

THE BURMA (SANCTIONS) (EU EXIT) REGULATIONS 2019

REPORT UNDER SECTION 2(4) OF THE SANCTIONS AND ANTI-MONEY LAUNDERING ACT 2018

Introduction

1. This is a report under section 2(4) of the Sanctions and Anti-Money Laundering Act 2018 (“**the Act**”) in relation to the Burma (Sanctions) (EU Exit) Regulations 2019. Section 2(4) requires a report to be laid before Parliament which explains why the appropriate Minister making regulations under section 1 considers that the purposes of the regulations meet one or more of the conditions in paragraphs (a) to (i) of section 1(2) of the Act;ⁱ why the Minister considers that there are good reasons to pursue that purpose; and why the Minister considers that the imposition of sanctions is a reasonable course of action for that purpose.
2. Sanctions will continue to contribute to the UK’s efforts to “defend the rules-based international order”. The UK will continue to be a global leader on sanctions, based on the smart, targeted use of sanctions, as part of wider political and diplomatic strategies. The UK will enhance its leadership role in developing robust evidence to support sanctions regimes and designations – for national and multilateral sanctions. At the international level, the UK will continue to seek multilateral cooperation on sanctions in response to shared threats, given that a collective approach to sanctions achieves the greatest impact.
3. The Act allows the UK to take a range of actions against those suspected of gross human rights violations, or otherwise promote compliance with international humanitarian rights law or respect for human rights.
4. Limited EU sanctions have been in place against Burma since 1991, and the existing EU Burma sanctions regime was established in its current form in April 2018 in response to systematic human rights violations beginning in August 2017. The preambular language in the EU Council Decision (No. 2018/655) underlined, in particular, the ongoing widespread, systematic and grave human rights violations committed by the Burmese military and security forces. The purpose of the sanctions imposed by the Council Decision is to encourage the Burma Security Forces (in particular the Armed Forces, otherwise known as the Tatmadaw) to comply with international human rights law and to respect human rights.
5. The UK played a significant role in pressing for the EU’s imposition of further sanctions on Burma in 2018, and in proposing designations under the sanctions regime in June and December 2018. Bringing these existing EU sanctions into UK law is consistent with UK policy on Burma. The Burma (Sanctions) (EU Exit) Regulations 2019 (“**the Regulations**”) are intended to substantially deliver the same policy effects as the existing EU sanctions regime.

Purposes and reasons for pursuing the purposes

6. The Regulations impose sanctions on Burma for the purpose of addressing human rights abuses and violations. In particular, they confer a power on the Secretary of State to designate any member of the Burma Security Forces who has been involved in the commission of serious

human rights violations or abuses in Burma, or in the obstruction of humanitarian assistance activities or independent investigation into human rights violations or abuses in Burma. The sanctions measures in these Regulations consist of an asset freeze and travel ban as well as trade restrictions on specified goods and technology, such as military and dual-use goods and technology and those that may be used for internal repression purposes and the interception and monitoring of communications. There are further restrictions on the provision of associated services, such as the provision of technical assistance relating to restricted goods or technology and the provision of financial services relating to such goods or technology. There are further trade sanctions in these Regulations, which prohibit the provision of interception and monitoring services to or for the benefit of certain persons connected with Burma and the provision of military-related services to or for the benefit of the Tatmadaw.

7. The purposes of the sanctions regime, as set out in regulation 4 of the Regulations, are to encourage the Burma Security Forces to comply with international human rights law and to respect human rights, including in particular, to—
 - a. respect the right to life of persons in Burma, particularly in relation to the Rohingya,
 - b. respect the right of persons in Burma not to be subjected to forced deportation or forcible transfer from Burma, particularly in relation to the Rohingya,
 - c. respect the right of persons not to be subjected to torture or cruel, inhuman or degrading treatment or punishment in Burma,
 - d. respect the right to liberty and security, including refraining from the arbitrary arrest and detention of persons in Burma,
 - e. afford persons in Burma charged with criminal offences the right to a fair trial,
 - f. afford journalists, human rights defenders and other persons in Burma the right to freedom of expression and peaceful assembly, and
 - g. secure the human rights of persons in Burma without discrimination, in particular in relation to discrimination on the basis of a person's sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.
8. Carrying out these purposes meets one or more of the conditions set out in section 1(2) of the Act. In particular, carrying out these purposes would fall within paragraph (2)(f), in that it would promote compliance with international human rights law and respect for human rights. The Burma Security Forces (comprising in particular the Tatmadaw and the Myanmar Police Force, including the Border Guard Police) continue to violate their international human rights obligations and the UK continues to lead international efforts to encourage Burma to improve conditions, especially in Rakhine State (where the majority of Rohingya lived before fleeing the destruction of their homes, persecution and human rights violations) and seek to encourage the Burma Security Forces to change their operational approach. We do this by putting pressure on those responsible for such crimes, including senior members of the Burma Security Forces, to change their behaviour. The sanctions regime is part of a broader international effort to pressure the Government of Burma to take steps to protect the rights of their citizens and ensure to ensure that security, the rule of law and accountability prevail in Rakhine, Kachin and Shan States (provinces also subject to atrocities committed largely by the Burma Security Forces).
9. There are good reasons for pursuing these purposes, namely to address the ongoing human rights abuses and violations taking place in Burma and to encourage the Burma Security Forces to comply with international human rights law and to respect human rights. The situation

