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STATUTORY INSTRUMENTS

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**2021 No. 496**

**The Myanmar (Sanctions) Regulations 2021**

**PART 1**

**General**

**Citation and commencement**

- 1.—(1) These Regulations may be cited as the Myanmar (Sanctions) Regulations 2021.
- (2) The following provisions come into force at 2.00 p.m. on 29th April 2021—
  - (a) this regulation;
  - (b) regulation 2 (interpretation);
  - (c) regulation 4 (purposes);
  - (d) regulation 5 (power to designate persons);
  - (e) regulation 6 (designation criteria);
  - (f) regulation 7 (meaning of “owned or controlled directly or indirectly”);
  - (g) regulation 8 (notification and publicity where designation power used);
  - (h) Schedule 1 (rules for interpretation of regulation 7(2)).
- (3) All other provisions come into force at 5.00 p.m. on 29th April 2021.

**Interpretation**

2. In these Regulations—
  - “the Act” means the Sanctions and Anti-Money Laundering Act 2018;
  - “arrangement” includes any agreement, understanding, scheme, transaction or series of transactions, whether or not legally enforceable (but see paragraph 12 of Schedule 1 for the meaning of that term in that Schedule);
  - “CEMA” means the Customs and Excise Management Act 1979<sup>(1)</sup>;
  - “the Commissioners” means the Commissioners for Her Majesty’s Revenue and Customs;
  - “conduct” includes acts and omissions;
  - “document” includes information recorded in any form and, in relation to information recorded otherwise than in legible form, references to its production include producing a copy of the information in legible form;
  - “the Dual-Use Regulation” means Council Regulation (EC) No 428/2009 of 5 May 2009 setting up a Community regime for the control of exports, transfer, brokering and transit of dual-use items;

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<sup>(1)</sup> 1979 c. 2. Amendments have been made to this Act and are cited, where relevant, in respect of the applicable regulations.

“humanitarian assistance activity” includes the work of international and non-governmental organisations carrying out relief activities in Myanmar for the benefit of the civilian population there;

“the Myanmar security forces” means the Tatmadaw and the Myanmar Police Force, including the Border Guard Force, and any person acting on their behalf or under their command or control;

“serious human rights violation or abuse” means a serious violation or abuse of any of the human rights specified in regulation 4;

“the Tatmadaw” means the Myanmar Armed Forces;

“trade licence” means a licence under regulation 45;

“Treasury licence” means a licence under regulation 44(1);

“United Kingdom person” has the same meaning as in section 21 of the Act.

### **Application of prohibitions and requirements outside the United Kingdom**

**3.—**(1) A United Kingdom person may contravene a relevant prohibition by conduct wholly or partly outside the United Kingdom.

(2) Any person may contravene a relevant prohibition by conduct in the territorial sea.

(3) In this regulation, a “relevant prohibition” means any prohibition imposed by—

- (a) regulation 9(2) (confidential information),
- (b) Part 3 (Finance),
- (c) Part 5 (Trade), or
- (d) a condition of a Treasury licence or a trade licence.

(4) A United Kingdom person may comply, or fail to comply, with a relevant requirement by conduct wholly or partly outside the United Kingdom.

(5) Any person may comply, or fail to comply, with a relevant requirement by conduct in the territorial sea.

(6) In this regulation, a “relevant requirement” means any requirement imposed—

- (a) by or under Part 7 (Information and records), or by reason of a request made under a power conferred by that Part, or
- (b) by a condition of a Treasury licence or a trade licence.

(7) Nothing in this regulation is to be taken to prevent a relevant prohibition or a relevant requirement from applying to conduct (by any person) in the United Kingdom.

### **Purposes**

**4.** The purposes of the regulations contained in this instrument are to—

- (a) promote the peace, stability and security of Myanmar;
- (b) promote respect for democracy, the rule of law and good governance in Myanmar, including in particular promoting the successful completion of Myanmar’s transition to a democratic country;
- (c) discourage actions, policies or activities which repress the civilian population in Myanmar;
- (d) promote compliance with international human rights law and respect for human rights in Myanmar, including in particular, respect for—
  - (i) the right to life of persons in Myanmar;

- (ii) the right of persons in Myanmar not to be held in slavery or required to perform forced or compulsory labour;
- (iii) the right of persons in Myanmar, including in particular the Rohingya, not to be subjected to forced deportation or forcible transfer from Myanmar;
- (iv) the right of persons not to be subject to torture or cruel, inhuman or degrading treatment or punishment in Myanmar, including in the context of—
  - (aa) violence against persons on the basis of their political opinion, religious belief or ethnicity,
  - (bb) rape and other forms of sexual and gender-based violence, or
  - (cc) recruitment or use of, or violence against, children;
- (v) the right to liberty and security of persons in Myanmar, including freedom from arbitrary arrest, detention or enforced disappearance;
- (vi) the right to a fair trial of persons charged with criminal offences in Myanmar;
- (vii) the rights of journalists, human rights defenders, civil society activists, religious leaders, politicians and all other persons in Myanmar to freedom of expression, peaceful assembly and association with others;
- (viii) the enjoyment of rights and freedoms in Myanmar without discrimination, including 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.

## PART 2

### Designation of persons

#### Power to designate persons

5.—(1) The Secretary of State may designate persons<sup>(2)</sup> by name for the purposes of any of the following—

- (a) regulations 11 to 15 (asset-freeze etc.);
- (b) regulation 17 (immigration).

(2) The Secretary of State may designate different persons for the purposes of different provisions mentioned in paragraph (1).

#### Designation criteria

6.—(1) The Secretary of State may not designate a person under regulation 5 (power to designate persons) unless the Secretary of State—

- (a) has reasonable grounds to suspect that that person is an involved person, and
- (b) considers that the designation of that person is appropriate, having regard to—
  - (i) the purposes stated in regulation 4 (purposes), and
  - (ii) the likely significant effects of the designation on that person (as they appear to the Secretary of State to be on the basis of the information that the Secretary of State has).

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(2) “Person” is defined by section 9(5) of the Sanctions and Anti-Money Laundering Act 2018 to include (in addition to an individual and a body of persons corporate or unincorporate) any organisation and any association or combination of persons.

- (2) In this regulation, an “involved person” means a person who—
- (a) is or has been involved in—
    - (i) undermining democracy, the rule of law or good governance in Myanmar;
    - (ii) the repression of the civilian population in Myanmar;
    - (iii) the commission of, or the obstruction of an independent investigation into, a serious human rights violation or abuse in Myanmar;
    - (iv) the commission of a violation of international humanitarian law in Myanmar;
    - (v) the obstruction of a humanitarian assistance activity in Myanmar;
    - (vi) any other action, policy or activity which threatens the peace, stability or security of Myanmar,
  - (b) is owned or controlled directly or indirectly (within the meaning of regulation 7) by a person who is or has been so involved,
  - (c) is acting on behalf of or at the direction of a person who is or has been so involved, or
  - (d) is a member of, or associated with, a person who is or has been so involved.
- (3) Any reference in this regulation to being involved in one or more of the activities set out in paragraph (2)(a) includes being involved in whatever way and wherever any actions constituting the involvement take place, and in particular includes—
- (a) being responsible for, engaging in, providing support for, or promoting such an activity;
  - (b) providing financial services, or making available funds or economic resources, that could contribute to such an activity;
  - (c) profiting financially, or obtaining any other benefit, from such an activity;
  - (d) providing financial services to, or making available funds or economic resources directly or indirectly to or for the benefit of, the Myanmar security forces;
  - (e) carrying out activities as a member of, or working for, the State Administration Council;
  - (f) working for, or being affiliated to, the Myanmar security forces as—
    - (i) a member of the Myanmar security forces of the rank of colonel or the equivalent or higher,
    - (ii) a member of the Border Guard Force,
    - (iii) a member of a militia,
    - (iv) a MSF-affiliated business, or
    - (v) a patron, director, trustee or other manager (whether executive or non-executive) of a MSF-affiliated business;
  - (g) being involved in the supply to Myanmar of goods or technology which could contribute to a serious human rights violation or abuse, or in providing financial services relating to such supply;
  - (h) being involved in the supply to Myanmar of restricted goods or restricted technology, or of material related to such goods or technology, or in providing financial services relating to such supply;
  - (i) being involved in the supply to Myanmar of dual-use goods or dual-use technology for military use or the use of the Myanmar security forces, or of material related to such goods or technology, or in providing financial services relating to such supply;
  - (j) assisting the contravention or circumvention of any relevant Myanmar-related provision.
- (4) In this regulation, “relevant Myanmar-related provision” means—

