

**EXPLANATORY MEMORANDUM TO**  
**THE BURMA (SANCTIONS) (EU EXIT) REGULATIONS**

**2019 No. 136**

**1. Introduction**

- 1.1 This explanatory memorandum has been prepared by the Foreign and Commonwealth Office and is laid before Parliament by Command of Her Majesty.
- 1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

**2. Purpose of the instrument**

- 2.1 These Regulations are intended to ensure that the UK can operate an effective sanctions regime in relation to Burma after the UK leaves the EU. When these Regulations come into force they will replace, with substantially the same effect, the EU sanctions regime relating to Burma that is currently in force under EU legislation and related UK regulations. This sanctions regime is aimed at encouraging the Burma Security Forces (and in particular the Tatmadaw) to comply with international human rights law and to respect human rights.

**3. Matters of special interest to Parliament**

*Matters of special interest to the Joint Committee on Statutory Instruments*

- 3.1 This instrument is one of the first statutory instruments to be made under the Sanctions and Anti-Money Laundering Act 2018 (“**the Sanctions Act**”).
- 3.2 This instrument is laid before Parliament under section 55(3) of the Sanctions Act and is subject to the made affirmative procedure. It comes into force in accordance with regulations made under section 56 of the Sanctions Act (see regulation 1(2)), which enables special provision to be made for the commencement of regulations where such provision is appropriate in consequence of, or otherwise in connection with, the withdrawal of the UK from the EU. Section 56(5) of the Sanctions Act provides that the instrument must be approved by resolution of both Houses within 60 days of the Regulations coming into force for it to continue to have effect. This defers parliamentary debates in relation to this instrument until after it has come into force.
- 3.3 Regulations will be made to appoint different days for the purpose of commencing different provisions of this instrument. In particular, these Regulations will come into force on exit day with the exception of Chapters 1 and 2 of this instrument (which set out the purposes of this sanctions regime) and contain the power to designate persons for the purpose of this sanctions regime. The Regulations will be brought into force prior to exit day in order to ensure that there is no gap in the implementation of this sanctions regime following the UK’s withdrawal from the EU.

*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)*

- 3.4 The territorial application of this instrument includes Scotland and Northern Ireland.

#### **4. Extent and Territorial Application**

- 4.1 The territorial extent of this instrument is the whole of the UK.
- 4.2 Subject to paragraph 4.3, the territorial application of this instrument is the UK.
- 4.3 This instrument also applies to conduct by UK persons outside the UK. In addition, the maritime enforcement powers contained in Part 9 of this instrument apply in relation to British ships in international or foreign waters, ships without nationality in international waters and foreign ships in international waters.

#### **5. European Convention on Human Rights**

- 5.1 The Minister of State for Europe and the Americas at the Foreign and Commonwealth Office, the Rt Hon Sir Alan Duncan MP, has made the following statement regarding Human Rights:

“In my view the provisions of the Burma (Sanctions) (EU Exit) Regulations 2019 are compatible with the Convention rights.”

#### **6. Legislative Context**

- 6.1 The UK’s implementation of UN and other multilateral sanctions currently relies largely on the European Communities Act 1972. Each sanctions regime generally consists of an EU Council Decision, a corresponding directly-applicable EU Council Regulation, and related UK regulations made under section 2(2) of the European Communities Act 1972 and other domestic legislation. There are currently around 35 sanctions regimes that take effect in the UK under EU law and associated UK secondary legislation. These include country-specific sanctions regimes, including in relation to Russia, North Korea and Iran, as well as regimes targeting Da’esh, Al Qaida and other terrorist groups.
- 6.2 The European Union (Withdrawal) Act 2018 will repeal the European Communities Act 1972 and provides for some EU sanctions law to form part of domestic law after the UK has left the EU. However, that Act does not provide powers to substantially amend that retained EU law and it does not provide powers to lift sanctions or impose new sanctions. In addition, that Act does not retain the effect of certain sanctions (travel bans) which are in force by virtue of EU Council Decisions (rather than under EU Regulations). The Sanctions Act was introduced to address these issues by providing the UK with the legal framework necessary to allow the UK to implement sanctions autonomously.
- 6.3 Section 1 of the Sanctions Act enables sanctions regulations to be made for the purposes of compliance with United Nations obligations and other international obligations, as well as for a number of other purposes which include: furthering the prevention of terrorism; national security; promoting international peace and security; promoting compliance with international human rights law and respect for human rights; or furthering foreign policy objectives.
- 6.4 The EU sanctions regime imposed on Burma for the purpose of preventing the commission of serious human rights violations currently has effect in the UK through both EU instruments and related UK regulations. Using the power contained in section 54(2)(a) of the Sanctions Act, the following will be revoked and replaced by these Regulations: Council Regulation (EU) No 401/2013 (a directly applicable regulation concerning restrictive measures directed against certain persons, entities

and bodies in respect of Myanmar/Burma that would otherwise form part of domestic law on exit day under the EU (Withdrawal) Act 2018); the Burma (European Union Financial Sanctions) Regulations 2018 (S.I. 2018/539); and the Export Control (Burma Sanctions) (No 2) Order 2018 (S.I. 2018/894).