remains of serious concern to both the UK and the international community, as evidenced in reports by Amnesty International¹, Human Rights Watch² and in the UN Independent International Fact Finding Mission³. The reports give details of military atrocities including: systematic burning of Rohingya villages, massacre, torture, arbitrary detention and targeted sexual violence. They consistently document violations including: violations of the right to life; of the prohibition of torture and other ill-treatment; of the rights and freedoms of religious and ethnic minorities. The UK shares concerns over these same issues.

10. The UN Independent International Fact Finding Mission 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 Rohingya population has specifically been targeted and has been subjected to serious systematic human rights violations. Similar violations are experienced by ethnic minorities throughout Burma. There are concerns that humanitarian assistance activities are being obstructed, and that there are significant obstacles to the eventual safe return of the Rohingya refugees who fled to Bangladesh.
11. On accountability, the same UN report highlights the domestic culture of impunity, and the failure of the Government of Burma to cooperate in investigating and prosecuting those responsible for human rights abuses. In response to the Rakhine crisis in 2017, the Burmese authorities have created ad hoc inquiry commissions and boards, but these are yet to demonstrate credibility in terms of an impartial, independent and thorough human rights investigation. It remains a concern that Burma's military courts are inadequate to deal with large-scale human rights violations.

Why sanctions are a reasonable course of action

12. The imposition of prohibitions and requirements of the kind imposed by these Regulations is a reasonable course of action for the purpose of encouraging the Burma Security Forces to comply with international human rights law and to respect human rights.
13. Sanctions can be used to change behaviour; constrain damaging action; or send a signal of condemnation. The UK Government believes sanctions can be an effective and reasonable foreign policy tool if they are one part of a broader foreign policy strategy for a country or thematic issue, and are appropriate to the purposes they are intending to achieve.
14. The gravity of the human rights situation in Burma means that putting sanctions in place is a reasonable measure to take. They send a powerful signal of disapproval, as well as deterring the Burma Security Forces from committing future human rights violations and constraining their ability to commit human rights violations by limiting access to certain goods and services. For example, it is believed that the Tatmadaw is keen to avoid the scrutiny and the reputational damage that sanctions bring and they have dismissed military officials from their positions following the announcement of EU sanctions. The recent pressure on the Government of Burma

¹ <https://www.amnesty.org/en/documents/asa16/7288/2017/en/> Amnesty International 2017

<https://www.amnesty.org/en/documents/asa16/8630/2018/en/> Amnesty International 2018

² <https://www.hrw.org/report/2017/12/19/massacre-river/burmese-army-crimes-against-humanity-tula-toli>
Human Rights Watch 2017

³ 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

and the Burma Security Forces is the result of sustained international efforts on the issue, including sanctions.

15. There are three principal kinds of prohibition in the Regulations: those relating to financial sanctions, those relating to immigration sanctions, and those relating to trade sanctions.