- (a) any provision of Part 3 (Finance) or Part 5 (Trade);
  - (b) any provision of the law of a country other than the United Kingdom made for purposes corresponding to a purpose of any provision of Part 3 or Part 5.
- (5) Nothing in any sub-paragraph of paragraph (3) is to be taken to limit the meaning of any of the other sub-paragraphs of that paragraph.
- (6) For the purposes of paragraph (3)(f)(iv), a “MSF-affiliated business” includes—
- (a) a person who is owned or controlled directly or indirectly (within the meaning of regulation 7) by, or otherwise makes available funds or economic resources directly or indirectly to or for the benefit of, the Myanmar security forces;
  - (b) a person who is owned or controlled directly or indirectly (within the meaning of regulation 7) by, or otherwise makes available funds or economic resources directly or indirectly to or for the benefit of, any person mentioned in paragraph (3)(f)(i) to (iii);
  - (c) a person who is not an individual (“C”) where more than one person, each of whom is a current or former member of, a unit of, or an organisation associated with, the Myanmar security forces, together—
    - (i) hold directly or indirectly more than 50% of the shares in C (within the meaning set out in Schedule 1),
    - (ii) hold directly or indirectly more than 50% of the voting rights in C (within the meaning set out in Schedule 1), or
    - (iii) hold the right directly or indirectly to appoint or remove a majority of the board of directors of C (within the meaning set out in Schedule 1).
- (7) In this regulation—
- “dual-use goods” and “dual-use technology” have the meanings given by Part 5;
  - “militia” means a national, regional or local armed group which supports or receives funding from, but is not part of or integrated into, the Myanmar security forces;
  - “restricted goods” and “restricted technology” have the meanings given by Part 5;
  - “the State Administration Council” means the State Administration Council established in Myanmar on 2 February 2021, and includes any successor entity with equivalent functions.

**Meaning of “owned or controlled directly or indirectly”**

- 7.—(1) A person who is not an individual (“C”) is “owned or controlled directly or indirectly” by another person (“P”) if either of the following two conditions is met (or both are met).
- (2) The first condition is that P—
- (a) holds directly or indirectly more than 50% of the shares in C,
  - (b) holds directly or indirectly more than 50% of the voting rights in C, or
  - (c) holds the right directly or indirectly to appoint or remove a majority of the board of directors of C.
- (3) Schedule 1 contains provision applying for the purpose of interpreting paragraph (2).
- (4) The second condition is that it is reasonable, having regard to all the circumstances, to expect that P would (if P chose to) be able, in most cases or in significant respects, by whatever means and whether directly or indirectly, to achieve the result that affairs of C are conducted in accordance with P’s wishes.

**Notification and publicity where designation power used**

- 8.—(1) Paragraph (2) applies where the Secretary of State—
- (a) has made a designation under regulation 5 (power to designate persons), or
  - (b) has by virtue of section 22 of the Act varied or revoked a designation made under that regulation.
- (2) The Secretary of State—
- (a) must without delay take such steps as are reasonably practicable to inform the designated person of the designation, variation or revocation, and
  - (b) must take steps to publicise the designation, variation or revocation.
- (3) The information given under paragraph (2)(a) where a designation is made must include a statement of reasons.
- (4) In this regulation, a “statement of reasons”, in relation to a designation, means a brief statement of the matters that the Secretary of State knows, or has reasonable grounds to suspect, in relation to the designated person which have led the Secretary of State to make the designation.
- (5) Matters that would otherwise be required by paragraph (4) to be included in a statement of reasons may be excluded from it where the Secretary of State considers that they should be excluded—
- (a) in the interests of national security or international relations,
  - (b) for reasons connected with the prevention or detection of serious crime in the United Kingdom or elsewhere, or
  - (c) in the interests of justice.
- (6) The steps taken under paragraph (2)(b) must—
- (a) unless one or more of the restricted publicity conditions is met, be steps to publicise generally—
    - (i) the designation, variation or revocation, and
    - (ii) in the case of a designation, the statement of reasons;
  - (b) if one or more of those conditions is met, be steps to inform only such persons as the Secretary of State considers appropriate of the designation, variation or revocation and (in the case of a designation) of the contents of the statement of reasons.
- (7) The “restricted publicity conditions” are as follows—
- (a) the designation is of a person believed by the Secretary of State to be an individual under the age of 18;
  - (b) the Secretary of State considers that disclosure of the designation, variation or revocation should be restricted—
    - (i) in the interests of national security or international relations,
    - (ii) for reasons connected with the prevention or detection of serious crime in the United Kingdom or elsewhere, or
    - (iii) in the interests of justice.
- (8) Paragraph (9) applies if—
- (a) when a designation is made, one or more of the restricted publicity conditions is met, but
  - (b) at any time when the designation has effect, it becomes the case that none of the restricted publicity conditions is met.
- (9) The Secretary of State must—

- (a) take such steps as are reasonably practicable to inform the designated person that none of the restricted publicity conditions is now met, and
- (b) take steps to publicise generally the designation and the statement of reasons relating to it.

### **Confidential information in certain cases where designation power used**

9.—(1) Where the Secretary of State in accordance with regulation 8(6)(b) informs only certain persons of a designation, variation or revocation and (in the case of a designation) of the contents of the statement of reasons, the Secretary of State may specify that any of that information is to be treated as confidential.

(2) A person (“P”) who—

- (a) is provided with information that is to be treated as confidential in accordance with paragraph (1), or
- (b) otherwise obtains such information,

must not, subject to paragraph (3), disclose it if P knows, or has reasonable cause to suspect, that the information is to be treated as confidential.

(3) The prohibition in paragraph (2) does not apply to any disclosure made by P with lawful authority.

(4) For this purpose information is disclosed with lawful authority only if and to the extent that—

- (a) the disclosure is by, or is authorised by, the Secretary of State,
- (b) the disclosure is by or with the consent of the person who is or was the subject of the designation,
- (c) the disclosure is necessary to give effect to a requirement imposed under or by virtue of these Regulations or any other enactment, or
- (d) the disclosure is required, under rules of court, tribunal rules or a court or tribunal order, for the purposes of legal proceedings of any description.

(5) This regulation does not prevent the disclosure of information that is already, or has previously been, available to the public from other sources.

(6) A person who contravenes the prohibition in paragraph (2) commits an offence.

(7) The High Court (in Scotland, the Court of Session) may, on the application of—

- (a) the person who is the subject of the information, or
- (b) the Secretary of State,

grant an injunction (in Scotland, an interdict) to prevent a breach of the prohibition in paragraph (2).

(8) In paragraph (4)(c), “enactment” has the meaning given by section 54(6) of the Act.

## **PART 3**

### **Finance**

#### **Meaning of “designated person” in Part 3**

10. In this Part, a “designated person” means a person who is designated under regulation 5 (power to designate persons) for the purposes of regulations 11 to 15 (asset-freeze etc.).

**Asset-freeze in relation to designated persons**

**11.**—(1) A person (“P”) must not deal with funds or economic resources owned, held or controlled by a designated person if P knows, or has reasonable cause to suspect, that P is dealing with such funds or economic resources.