## 7. Policy background

### *What is being done and why?*

- 7.1 Her Majesty's Government's (HMG's) policy on Burma includes the use of sanctions to encourage the Burma Security Forces, in particular the Burma armed forces (the Tatmadaw), Border Guard Police and the Myanmar Police Force, to comply with international human rights law. Sanctions also signal the UK's concern over human rights violations and the lack of investigation and accountability for recent atrocities in Burma, particularly against the Rohingya.
- 7.2 The human rights situation in Burma remains of serious concern. The UN independent international fact finding mission<sup>1</sup> establishes consistent patterns of serious human rights violations and abuses in Kachin, Rakhine and Shan States and attributes responsibility to Burmese security forces, particularly the military (the Tatmadaw). Military atrocities include: systematic burning of Rohingya villages, massacre, torture, arbitrary detention and targeted sexual violence. In light of this, sanctions form one part of international efforts to encourage the Burma Security Forces to comply with international human rights law and to respect human rights.
- 7.3 The EU has been imposing limited sanctions on Burma since 1991. The current EU sanctions regulations (consisting of an arms embargo, export controls, asset freeze and travel ban) were updated in June 2018 following systematic human rights violations beginning in August 2017. These Regulations are intended to substantially deliver the same policy effects as those existing EU sanctions.
- 7.4 Bringing this sanctions regime into UK law using the powers in the Sanctions Act will enable all the sanctions measures to continue to operate effectively after the UK leaves the EU, as well as enabling HMG to amend and lift the sanctions, or impose further sanctions, autonomously.
- 7.5 This instrument is accompanied by two statutory reports that are required to be published under the Sanctions Act.
- 7.6 Firstly, and in accordance with section 2(4) of the Sanctions Act, a report has been produced to explain why the Minister considers that the carrying out of the stated purposes of this instrument would meet one or more of the discretionary purposes (i.e. purposes other than implementing UN obligations) set out in the Sanctions Act; why there are good reasons to pursue those purposes; and why the Minister considers that the imposition of sanctions is a reasonable course of action for those purposes. As mentioned in paragraph 7.2 above, the stated purposes of these regulations are to encourage the Burma Security Forces to comply with international human rights law and to respect human rights.
- 7.7 Secondly, and in accordance with section 18 of the Sanctions Act, a report has been produced that identifies the offences contained in this instrument; explains why there are good reasons for those offences; and explains why there are good reasons for the

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<sup>1</sup> [https://www.ohchr.org/Documents/HRBodies/HRCouncil/FFM-Myanmar/A\\_HRC\\_39\\_64.pdf](https://www.ohchr.org/Documents/HRBodies/HRCouncil/FFM-Myanmar/A_HRC_39_64.pdf) United Nations Office of the High Commission for Human Rights 2018

prescribed penalties in relation to those offences. Offences include, for example, breaching the prohibitions on exporting certain goods to Burma.

- 7.8 Part 2 of this instrument deals with the designation of persons (including individuals, entities and organisations) under the sanctions regime. It lists the criteria against which a Minister may make a decision to designate a person as being subject to a travel ban or asset freeze (“**designated persons**”), namely where a member of the Burma Security Forces has been involved in the commission of serious human rights violations in Burma.
- 7.9 The names of designated persons are not included in this instrument. These will be held on a separate administrative list on gov.uk to enable immediate publication following a decision to make or amend a designation. This limits the opportunity for designated persons to remove assets from the UK.
- 7.10 Part 3 of the instrument sets out financial sanctions measures that can be imposed on designated persons. Financial sanctions include freezing a designated person’s funds and economic resources (non-monetary assets, such as property or vehicles) and ensuring that funds and economic resources are not made available to or for the benefit of a designated person or entity, either directly or indirectly. The instrument sets out exceptions and licensing derogations from these sanctions that will be applicable or available, as the case may be, under certain prescribed circumstances, such as to enable those listed to have access to funds, for example, to satisfy their basic needs.
- 7.11 Part 4 of the instrument sets out the effect of immigration measures made under this instrument. A designation under regulation 4 of the instrument means that section 8B of the Immigration Act 1971 then applies to the person: a designated person is banned from travelling to or via the UK and any permission to stay in the UK that they may have is cancelled. In certain circumstances, the Secretary of State may direct, on an individual basis, that the travel ban does not apply, for example for the purposes of attending UN meetings.
- 7.12 Part 5 of the instrument sets out trade sanctions. These sanctions include restrictions on the trade of restricted goods and technology, namely military goods (e.g. arms), dual-use goods (i.e. goods that can be used for both a military and a civil purpose) and goods that may be used to repress the civilian population in Burma or to intercept or monitor communications. Lists of internal repression goods and interception and monitoring equipment are at Schedules 2 and 3 of the instrument respectively. This Part also imposes a prohibition on the provision of interception and monitoring services to, or for the benefit of, certain persons connected with Burma and a prohibition on the provision of military-related services, to or for the benefit of the Tatmadaw.
- 7.13 Part 6 of the instrument makes provision in respect of exceptions and licences that may apply or be available, as the case may be, in respect of prohibitions and requirements under this regime. For example, and in relation to Treasury licences, a designated person can apply for a licence allowing funds to be released in order to pay for essential goods or services such as food. It states that the Treasury may issue licences to permit activity prohibited by Part 3 (Finance) where it is appropriate for a purpose set out in Schedule 4 of the instrument. Part 6 also details exceptions to trade prohibitions. It states that licences provided by the Secretary of State may permit

