3(1)(a) and (b) and (2)(a) and (b), 3a(1) and (4)(a) and (b), 3b(1) or 3c(1)(a), (b) or (c) of the Burma Regulation.

(6) Section 138(a) of the 1979 Act applies to a person who has committed, or whom there are reasonable grounds to suspect of having committed, an offence under this Order as it applies to a person who has committed, or whom there are reasonable grounds to suspect of having committed, an offence for which the person is liable to be arrested under the customs and excise Acts but with the modifications specified in paragraph (7).

(7) The modifications are that—

(a) any reference to an offence under, or for which a person is liable to be arrested under, the customs and excise Acts is to be read as a reference to an offence under this Order;

(b) subsection (2) is to be read as if for the words “any person so liable” there were substituted “any such person”.

(8) The provisions of the 1979 Act mentioned in paragraph (9) apply for the purposes of proceedings for an offence under this Order as they apply for the purposes of proceedings for an offence under the customs and excise Acts(b) but with the modifications specified in paragraph (10).

(9) The provisions of the 1979 Act are sections 145(c), 146(d), 146A(e), 147(f), 148, 150(g), 151(h), 152(i), 154(j) and 155(k).

(10) The modifications are that—

(a) any reference to proceedings for an offence under the customs and excise Acts is to be read as a reference to proceedings for an offence under this Order;

(b) any reference to an offence for which a person is liable to be arrested under the customs and excise Acts is to be read as a reference to an offence under this Order;

(c) section 146A has effect as if for subsection (1) of that section there were substituted—

“(1) The following provisions apply in relation to proceedings for an offence under the Export Control (Burma Sanctions) Order 2018.”;

(d) the reference in section 151 to any penalty imposed under the customs and excise Acts is to be read as a reference to any penalty imposed under this Order.

Revocation

11. The Export Control (Burma Sanctions) Order 2018(l) is revoked.

(a) Section 138 was amended by sections 114(1) and 119 of, and paragraph 37 of Schedule 6 and Schedule 7 to, the Police and Criminal Evidence Act 1984, section 11 of the Finance Act 1988 (c.39), section 111 of, and paragraph 54 of Schedule 7 to, the Serious Organised Crime and Police Act 2005 (c.15) and by S.I. 1989/1341 (N.I. 12).

(b) See section (1) of the 1979 Act.

(c) Section 145 was amended by section 114(1) of the Police and Criminal Evidence Act 1984 and by section 50(6) of, and paragraphs 20 and 23 of Schedule 4 to, the 2005 Act.

(d) Section 146 was modified by S.I.1990/2167.

(e) Section 146A was inserted by section 16(1) of the Finance Act 1989 (c.26) and amended by section 50(6) of, and paragraphs 20 and 24 of Schedule 4 to, the 2005 Act.

(f) Section 147 was amended by section 154 of, and paragraph 176 of Schedule 7 to, the Magistrates’ Courts Act 1980 (c.43), sections 77 and 78 of, and paragraph 42 of Schedule 14 and Schedule 16 to, the Criminal Justice Act 1982 (c.48) and section 16(2) of the Finance Act 1989.

(g) Section 150 was amended by section 50(6) of, and paragraphs 20 and 25 of Schedule 4 to, the 2005 Act.

(h) Section 151 was amended by section 154 of, and paragraph 177 of Schedule 7 to, the Magistrates’ Courts Act 1980.

(i) Section 152 was amended by section 50(6) and 52 of, and paragraphs 20 and 26 of Schedule 4 and Schedule 5 to, the 2005 Act.

(j) Section 154 was modified by S.I. 1990/2167.

(k) Section 155 was amended by section 50(6) of, and paragraphs 20, 21 and 27 of Schedule 4 to, the 2005 Act.

(l) S.I. 2018/871.

Review

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

- (a) carry out a review of the regulatory provisions contained in this Order;
- (b) set out the conclusions of the review in a report; and
- (c) publish the report.

(2) The first report under this Order must be published before 14th August 2023.

(3) Subsequent reports must be published at intervals not exceeding 5 years.

(4) Section 30(3) of the Small Business, Enterprise and Employment Act 2015^(a) (“the 2015 Act”) requires that a review carried out under this article must, so far as is reasonable, have regard to how the Burma Regulation is implemented in other member States.

(5) Section 30(4) of the 2015 Act requires that a report published under this article must in particular—

- (a) set out the objectives intended to be achieved by the regulatory provisions 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 another way which involves less onerous regulatory provisions.

Liam Fox

Secretary of State

Department for International Trade

20th July 2018

EXPLANATORY NOTE

(This note is not part of the Order)

This Order makes provision in connection with the trade restrictions against Burma specified in Council Regulation (EU) 401/2013 of 2 May 2013 (OJ No. L121, 3.5.2013, p.1) as amended by Council Regulation (EU) 2018/647 of 26 April 2018 (OJ No. L108, 27.4.2018, p.1) (“the Burma Regulation”). This Order revokes and replaces the Export Control (Burma Sanctions) Order 2018 (S.I. 2018/871).

Article 4 provides for the granting of licences for the purposes of the provisions of the Burma Regulation which allow a competent authority to authorise trade related activities which would otherwise be prohibited. The competent authority for these purposes is the Secretary of State. A licence granted by the Secretary of State may be varied, suspended or revoked. Article 4(7) makes it an offence to knowingly or recklessly provide false information for the purpose of obtaining a licence. Article 4(9) makes it an offence to fail to comply with any condition attached to a licence.

Article 5 creates offences for contravention of relevant prohibitions in the Burma Regulation. “Relevant prohibitions” are trade prohibitions but do not include prohibitions on the export of goods. Offences for contravention or circumvention of prohibitions on the export of goods are to be found in the Customs and Excise Management Act 1979 (c.2) (“the 1979 Act”).

Article 6 creates an offence of circumventing any relevant prohibition in the Burma Regulation.

Article 7 makes provision for a defence for a person charged with certain offences under the Order.

(a) 2015 c.26.

Article 8 sets out the penalties relating to the offences under this Order. Article 9 makes modifications to the penalties that will apply where a person is guilty of an offence under the 1979 Act in connection with the exportation of goods which is prohibited by the Burma Regulation.

Article 10 applies (with modifications) sections 77A, 138, 145, 146, 146A, 147, 148, 150, 151, 152, 154 and 155 of the 1979 Act for the purposes of the Order. These sections, as applied, make provision in connection with the investigation of and proceedings for offences under this Order.

An impact assessment has not been produced for this instrument as it has no or minimal impact on business, charities or voluntary bodies. A copy of the Explanatory Memorandum is published alongside the Order on www.legislation.gov.uk. Further information is available from the Export Control Organisation, Department for International Trade, 3 Whitehall Place, London, SW1A 2AW and on the [gov.uk](http://www.gov.uk) website (www.gov.uk).

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