(2) Paragraph (1) is subject to Part 6 (Exceptions and licences).

(3) A person who contravenes the prohibition in paragraph (1) commits an offence.

(4) For the purposes of paragraph (1), a person “deals with” funds if the person—

(a) uses, alters, moves, transfers or allows access to the funds,

(b) deals with the funds in any other way that would result in any change in volume, amount, location, ownership, possession, character or destination, or

(c) makes any other change, including portfolio management, that would enable use of the funds.

(5) For the purposes of paragraph (1), a person “deals with” economic resources if the person—

(a) exchanges the economic resources for funds, goods or services, or

(b) uses the economic resources in exchange for funds, goods or services (whether by pledging them as security or otherwise).

(6) The reference in paragraph (1) to funds or economic resources that are “owned, held or controlled” by a person includes, in particular, a reference to—

(a) funds or economic resources in which the person has any legal or equitable interest, regardless of whether the interest is held jointly with any other person and regardless of whether any other person holds an interest in the funds or economic resources;

(b) any tangible property (other than real property), or bearer security, that is comprised in funds or economic resources and is in the possession of the person.

(7) For the purposes of paragraph (1) funds or economic resources are to be treated as owned, held or controlled by a designated person if they are owned, held or controlled by a person who is owned or controlled directly or indirectly (within the meaning of regulation 7) by the designated person.

(8) For the avoidance of doubt, the reference in paragraph (1) to a designated person includes P if P is a designated person.

**Making funds available to designated persons**

**12.**—(1) A person (“P”) must not make funds available directly or indirectly to a designated person if P knows, or has reasonable cause to suspect, that P is making the funds so available.

(2) Paragraph (1) is subject to Part 6 (Exceptions and licences).

(3) A person who contravenes the prohibition in paragraph (1) commits an offence.

(4) The reference in paragraph (1) to making funds available indirectly to a designated person includes, in particular, a reference to making them available to a person who is owned or controlled directly or indirectly (within the meaning of regulation 7) by the designated person.

**Making funds available for benefit of designated persons**

**13.**—(1) A person (“P”) must not make funds available to any person for the benefit of a designated person if P knows, or has reasonable cause to suspect, that P is making the funds so available.

(2) Paragraph (1) is subject to Part 6 (Exceptions and licences).

(3) A person who contravenes the prohibition in paragraph (1) commits an offence.



- (4) For the purposes of this regulation—
  - (a) funds are made available for the benefit of a designated person only if that person thereby obtains, or is able to obtain, a significant financial benefit, and
  - (b) “financial benefit” includes the discharge (or partial discharge) of a financial obligation for which the designated person is wholly or partly responsible.

#### **Making economic resources available to designated persons**

**14.**—(1) A person (“P”) must not make economic resources available directly or indirectly to a designated person if P knows, or has reasonable cause to suspect—

- (a) that P is making the economic resources so available, and
  - (b) that the designated person would be likely to exchange the economic resources for, or use them in exchange for, funds, goods or services.
- (2) Paragraph (1) is subject to Part 6 (Exceptions and licences).
- (3) A person who contravenes the prohibition in paragraph (1) commits an offence.

(4) The reference in paragraph (1) to making economic resources available indirectly to a designated person includes, in particular, a reference to making them available to a person who is owned or controlled directly or indirectly (within the meaning of regulation 7) by the designated person.

#### **Making economic resources available for benefit of designated persons**

**15.**—(1) A person (“P”) must not make economic resources available to any person for the benefit of a designated person if P knows, or has reasonable cause to suspect, that P is making the economic resources so available.

- (2) Paragraph (1) is subject to Part 6 (Exceptions and licences).
- (3) A person who contravenes the prohibition in paragraph (1) commits an offence.
- (4) For the purposes of paragraph (1)—
  - (a) economic resources are made available for the benefit of a designated person only if that person thereby obtains, or is able to obtain, a significant financial benefit, and
  - (b) “financial benefit” includes the discharge (or partial discharge) of a financial obligation for which the designated person is wholly or partly responsible.

#### **Circumventing etc. prohibitions**

**16.**—(1) A person must not intentionally participate in activities knowing that the object or effect of them is, whether directly or indirectly—

- (a) to circumvent any of the prohibitions in regulations 11 to 15 (asset-freeze etc.), or
  - (b) to enable or facilitate the contravention of any such prohibition.
- (2) A person who contravenes the prohibition in paragraph (1) commits an offence.

## PART 4

### Immigration

#### **Immigration**

17. A person who is designated under regulation 5 (power to designate persons) for the purposes of this regulation is an excluded person for the purposes of section 8B of the Immigration Act 1971(3).

## PART 5

### Trade

#### CHAPTER 1

#### Interpretation

#### **Definition of “restricted goods” and “restricted technology”**

18. In this Part—

“restricted goods” means—

- (a) military goods,
- (b) internal repression goods, and
- (c) interception and monitoring goods;

“restricted technology” means—

- (a) military technology,
- (b) internal repression technology, and
- (c) interception and monitoring technology.

#### **Definitions relating to “restricted goods” and “restricted technology”**

19.—(1) The following definitions apply for the purposes of regulation 18—

“interception and monitoring goods” means any items mentioned in sub-paragraph (a) or (b), provided that it may be used for interception and monitoring services—

- (a) a relevant Schedule 3 item;
- (b) any tangible storage medium on which interception and monitoring technology is recorded or from which it can be derived;

“interception and monitoring technology” means any thing—

- (a) which is described as software in paragraph 2 of Schedule 3, provided that it may be used for interception and monitoring services, and
- (b) which is described as software or other technology in paragraph 3 of Schedule 3, (but see paragraph (3));

“internal repression goods” means—

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(3) 1971 c. 77. Section 8B was inserted by the Immigration and Asylum Act 1999 (c. 33), section 8; and amended by the Immigration Act 2016 (c. 19), section 76; and the Sanctions and Anti-Money Laundering Act 2018, section 59 and Schedule 3, Part 1.

- (a) any thing specified in Schedule 2, other than—
  - (i) any thing which is internal repression technology, or
  - (ii) any thing for the time being specified in—
    - (aa) Schedule 2 to the Export Control Order 2008(4), or
    - (bb) Annex I of the Dual-Use Regulation, and
- (b) any tangible storage medium on which internal repression technology is recorded or from which it can be derived;

“internal repression technology” means any thing which is described in Schedule 2 as software or technology, within the meaning of that Schedule;

“military goods” means—

- (a) any thing for the time being specified in Schedule 2 to the Export Control Order 2008, other than any thing which is military technology, and
- (b) any tangible storage medium on which military technology is recorded or from which it can be derived;

“military technology” means any thing for the time being specified in Schedule 2 to the Export Control Order 2008 which is described as software or technology.

(2) For the purpose of paragraph (1), “a relevant Schedule 3 item” means any thing described in Schedule 3, other than—

- (a) any thing which is interception and monitoring technology, or
- (b) any thing for the time being specified in—
  - (i) Schedule 2 to the Export Control Order 2008, or
  - (ii) Annex I of the Dual-Use Regulation.

(3) The definition of “interception and monitoring technology” does not apply to software which is—

- (a) generally available to the public, or
- (b) in the public domain.

(4) For the purpose of paragraph (3)—

- (a) software is “generally available to the public” if—
  - (i) the software is sold from stock at retail selling points without restriction, by means of—
    - (aa) over the counter transactions,
    - (bb) mail order transactions,
    - (cc) electronic transactions, or
    - (dd) telephone order transactions, and
  - (ii) the software is designed for installation by the user without further substantial support by the supplier;
- (b) software is “in the public domain” if the software has been made available without restrictions upon its further dissemination (and for this purpose copyright restrictions do not constitute a restriction upon its further dissemination).