- a. Financial and immigration sanctions. These restrictions consist of an asset freeze (including a restriction on providing funds and economic resources) and a travel ban. These restrictions can only be imposed upon specified individuals and entities who meet the criteria set out in the Regulations, namely that there are reasonable grounds to suspect that the person is or has been a member of the Burma Security Forces and that they are, or have been, involved in the commission of a serious human rights violation or abuse in Burma, or the obstruction of a humanitarian assistance activity or an independent investigation into a serious human rights violation or abuse in Burma, and that their designation is appropriate having regard to the purposes of the regime and the likely significant effects of the designation on that person. This is in order to ensure that the sanctions are clearly targeted at those who abuse human rights, and therefore fulfil the stated purpose of the sanctions. The intention is to apply pressure on the Burma Security Forces to change their behaviour, and to send a strong message of disapproval of human rights violations. Current evidence suggests that serious human rights violations in Burma are committed mainly, but not solely by members of the Burma Security Forces or by persons associated with them. Limiting the application of these restrictions to members of the Tatmadaw and the Myanmar Police Force (including in particular the Border Guard Police) is intended to be a proportionate way to help prevent further human rights violations, and to put pressure on the Burmese government to protect all people and groups in Burma from future human rights violations and abuses. The Regulations allow for exceptions to the travel ban and also provides for the financial sanctions to be subject to certain exceptions and a licensing framework. The exceptions and licensing provisions support the reasonableness of imposing these sanctions measures on designated persons, as they mitigate any possible negative or counter-productive impacts.
- b. Trade sanctions. The Regulations contain restrictions on the trade of restricted goods and technology, namely military or dual-use goods or technology (e.g. arms or goods and technology that may be used for both a military and a civilian purpose) or any other goods or technology that may be used to repress the civilian population in Burma or to intercept and monitor communications. The Regulations also impose restrictions on the provision of certain services, such technical assistance, financial services or brokering services, relating to those goods or technology. Furthermore the Regulations prohibit the provision of interception and monitoring services to or for the benefit of certain persons connected with Burma and the provision of military-related services to or for the benefit of the Tatmadaw. The effect of these sanctions is to directly constrain potential human rights violations, therefore fulfilling the stated purposes of this regime. For example, by preventing persons from providing technical assistance to the Tatmadaw, in order to limit their campaign of deliberately targeting civilians, specifically ethnic minorities. The trade measures in the Regulations are targeted and provide for the trade sanctions to be subject to a licensing framework that will be overseen by the Department for International Trade. The power to grant licences under

this regime supports the reasonableness of imposing these sanctions measures, as it will mitigate any unintended negative consequences.

16. These sanctions are not an end in themselves. They are one element of a broader strategy to achieve the UK Government's foreign policy goals in Burma. The UK wants to see a sustainable, secure, and equitable solution for the Rohingya, including voluntary, safe and dignified return to Burma under international monitoring; progress on the peace process with buy-in from all parties; economic growth on the back of increased Foreign Direct Investment; and the continuation of civilian government with 2020 elections a move towards a constitutionally reduced role for the military. Direct lobbying alone has not proved sufficient. The UK Government is therefore combining sanctions with bilateral lobbying, lobbying through international frameworks, supporting UN resolutions and supporting the UN Special Rapporteur on the situation of human rights in Burma.
17. The policy intention is to keep the sanctions on Burma in place until the UK Government is assured that the human rights situation in Burma has improved, or has demonstrated steady and consistent improvement over a sustained period of time. The sanctions regime will remain until there is evidence that the Government of Burma is taking meaningful measures to protect the remaining Rohingya population in Burma; to open up humanitarian access to Rakhine state; and to establish the conditions for the eventual safe return of the Rohingya refugees. This position may be reached by evidence of some concrete steps having been taken that show an improvement in the areas of concern outlined in the purposes of these Regulations, or via the UN Special Rapporteur on the situation of human rights in Burma. The UK Government will continue to coordinate with international partners, including on the future of the sanctions regime.
18. The Regulations also impose supplemental prohibitions and requirements, in particular those relating to the disclosure of confidential information, the reporting of information by relevant firms, and the holding of records. These kinds of prohibitions and requirements ensure that certain information is appropriately held by those involved with the operation of the sanctions regime, and that certain information is provided to authorities, and ensure that certain sensitive information is treated securely. These kinds of prohibitions and requirements enable the government to properly operate and enforce the sanctions regime, and therefore their imposition is also considered a reasonable course of action for the purposes of the Regulations.

Conclusions

19. The purposes of these Regulations are encourage the Burma Security Forces to comply with international human rights law and to respect human rights. For the reasons set out in this report, carrying out those purposes meets one of the conditions in section 1(2) of the Act. As set out in this report, there are good reasons for pursuing those purposes, and the imposition of the kinds of prohibitions and requirements imposed by these Regulations for those purposes is a reasonable course of action for those purposes.

The Rt Hon Sir Alan Duncan KCMG

**Minister of State for Europe and the Americas, Foreign and Commonwealth Office, on behalf of
the Secretary of State for Foreign and Commonwealth Affairs**

ⁱ Section 1(2) states:

“A purpose is within this subsection if the appropriate Minister making the regulations considers that carrying out that purpose would –

- a) further the prevention of terrorism, in the United Kingdom or elsewhere,*
- b) be in the interests of national security,*
- c) be in the interests of international peace and security,*
- d) further a foreign policy objective of the government of the United Kingdom,*
- e) promote the resolution of armed conflicts or the protection of civilians in conflict zones,*
- f) provide accountability for or be a deterrent to gross violations of human rights, or otherwise promote -*
 - (i) compliance with international human rights law, or*
 - (ii) respect for human rights,*
- g) promote compliance with international humanitarian law,*
- h) contribute to multilateral efforts to prevent the spread and use of weapons and materials of mass destruction, or*
- i) promote respect for democracy, the rules of law and good governance.”*