

EXPLANATORY MEMORANDUM TO
THE EXPORT CONTROL (BURMA SANCTIONS) (NO. 2) ORDER 2018
2018 No. 894

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department for International Trade and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

- 2.1 This instrument replaces the Export Control (Burma Sanctions) Order 2018 (the “original Order”) that was made on 16 July 2018. Both the original Order and this Order provide for the enforcement of European Union trade sanctions set out in Council Regulation (EU) 2018/647 of 26 April 2018 amending Regulation (EU) No 401/2013 of 2 May 2013 concerning restrictive measures in respect of Myanmar/Burma (the “2018 Regulation”). It also makes provision for the granting of licences - permitting, in accordance with provision made by the 2018 Regulation, certain trade activities which would otherwise be prohibited.
- 2.2 This instrument revokes the original Order because the original Order inadvertently did not provide for the desired level of penalty for certain offences. Offences which could have been made under the Export Control Act 2002 - which, for instance, provides for a maximum period of imprisonment of 10 years on conviction on indictment - were instead made under the European Communities Act 1972. Under the latter, the maximum penalty on conviction on indictment is 2 years. This Order therefore remedies this oversight. In addition, this Order consolidates the existing offences and penalties in respect of earlier EU-imposed trade restrictions relating to Burma – those offences and penalties provided for in the Export Control (Burma) Order 2013 (“the 2013 Order”).

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

- 3.2 As the instrument is not subject to parliamentary procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business.

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is the whole of the United Kingdom.
- 4.2 The territorial application of this instrument is the whole of the United Kingdom.

5. European Convention on Human Rights

- 5.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

6. Legislative Context

- 6.1 The EU initially imposed sanctions against Burma in 1990. In 1996, the EU adopted a Common Position on Burma which included a ban on the sale or transfer of arms and weapons expertise to the country, visa restrictions on members of the military regime, their families and allies, and a freeze on officials' overseas assets. All bilateral aid other than humanitarian assistance was suspended.
- 6.2 After troops violently suppressed anti-government protests in 2007, the sanctions were extended to include a ban on imports of gems, timbers and metals. They were further tightened in August 2009 when pro-democracy opposition leader Aung San Suu Kyi's house arrest was extended.
- 6.3 However, in 2010 Aung San Suu Kyi, who had been prevented from taking part in that year's elections, was released from house arrest. Reform followed, and the EU lifted its trade, economic and individual sanctions - except those on arms sales - in response to Myanmar's political reform programme. This change is reflected in Council Regulation (EU) No 401/2013, which followed Council Decision 2013/184/CFSP of 22 April 2013, and is enforced in the United Kingdom by the 2013 Order.
- 6.4 The 2018 Regulation was adopted by the Council of the European Union in response to widespread, systematic grave human rights violations committed by the Burmese military and security forces. The original Order was made on 16 July 2018 to enforce the Regulation but did not provide the desired level of penalty for certain offences. This Order therefore replaces that Order. Furthermore, it consolidates the existing offences and penalties provided for in the 2013 Order – offences and penalties in respect of earlier EU-imposed trade sanctions regarding Burma.

7. Policy background

What is being done and why?

- 7.1 In February 2018, the European Council adopted conclusions condemning the widespread systematic human rights violations committed by the Burmese military and the failure of the Burmese Government and security forces to ensure security, rule of law and accountability in Rakhine, Kachin and Shan States.
- 7.2 This was followed, on 26 April 2018, by the EU's imposition of sanctions prohibiting the export to Burma of, amongst other things, dual-use goods, technology, software, and the provision of telecommunications, internet monitoring or interception services to Burma.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

- 8.1 This instrument does not relate to withdrawal from the European Union or trigger the statement requirements under the European Union (Withdrawal) Act 2018.

9. Consolidation

9.1 None.

10. Consultation outcome

10.1 This instrument provides for the technical implementation of a directly applicable EU Regulation. No consultation was necessary.

11. Guidance

11.1 Guidance about sanctions against Burma is available on GOV.UK
<https://www.gov.uk/guidance/arms-embargo-on-burma>

12. Impact

12.1 There is no significant impact on business, charities or voluntary bodies.

12.2 There is no impact on the public sector.

12.3 An Impact Assessment has not been prepared for this instrument because it provides for the technical implementation of a directly applicable EU Regulation.

13. Regulating small business

13.1 The legislation applies to activities that are undertaken by small businesses.

13.2 To minimise the impact of the requirements on small businesses, the 2018 Regulation is enforced by penalties that are only applied if a business deliberately breaches the sanctions set out in the Regulation, rather than by regulatory measures.

14. Monitoring & review

14.1 The approach to monitoring of this legislation is for a review to be carried out within five years of it coming into force and every five years thereafter.

14.2 A statutory review clause is included in this Order.

15. Contact

15.1 Peter Monday at the Department for International Trade. Telephone: 0207 215 8810. Email: peter.monday@trade.gov.uk can be contacted with any queries regarding the instrument.

15.2 Edward Bell at the Department for International Trade can confirm that this Explanatory Memorandum meets the required standard.

15.3 Dr Liam Fox (Secretary of State) at the Department for International Trade can confirm that this Explanatory Memorandum meets the required standard.