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(4) [S.I. 2008/3231](#). Schedule 2 was substituted by [S.I. 2017/85](#) and subsequently amended by [S.I. 2017/697](#); [S.I. 2018/165](#); [S.I. 2018/939](#); [S.I. 2019/137](#); and [S.I. 2019/989](#). There are other instruments which amend other parts of the Order.

**Definition of “interception and monitoring services”**

**20.**—(1) For the purposes of this Part, “interception and monitoring services” means any service that has as its object or effect the interception of a communication in the course of its transmission by means of a telecommunication system.

(2) A person intercepts a communication in the course of its transmission by means of a telecommunication system if, and only if—

- (a) the person does a relevant act in relation to the system, and
- (b) the effect of the relevant act is to make any content of the communication available, at a relevant time, to a person who is not the sender or intended recipient of the communication.

(3) In paragraph (2), a “relevant act”, in relation to a telecommunication system, means—

- (a) modifying, or interfering with, the system or its operation;
- (b) monitoring transmissions made by means of the system;
- (c) monitoring transmissions made by wireless telegraphy to or from apparatus that is part of the system.

(4) In paragraph (2), a “relevant time”, in relation to a communication transmitted by means of a telecommunication system, means—

- (a) any time while the communication is being transmitted, and
- (b) any time when the communication is stored in or by the system (whether before or after its transmission).

(5) For the purpose of paragraph (2), the cases in which any content of a communication is to be taken to be made available to a person at a relevant time include any case in which any of the communication is diverted or recorded at a relevant time so as to make the content of the communication available to a person after that time.

(6) In paragraph (3), references to modifying a telecommunication system include references to attaching any apparatus to, or otherwise modifying or interfering with—

- (a) any part of the system, or
- (b) any wireless telegraphy apparatus used for making transmissions to or from apparatus that is part of the system.

(7) For the purposes of this regulation, the following definitions also apply—

“apparatus” includes any equipment, machinery or device (whether physical or logical) and any wire or cable;

“communication”, for the purpose of a telecommunication system, includes—

- (a) anything comprising speech, music, sounds, visual images or data of any description, and
- (b) signals serving for the impartation of anything between persons, between a person and a thing or between things, for the actuation or control of any apparatus;

“content”, in relation to a communication and a telecommunication system, means any element of the communication, or any data attached to or logically associated with the communication, which reveals anything of what might reasonably be considered to be the meaning (if any) of the communication, but—

- (a) any meaning arising from the fact of the communication or from any data relating to the transmission of the communication is to be disregarded, and
- (b) anything which is systems data is not content;

“systems data” means any data that enables or facilitates, or identifies or describes anything connected with enabling or facilitating, the functioning of a telecommunication system (including any apparatus forming part of the system);

“a telecommunication system” means a system (including the apparatus comprised in it) that exists for the purpose of facilitating the transmission of communications by any means involving the use of electrical or electromagnetic energy;

“wireless telegraphy” and “wireless telegraphy apparatus” have the same meaning as in sections 116 and 117 of the Wireless Telegraphy Act 2006<sup>(5)</sup>.

### **Interpretation of other expressions used in this Part**

**21.**—(1) Paragraphs 32 and 36 of Schedule 1 to the Act (trade sanctions) apply for the purpose of interpreting expressions in this Part.

(2) In this Part, any reference to the United Kingdom includes a reference to the territorial sea.

(3) In this Part—

“brokering service” means any service to secure, or otherwise in relation to, an arrangement, including (but not limited to)—

- (a) the selection or introduction of persons as parties or potential parties to the arrangement,
- (b) the negotiation of the arrangement,
- (c) the facilitation of anything that enables the arrangement to be entered into, and
- (d) the provision of any assistance that in any way promotes or facilitates the arrangement;

“dual-use goods” means—

- (a) any thing for the time being specified in Annex I of the Dual-Use Regulation other than any thing which is dual-use technology, and
- (b) any tangible storage medium on which dual-use technology is recorded or from which it can be derived;

“dual-use technology” means any thing for the time being specified in Annex I of the Dual-Use Regulation which is described as software or technology;

“technical assistance”, in relation to goods or technology, means—

- (a) technical support relating to the repair, development, production, assembly, testing, use or maintenance of the goods or technology, or
- (b) any other technical service relating to the goods or technology;

“transfer” has the meaning given by paragraph 37 of Schedule 1 to the Act.

(4) For the purposes of this Part, a person is to be regarded as “connected with” Myanmar if the person is—

- (a) an individual who is, or an association or combination of individuals who are, ordinarily resident in Myanmar,
- (b) an individual who is, or an association or combination of individuals who are, located in Myanmar,
- (c) a person, other than an individual, which is incorporated or constituted under the law of Myanmar, or
- (d) a person, other than an individual, which is domiciled in Myanmar.

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(5) 2006 c.36.

## CHAPTER 2

### Restricted goods and restricted technology

#### Export of restricted goods

- 22.—(1) The export of restricted goods to, or for use in, Myanmar is prohibited.
- (2) Paragraph (1) is subject to Part 6 (Exceptions and licences).

#### Supply and delivery of restricted goods

- 23.—(1) A person must not directly or indirectly supply or deliver restricted goods from a third country to a place in Myanmar.
- (2) Paragraph (1) is subject to Part 6 (Exceptions and licences).
- (3) A person who contravenes the prohibition in paragraph (1) commits an offence, but it is a defence for a person charged with that offence to show that the person did not know and had no reasonable cause to suspect that the goods were destined (or ultimately destined) for Myanmar.
- (4) In this regulation, “third country” means a country that is not the United Kingdom, the Isle of Man or Myanmar.

#### Making restricted goods and restricted technology available

- 24.—(1) A person must not—
- (a) directly or indirectly make restricted goods or restricted technology available to a person connected with Myanmar;
  - (b) directly or indirectly make restricted goods or restricted technology available for use in Myanmar.
- (2) Paragraph (1) is subject to Part 6 (Exceptions and licences).
- (3) A person who contravenes a prohibition in paragraph (1) commits an offence, but—
- (a) it is a defence for a person charged with the offence of contravening paragraph (1)(a) (“P”) to show that P did not know and had no reasonable cause to suspect that the person was connected with Myanmar;
  - (b) it is a defence for a person charged with the offence of contravening paragraph (1)(b) to show that the person did not know and had no reasonable cause to suspect that the goods or technology were for use in Myanmar.

#### Transfer of restricted technology

- 25.—(1) A person must not—
- (a) transfer restricted technology to a place in Myanmar;
  - (b) transfer restricted technology to a person connected with Myanmar.
- (2) Paragraph (1) is subject to Part 6 (Exceptions and licences).
- (3) A person who contravenes a prohibition in paragraph (1) commits an offence, but—
- (a) it is a defence for a person charged with the offence of contravening paragraph (1)(a) to show that the person did not know and had no reasonable cause to suspect that the transfer was to a place in Myanmar;
  - (b) it is a defence for a person charged with the offence of contravening paragraph (1)(b) (“P”) to show that P did not know and had no reasonable cause to suspect that the person was connected with Myanmar.

### **Technical assistance relating to restricted goods and restricted technology**

**26.**—(1) A person must not directly or indirectly provide technical assistance relating to restricted goods or restricted technology—

- (a) to a person connected with Myanmar, or
- (b) for use in Myanmar.

(2) Paragraph (1) is subject to Part 6 (Exceptions and licences).

(3) A person who contravenes a prohibition in paragraph (1) commits an offence, but—

- (a) it is a defence for a person charged with the offence of contravening paragraph (1)(a) (“P”) to show that P did not know and had no reasonable cause to suspect that the person was connected with Myanmar;
- (b) it is a defence for a person charged with the offence of contravening paragraph (1)(b) to show that the person did not know and had no reasonable cause to suspect that the goods or technology were for use in Myanmar.