activity prohibited by Part 5 (Trade). Guidance will provide further detail about licencing.

- 7.14 Part 9 of the instrument confers powers on maritime enforcement officers. These powers are analogous to maritime enforcement powers contained in existing legislation, such as Chapter 5 of the Policing and Crime Act 2017. The key distinction is that those powers are contingent on there being reasonable grounds to suspect that a criminal offence has been committed, whereas the purpose of these powers is to identify, seize and dispose of goods which are being dealt with in contravention, or deemed contravention, of certain trade sanctions.

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

- 8.1 This instrument is not being made under the European Union (Withdrawal) Act but it relates to the withdrawal of the UK from the EU. This is because this instrument replaces, with substantially the same effect, the existing EU Burma sanctions regime.

## **9. Consolidation**

- 9.1 This instrument does not consolidate previous instruments.

## **10. Consultation outcome**

- 10.1 HMG ran a public consultation on the Sanctions Act which was open for nine weeks. Over 30,000 individuals and companies received a copy of the White Paper, and 34 individuals provided written responses. Government officials held a number of roundtables with key sectors, including financial services, trade bodies, the legal profession, NGOs and industry professionals and regulators. The main areas of concern raised in consultation responses were around the legal threshold for sanctions designations, the rights of designated persons to challenge their designations, and licensing procedures. All of these concerns were taken into account in the drafting of the Act.
- 10.2 There is neither a requirement in the Act for public consultation on instruments made under the Act, nor is there any other legal obligation to consult in respect of this instrument. HMG will continue engagement with stakeholders on the implementation of UK sanctions.

## **11. Guidance**

- 11.1 In accordance with section 43 of the Act, guidance will be published in relation to the prohibitions and requirements under these Regulations. This guidance will be available on gov.uk before these Regulations come into force.

## **12. Impact**

- 12.1 As this instrument maintains existing sanctions measures that are already applicable to UK business, charities and voluntary bodies through EU law, we assess that there is no new substantial impact. Businesses and charities will need to ensure that they are referring to and complying with the relevant UK law once the UK leaves the EU.
- 12.2 There is no significant impact on the public sector.
- 12.3 An Impact Assessment has not been produced for these Regulations, as the instrument is intended to ensure existing sanctions remain in place following EU exit. This

instrument is intended to substantially deliver the same policy effects as the existing EU sanctions. An impact assessment was, however, produced for the primary legislation and can be found at <https://publications.parliament.uk/pa/bills/lbill/2017-2019/0069/sanctions-and-anti-money-laundering-IA.pdf>. That assessment concluded that the introduction of the Act, and statutory instruments under it to transfer existing regimes into UK law, would overall reduce uncertainty for business and would not result in significant costs or impact, apart from some familiarisation costs for businesses associated with adapting to the new legislative framework.

### **13. Regulating small business**

- 13.1 These Regulations apply to activities that are undertaken by small businesses.
- 13.2 These Regulations are intended to continue the regulatory requirements under the existing EU sanctions regime. The Foreign and Commonwealth Office does not believe it is possible to exempt smaller businesses from the requirements to comply with these Regulations as this could provide a route for designated persons to evade sanctions.

### **14. Monitoring & review**

- 14.1 The Sanctions Act requires regular reviews of these Regulations. Under section 30 of the Act, the Secretary of State must consider whether or not these Regulations are still appropriate for their stated purpose and lay an annual report before Parliament, confirming either that is the case or explaining what action has or will be taken in consequence of that review. As such, the Minister does not consider that a review clause in these Regulations is appropriate.

### **15. Contact**

- 15.1 Clare Kendall-Bohoslawec at the Foreign and Commonwealth Office telephone: 020 7008 8637 or email: [Sanctions.SIs@fco.gov.uk](mailto:Sanctions.SIs@fco.gov.uk) can be contacted with any queries regarding the instrument.
- 15.2 Qudsi Rasheed, Deputy Director at the Foreign and Commonwealth Office, can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 The Rt Hon Sir Alan Duncan MP, Minister of State at the Foreign and Commonwealth Office, can confirm that this Explanatory Memorandum meets the required standard.