### **Financial services and funds relating to restricted goods and restricted technology**

**27.**—(1) A person must not directly or indirectly provide, to a person connected with Myanmar, financial services in pursuance of or in connection with an arrangement whose object or effect is—

- (a) the export of restricted goods,
- (b) the direct or indirect supply or delivery of restricted goods,
- (c) directly or indirectly making restricted goods or restricted technology available to a person,
- (d) the transfer of restricted technology, or
- (e) the direct or indirect provision of technical assistance relating to restricted goods or restricted technology.

(2) A person must not directly or indirectly make funds available to a person connected with Myanmar in pursuance of or in connection with an arrangement mentioned in paragraph (1).

(3) A person must not directly or indirectly provide financial services or funds in pursuance of or in connection with an arrangement whose object or effect is—

- (a) the export of restricted goods to, or for use in, Myanmar,
- (b) the direct or indirect supply or delivery of restricted goods to a place in Myanmar,
- (c) directly or indirectly making restricted goods or restricted technology available—
  - (i) to a person connected with Myanmar, or
  - (ii) for use in Myanmar,
- (d) the transfer of restricted technology—
  - (i) to a person connected with Myanmar, or
  - (ii) to a place in Myanmar, or
- (e) the direct or indirect provision of technical assistance relating to restricted goods or restricted technology—
  - (i) to a person connected with Myanmar, or
  - (ii) for use in Myanmar.

(4) Paragraphs (1) to (3) are subject to Part 6 (Exceptions and licences).

(5) A person who contravenes a prohibition in any of paragraphs (1) to (3) commits an offence, but—

- (a) it is a defence for a person charged with an offence of contravening paragraph (1) or (2) (“P”) to show that P did not know and had no reasonable cause to suspect that the person was connected with Myanmar;
- (b) it is a defence for a person charged with an offence of contravening a prohibition in paragraph (3) to show that the person did not know and had no reasonable cause to suspect that the financial services or funds (as the case may be) were provided in pursuance of or in connection with an arrangement mentioned in that paragraph.

### **Brokering services: non-UK activity relating to restricted goods and restricted technology**

**28.**—(1) A person must not directly or indirectly provide brokering services in relation to an arrangement (“arrangement A”) whose object or effect is—

- (a) the direct or indirect supply or delivery of restricted goods from a third country to a place in Myanmar,
- (b) directly or indirectly making restricted goods available in a third country for direct or indirect supply or delivery—
  - (i) to a person connected with Myanmar, or
  - (ii) to a place in Myanmar,
- (c) directly or indirectly making restricted technology available in a third country for transfer—
  - (i) to a person connected with Myanmar, or
  - (ii) to a place in Myanmar,
- (d) the transfer of restricted technology from a place in a third country—
  - (i) to a person connected with Myanmar, or
  - (ii) to a place in Myanmar,
- (e) the direct or indirect provision, in a non-UK country, of technical assistance relating to restricted goods or restricted technology—
  - (i) to a person connected with Myanmar, or
  - (ii) for use in Myanmar,
- (f) the direct or indirect provision, in a non-UK country, of financial services—
  - (i) to a person connected with Myanmar, where arrangement A, or any other arrangement in connection with which arrangement A is entered into, is an arrangement mentioned in regulation 27(1), or
  - (ii) where arrangement A, or any other arrangement in connection with which arrangement A is entered into, is an arrangement mentioned in regulation 27(3),
- (g) directly or indirectly making funds available, in a non-UK country, to a person connected with Myanmar, where arrangement A, or any other arrangement in connection with which arrangement A is entered into, is an arrangement mentioned in regulation 27(1), or
- (h) the direct or indirect provision of funds from a non-UK country, where arrangement A, or any other arrangement in connection with which arrangement A is entered into, is an arrangement mentioned in regulation 27(3).

(2) Paragraph (1) is subject to Part 6 (Exceptions and licences).

(3) A person who contravenes a prohibition in paragraph (1) commits an offence, but it is a defence for a person charged with that offence to show that the person did not know and had no reasonable cause to suspect that the brokering services were provided in relation to an arrangement mentioned in that paragraph.



(4) In this regulation—

“non-UK country” means a country that is not the United Kingdom;

“third country” means—

- (a) for the purposes of paragraph (1)(a) and (b), a country that is not the United Kingdom, the Isle of Man or Myanmar, and
- (b) for the purposes of any other provision of paragraph (1), a country that is not the United Kingdom or Myanmar.

## CHAPTER 3

### Dual-use goods and dual-use technology

#### Interpretation of this Chapter

29. For the purposes of this Chapter—

- (a) goods are “for military use” if they are—
  - (i) for use by the Tatmadaw or any other military end-user, or
  - (ii) for any military use;
- (b) technology is “for military use” if it—
  - (i) relates to military activities carried on or proposed to be carried on by the Tatmadaw or any other military end-user, or
  - (ii) is for any military use.

#### Export of dual-use goods

- 30.—(1) The export to Myanmar of dual-use goods for military use is prohibited.
- (2) The export of dual-use goods for military use in Myanmar is prohibited.
- (3) The export of dual-use goods to or for use by the Myanmar security forces is prohibited.
- (4) Paragraphs (1), (2) and (3) are subject to Part 6 (Exceptions and licences).

#### Supply and delivery of dual-use goods

- 31.—(1) A person must not—
- (a) directly or indirectly supply or deliver dual-use goods for military use from a third country to a place in Myanmar;
  - (b) directly or indirectly supply or deliver dual-use goods from a third country to, or for use by, the Myanmar security forces.
- (2) Paragraph (1) is subject to Part 6 (Exceptions and licences).
- (3) A person who contravenes a prohibition in paragraph (1) commits an offence, but—
- (a) it is a defence for a person charged with the offence of contravening paragraph (1)(a) (“P”) to show that P did not know and had no reasonable cause to suspect that—
    - (i) the goods were destined (or ultimately destined) for Myanmar, or
    - (ii) the goods were for military use;
  - (b) it is a defence for a person charged with the offence of contravening paragraph (1)(b) (“P”) to show that P did not know and had no reasonable cause to suspect that the goods were supplied or delivered to or for the use of the Myanmar security forces.

(4) In this regulation, “third country” means a country that is not the United Kingdom, the Isle of Man or Myanmar.

### **Making dual-use goods and dual-use technology available**

**32.**—(1) A person must not—

- (a) directly or indirectly make available, to a person connected with Myanmar, dual-use goods for military use or dual-use technology for military use;
- (b) directly or indirectly make available dual-use goods for military use in Myanmar or dual-use technology for military use in Myanmar;
- (c) directly or indirectly make dual-use goods available to, or for use by, the Myanmar security forces.

(2) Paragraph (1) is subject to Part 6 (Exceptions and licences).

(3) A person who contravenes a prohibition in paragraph (1) commits an offence, but—

- (a) it is a defence for a person charged with an offence of contravening paragraph (1)(a) (“P”) to show that P did not know and had no reasonable cause to suspect that—
  - (i) the person was connected with Myanmar, or
  - (ii) the goods or technology were for military use;
- (b) it is a defence for a person charged with an offence of contravening paragraph (1)(b) (“P”) to show that P did not know and had no reasonable cause to suspect that the goods or technology were for military use in Myanmar;
- (c) it is a defence for a person charged with an offence of contravening paragraph (1)(c) (“P”) to show that P did not know and had no reasonable cause to suspect that the goods were made available to or for the use of the Myanmar security forces.

### **Transfer of dual-use technology**

**33.**—(1) A person must not—

- (a) transfer dual-use technology for military use to a place in Myanmar;
- (b) transfer dual-use technology for military use to a person connected with Myanmar;
- (c) transfer dual-use technology to the Myanmar security forces.

(2) Paragraph (1) is subject to Part 6 (Exceptions and licences).

(3) A person who contravenes a prohibition in paragraph (1) commits an offence, but—

- (a) it is a defence for a person charged with the offence of contravening paragraph (1)(a) (“P”) to show that P did not know and had no reasonable cause to suspect that—
  - (i) the transfer was to a place in Myanmar, or
  - (ii) the technology was for military use;
- (b) it is a defence for a person charged with the offence of contravening paragraph (1)(b) (“P”) to show that P did not know and had no reasonable cause to suspect that—
  - (i) the person was connected with Myanmar, or
  - (ii) the technology was for military use;
- (c) it is a defence for a person charged with an offence of contravening paragraph (1)(c) (“P”) to show that P did not know and had no reasonable cause to suspect that the technology was transferred to the Myanmar security forces.

### **Technical assistance relating to dual-use goods and dual-use technology**

- 34.**—(1) A person must not directly or indirectly—
- (a) provide technical assistance relating to dual-use goods for military use or dual-use technology for military use to a person connected with Myanmar;
  - (b) provide technical assistance relating to dual-use goods for military use in Myanmar or dual-use technology for military use in Myanmar;
  - (c) provide technical assistance relating to dual-use goods or dual-use technology to the Myanmar security forces;
  - (d) provide technical assistance relating to dual-use goods or dual-use technology for use by the Myanmar security forces.
- (2) Paragraph (1) is subject to Part 6 (Exceptions and licences).
- (3) A person who contravenes a prohibition in paragraph (1) commits an offence, but—
- (a) it is a defence for a person charged with the offence of contravening paragraph (1)(a) (“P”) to show that P did not know and had no reasonable cause to suspect that—
    - (i) the person was connected with Myanmar, or
    - (ii) the goods or technology were for military use;
  - (b) it is a defence for a person charged with the offence of contravening paragraph (1)(b) (“P”) to show that P did not know and had no reasonable cause to suspect that the goods or technology were for military use in Myanmar;
  - (c) it is a defence for a person charged with the offence of contravening paragraph (1)(c) (“P”) to show that P did not know and had no reasonable cause to suspect that the technical assistance was provided to the Myanmar security forces;
  - (d) it is a defence for a person charged with the offence of contravening paragraph (1)(d) (“P”) to show that P did not know and had no reasonable cause to suspect that the goods or technology were for use by the Myanmar security forces.

### **Financial services and funds relating to dual-use goods and dual-use technology**

- 35.**—(1) A person must not directly or indirectly provide, to a person connected with Myanmar, financial services in pursuance of or in connection with an arrangement whose object or effect is—
- (a) the export of dual-use goods for military use,
  - (b) the direct or indirect supply or delivery of dual-use goods for military use,
  - (c) directly or indirectly making dual-use goods or dual-use technology for military use available to a person,
  - (d) the transfer of dual-use technology for military use, or
  - (e) the direct or indirect provision of technical assistance relating to dual-use goods or dual-use technology for military use.
- (2) A person must not directly or indirectly make funds available to a person connected with Myanmar in pursuance of or in connection with an arrangement mentioned in paragraph (1).
- (3) A person must not directly or indirectly provide, to the Myanmar security forces, financial services or funds in pursuance of or in connection with an arrangement whose object or effect is—
- (a) the export of dual-use goods,
  - (b) the direct or indirect supply or delivery of dual-use goods,
  - (c) directly or indirectly making dual-use goods or dual-use technology available to a person,
  - (d) the transfer of dual-use technology, or

- (e) the direct or indirect provision of technical assistance relating to dual-use goods or dual-use technology.
- (4) A person must not directly or indirectly provide financial services or funds in pursuance of or in connection with an arrangement whose object or effect is—
- (a) the export to Myanmar of dual-use goods for military use,
  - (b) the export of dual-use goods for military use in Myanmar,
  - (c) the export of dual-use goods to or for use by the Myanmar security forces,
  - (d) the direct or indirect supply or delivery of dual-use goods for military use to a place in Myanmar,
  - (e) the direct or indirect supply or delivery of dual-use goods to, or for use by, the Myanmar security forces,
  - (f) directly or indirectly making available, to a person connected with Myanmar, dual-use goods for military use or dual-use technology for military use,
  - (g) directly or indirectly making available dual-use goods for military use in Myanmar or dual-use technology for military use in Myanmar,
  - (h) directly or indirectly making available dual-use goods or dual-use technology to, or for use by, the Myanmar security forces,
  - (i) the transfer of dual-use technology for military use—
    - (i) to a person connected with Myanmar, or
    - (ii) to a place in Myanmar,
  - (j) the transfer of dual-use technology to the Myanmar security forces,
  - (k) the direct or indirect provision of technical assistance relating to dual-use goods for military use or dual-use technology for military use to a person connected with Myanmar,
  - (l) the direct or indirect provision of technical assistance relating to dual-use goods for military use in Myanmar or dual-use technology for military use in Myanmar,
  - (m) the direct or indirect provision of technical assistance relating to dual-use goods or dual-use technology to the Myanmar security forces, or
  - (n) the direct or indirect provision of technical assistance relating to dual-use goods or dual-use technology for use by the Myanmar security forces.
- (5) Paragraphs (1) to (4) are subject to Part 6 (Exceptions and licences).
- (6) A person who contravenes a prohibition in any of paragraphs (1) to (4) commits an offence, but—
- (a) it is a defence for a person charged with an offence of contravening a prohibition in paragraph (1) or (2) (“P”) to show that P did not know and had no reasonable cause to suspect that the person was connected with Myanmar;
  - (b) it is a defence for a person charged with an offence of contravening a prohibition in paragraph (3) (“P”) to show that P did not know and had no reasonable cause to suspect that the financial services or funds (as the case may be) were provided to the Myanmar security forces;
  - (c) it is a defence for a person charged with an offence of contravening a prohibition in paragraph (4) (“P”) to show that P did not know and had no reasonable cause to suspect that the financial services or funds (as the case may be) were provided in pursuance of or in connection with an arrangement mentioned in that paragraph.

### **Brokering services: non-UK activity relating to dual-use goods and dual-use technology**

**36.—(1)** A person must not directly or indirectly provide brokering services in relation to an arrangement (“arrangement A”) whose object or effect is—

- (a) the direct or indirect supply or delivery of dual-use goods for military use from a third country to a place in Myanmar,
- (b) the direct or indirect supply or delivery of dual-use goods to or for use by the Myanmar security forces,
- (c) directly or indirectly making dual-use goods for military use available in a third country for direct or indirect supply or delivery—
  - (i) to a person connected with Myanmar, or
  - (ii) to a place in Myanmar,
- (d) directly or indirectly making dual-use technology for military use available in a third country for transfer—
  - (i) to a person connected with Myanmar, or
  - (ii) to a place in Myanmar,
- (e) directly or indirectly making dual-use goods or dual-use technology available to, or for use by, the Myanmar security forces,
- (f) the transfer of dual-use technology for military use from a place in a third country—
  - (i) to a person connected with Myanmar, or
  - (ii) to a place in Myanmar,
- (g) the transfer of dual-use technology from a place in a third country to the Myanmar security forces,
- (h) the direct or indirect provision, in a non-UK country, of technical assistance relating to dual-use goods or dual-use technology for military use—
  - (i) to a person connected with Myanmar, or
  - (ii) for use in Myanmar,
- (i) the direct or indirect provision, in a non-UK country, of technical assistance relating to dual-use goods or dual-use technology to the Myanmar security forces,
- (j) the direct or indirect provision, in a non-UK country, of financial services—
  - (i) to a person connected with Myanmar, where arrangement A, or any other arrangement in connection with which arrangement A is entered into, is an arrangement mentioned in regulation 35(1), or
  - (ii) where arrangement A, or any other arrangement in connection with which arrangement A is entered into, is an arrangement mentioned in regulation 35(3),
- (k) directly or indirectly making funds available, in a non-UK country, to a person connected with Myanmar, where arrangement A, or any other arrangement in connection with which arrangement A is entered into, is an arrangement mentioned in regulation 35(1), or
- (l) the direct or indirect provision of funds from a non-UK country, where arrangement A, or any other arrangement in connection with which arrangement A is entered into, is an arrangement mentioned in regulation 35(3).

(2) Paragraph (1) is subject to Part 6 (Exceptions and licences).

(3) A person who contravenes a prohibition in paragraph (1) commits an offence, but it is a defence for a person charged with that offence to show that the person did not know and had no

reasonable cause to suspect that the brokering services were provided in relation to an arrangement mentioned in that paragraph.

(4) In this regulation—

“non-UK country” means a country that is not the United Kingdom;

“third country” means—

- (a) for the purposes of paragraph (1)(a) and (c), a country that is not the United Kingdom, the Isle of Man or Myanmar, and
- (b) for the purposes of any other provision of paragraph (1), a country that is not the United Kingdom or Myanmar.

## CHAPTER 4

### Interception and monitoring services

#### **Provision of interception and monitoring services**

**37.**—(1) A person must not directly or indirectly provide interception and monitoring services to, or for the benefit of, the Government of Myanmar.

(2) Paragraph (1) is subject to Part 6 (Exceptions and licences).

(3) A person who contravenes the prohibition in paragraph (1) commits an offence, but it is a defence for a person charged with that offence (“P”) to show that P did not know and had no reasonable cause to suspect that the services were provided to, or for the benefit of, the Government of Myanmar.

(4) In this regulation, “the Government of Myanmar” includes its public bodies, corporations or agencies, or any person acting on its behalf or at its direction.

## CHAPTER 5

### Military activities etc.

#### **Military activities or otherwise enabling or facilitating the conduct of armed hostilities**

**38.**—(1) A person must not directly or indirectly provide anything falling within paragraph (2) to or for the benefit of the Tatmadaw, or to any person acting on its behalf or under its direction, where such provision—

- (a) relates to the military activities of the recipient in Myanmar, or
- (b) otherwise enables or facilitates the conduct of armed hostilities in Myanmar.

(2) The following fall within this paragraph—

- (a) technical assistance,
- (b) armed personnel,
- (c) financial services or funds, or
- (d) brokering services in relation to an arrangement whose object or effect is to provide, in a non-UK country, anything mentioned in sub-paragraphs (a) to (c).

(3) Paragraph (1) is subject to Part 6 (Exceptions and licences).

(4) A person who contravenes the prohibition in paragraph (1) commits an offence, but it is a defence for a person charged with that offence (“P”) to show that P did not know and had no reasonable cause to suspect that the provision as mentioned in paragraph (1)—

- (a) was to or for the benefit of the Tatmadaw, or to any person acting on its behalf or under its direction, or

- (b) related to the military activities of the recipient in Myanmar or would otherwise enable or facilitate the conduct of armed hostilities in Myanmar.
- (5) In this regulation—
  - “non-UK country” means a country that is not the United Kingdom;
  - “technical assistance” means the provision of technical support or any other technical service”.
- (6) Nothing in this regulation is to be taken to limit the meaning of any of the prohibitions contained in Chapters 2 to 4 of this Part.

## CHAPTER 6

### Further provision

#### **Circumventing etc. prohibitions**

- 39.**—(1) A person must not intentionally participate in activities knowing that the object or effect of them is, whether directly or indirectly—
- (a) to circumvent any of the prohibitions in Chapters 2 to 5 of this Part, or
  - (b) to enable or facilitate the contravention of any such prohibition.
- (2) A person who contravenes a prohibition in paragraph (1) commits an offence.

#### **Defences**

- 40.**—(1) Paragraph (2) applies where a person relies on a defence under Chapters 2 to 5 of this Part.
- (2) If evidence is adduced which is sufficient to raise an issue with respect to the defence, the court must assume that the defence is satisfied unless the prosecution proves beyond reasonable doubt that it is not.

## PART 6

### Exceptions and licences

#### **Finance: exceptions from prohibitions**

- 41.**—(1) The prohibition in regulation 11 (asset-freeze in relation to designated persons) is not contravened by an independent person (“P”) transferring to another person a legal or equitable interest in funds or economic resources where, immediately before the transfer, the interest—
- (a) is held by P, and
  - (b) is not held jointly with the designated person.
- (2) In paragraph (1), “independent person” means a person who—
- (a) is not the designated person, and
  - (b) is not owned or controlled directly or indirectly (within the meaning of regulation 7) by the designated person.
- (3) The prohibitions in regulations 11 to 13 (asset-freeze in relation to, and making funds available to, or for the benefit of, designated persons) are not contravened by a relevant institution crediting a frozen account with interest or other earnings due on the account.

(4) The prohibitions in regulations 12 and 13 (making funds available to, or for the benefit of, designated persons) are not contravened by a relevant institution crediting a frozen account where it receives funds transferred to that institution for crediting to that account.

(5) The prohibitions in regulations 12 and 13 are not contravened by the transfer of funds to a relevant institution for crediting to an account held or controlled (directly or indirectly) by a designated person, where those funds are transferred in discharge (or partial discharge) of an obligation which arose before the date on which the person became a designated person.

(6) The prohibitions in regulations 11 to 13 are not contravened in relation to a designated person (“P”) by a transfer of funds from account A to account B, where—

- (a) account A is with a relevant institution which carries on an excluded activity within the meaning of section 142D of the Financial Services and Markets Act 2000(6),
- (b) account B is with a ring-fenced body within the meaning of section 142A of the Financial Services and Markets Act 2000(7), and
- (c) accounts A and B are held or controlled (directly or indirectly) by P.

(7) In this regulation—

“designated person” has the same meaning as it has in Part 3 (Finance);

“frozen account” means an account with a relevant institution which is held or controlled (directly or indirectly) by a designated person;

“relevant institution” means a person that has permission under Part 4A of the Financial Services and Markets Act 2000(8) (Permission to carry on regulated activity).

(8) The definition of “relevant institution” in paragraph (7) is to be read with section 22 of the Financial Services and Markets Act 2000(9), any relevant order under that section(10) and Schedule 2 to that Act(11).

### **Exception for authorised conduct in a relevant country**

**42.**—(1) Where a person’s conduct in a relevant country would, in the absence of this regulation, contravene a prohibition in any of regulations 11 to 15 (asset-freeze etc.) or Chapters 2 to 5 of Part 5 (Trade) (“the relevant prohibition”), the relevant prohibition is not contravened if the conduct is authorised by a licence or other authorisation which is issued—

- (a) under the law of the relevant country, and
- (b) for the purpose of disapplying a prohibition in that jurisdiction which corresponds to the relevant prohibition.

(2) In this regulation, “relevant country” means—

- (a) any of the Channel Islands,
- (b) the Isle of Man, or
- (c) any British overseas territory.

(6) 2000 c. 8. Section 142D was inserted by the Financial Services (Banking Reform) Act 2013 (c. 33), section 4(1).

(7) Section 142A was inserted by the Financial Services (Banking Reform) Act 2013, section 4(1).

(8) Part 4A was inserted by the Financial Services Act 2012 (c. 21), section 11(2); and most recently amended by S.I. 2019/632.

(9) Section 22 was amended by the Financial Guidance and Claims Act 2018 (c. 10), section 27(4); the Financial Services Act 2012 (c. 21), section 7(1); and S.I. 2018/135.

(10) S.I. 2001/544, as most recently amended by S.S.I. 2018/1149; S.I. 2018/1403; S.I. 2019/632; S.I. 2019/660; S.I. 2019/679; S.I. 2019/710; S.I. 2019/1361; S.I. 2020/117; and S.I. 2020/480.

(11) Schedule 2 was amended by the Regulation of Financial Services (Land Transactions) Act 2005 (c. 24), section 1; the Dormant Bank and Building Society Accounts Act 2008 (c. 31), section 15 and Schedule 2, paragraph 1; the Financial Services Act 2012, sections 7(2) to (5) and 8; the Financial Guidance and Claims Act 2018, section 27(13); S.I. 2013/1881; S.I. 2018/135; and S.I. 2019/632.



### **Exception for acts done for purposes of national security or prevention of serious crime**

**43.**—(1) Where an act would, in the absence of this paragraph, be prohibited by the prohibition in regulation 9(2) (confidentiality) or any prohibition in Part 3 (Finance) or Part 5 (Trade), that prohibition does not apply to the act if the act is one which a responsible officer has determined would be in the interests of—

- (a) national security, or
- (b) the prevention or detection of serious crime in the United Kingdom or elsewhere.

(2) Where, in the absence of this paragraph, a thing would be required to be done under or by virtue of a provision of Part 7 (Information and records) or Part 9 (Maritime enforcement), that requirement does not apply if a responsible officer has determined that not doing the thing in question would be in the interests of—

- (a) national security, or
- (b) the prevention or detection of serious crime in the United Kingdom or elsewhere.

(3) In this regulation, “responsible officer” means a person in the service of the Crown or holding office under the Crown, acting in the course of that person’s duty.

### **Treasury licences**

**44.**—(1) The prohibitions in regulations 11 to 15 (asset-freeze etc.) do not apply to anything done under the authority of a licence issued by the Treasury under this paragraph.

(2) The Treasury may issue a licence which authorises acts by a particular person only where the Treasury consider that it is appropriate to issue the licence for a purpose set out in Schedule 4.

### **Trade licences**

**45.** The prohibitions in Chapters 2 to 5 of Part 5 (Trade) do not apply to anything done under the authority of a licence issued by the Secretary of State under this regulation.

### **Licences: general provisions**

**46.**—(1) This regulation applies in relation to Treasury licences and trade licences.

(2) A licence must specify the acts authorised by it.

(3) A licence may be general or may authorise acts by a particular person or persons of a particular description.

(4) A licence may —

- (a) contain conditions;
- (b) be of indefinite duration or a defined duration.

(5) A person who issues a licence may vary, revoke or suspend it at any time.

(6) A person who issues, varies, revokes or suspends a licence which authorises acts by a particular person must give written notice to that person of the issue, variation, revocation or suspension of the licence.

(7) A person who issues, varies, revokes or suspends a general licence or a licence which authorises acts by persons of a particular description must take such steps as that person considers appropriate to publicise the issue, variation, revocation or suspension of the licence.

### **Finance: licensing offences**

**47.**—(1) A person (“P”) commits an offence if P knowingly or recklessly—

(a) provides information that is false in a material respect, or  
 (b) provides or produces a document that is not what it purports to be,  
 for the purpose of obtaining a Treasury licence (whether for P or anyone else).

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

#### **Trade: licensing offences**

**48.**—(1) A person (“P”) commits an offence if P knowingly or recklessly—

(a) provides information that is false in a material respect, or  
 (b) provides or produces a document that is not what it purports to be,  
 for the purpose of obtaining a trade licence (whether for P or anyone else).

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

(3) A licence in respect of which an offence under paragraph (1) has been committed is to be treated as void from the time at which it was issued.

#### **Section 8B(1) to (3) of the Immigration Act 1971: directions**

**49.**—(1) The Secretary of State may direct that, in relation to any person within regulation 17 (immigration) whose name is specified, or who is of a specified description, section 8B(1) and (2) of the Immigration Act 1971, or section 8B(3) of that Act, have effect subject to specified exceptions.

(2) A direction may contain conditions.

(3) A direction must be of a defined duration (and that duration may be expressed in any way, including, for example, being expressed in a way such that the direction ceases to have effect on, or within a specified period after, the occurrence of a specified event).

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

(5) On the issue, variation, revocation or suspension of a direction under this regulation, the Secretary of State may take such steps as the Secretary of State considers appropriate to publicise the issue, variation, revocation or suspension of the direction.

(6) In this regulation, “specified” means specified in a direction under this regulation.

## **PART 7**

### **Information and records**

#### **Finance: reporting obligations**

**50.**—(1) A relevant firm must inform the Treasury as soon as practicable if—

- (a) it knows, or has reasonable cause to suspect, that a person—
- (i) is a designated person, or
  - (ii) has committed an offence under any provision of Part 3 (Finance) or regulation 47 (finance: licensing offences), and
- (b) the information or other matter on which the knowledge or cause for suspicion is based came to it in the course of carrying on its business.

(2) Where a relevant firm informs the Treasury under paragraph (1), it must state—

- (a) the information or other matter on which the knowledge or suspicion is based, and
  - (b) any information it holds about the person by which the person can be identified.
- (3) Paragraph (4) applies if—
- (a) a relevant firm informs the Treasury under paragraph (1) that it knows, or has reasonable cause to suspect, that a person is a designated person, and
  - (b) that person is a customer of the relevant firm.
- (4) The relevant firm must also state the nature and amount or quantity of any funds or economic resources held by it for the customer at the time when it first had the knowledge or suspicion.
- (5) A relevant institution must inform the Treasury without delay if that institution—
- (a) credits a frozen account in accordance with regulation 41(4) (finance: exceptions from prohibitions), or
  - (b) transfers funds from a frozen account in accordance with regulation 41(6).
- (6) A person who fails to comply with a requirement in paragraph (1), (2) or (4) commits an offence.
- (7) In this regulation—
- “designated person” has the same meaning as it has in Part 3 (Finance);
  - “frozen account” has the same meaning as it has in regulation 41;
  - “relevant firm” is to be read in accordance with regulation 51 (“relevant firm”);
  - “relevant institution” has the same meaning as it has in regulation 41.

### **“Relevant firm”**

**51.**—(1) The following are relevant firms for the purposes of regulation 50 (finance: reporting obligations)—

- (a) a person that has permission under Part 4A of the Financial Services and Markets Act 2000 (Permission to carry on regulated activities);
- (b) an undertaking that by way of business—
  - (i) operates a currency exchange office,
  - (ii) transmits money (or any representation of monetary value) by any means, or
  - (iii) cashes cheques that are made payable to customers;
- (c) a firm or sole practitioner that is—
  - (i) a statutory auditor within the meaning of Part 42 of the Companies Act 2006 (Statutory auditors)(**12**), or
  - (ii) a local auditor within the meaning of section 4(1) of the Local Audit and Accountability Act 2014 (general requirements for audit)(**13**);
- (d) a firm or sole practitioner that provides to other persons, by way of business—
  - (i) accountancy services,
  - (ii) legal or notarial services,
  - (iii) advice about tax affairs, or
  - (iv) trust or company services within the meaning of paragraph (2);

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(12) 2006 c. 46.

(13) 2014 c. 2.

- (e) a firm or sole practitioner that carries out, or whose employees carry out, estate agency work;
  - (f) the holder of a casino operating licence within the meaning given by section 65(2)(a) of the Gambling Act 2005 (nature of licence)(**14**);
  - (g) a person engaged in the business of making, supplying, selling (including selling by auction) or exchanging—
    - (i) articles made from gold, silver, platinum or palladium, or
    - (ii) precious stones or pearls.
- (2) In paragraph (1), “trust or company services” means any of the following services—
- (a) forming companies or other legal persons;
  - (b) acting, or arranging for another person to act—
    - (i) as a director or secretary of a company,
    - (ii) as a partner of a partnership, or
    - (iii) in a similar capacity in relation to other legal persons;
  - (c) providing a registered office, business address, correspondence or administrative address or other related services for a company, partnership or any other legal person or arrangement;
  - (d) acting, or arranging for another person to act, as—
    - (i) a trustee of an express trust or similar legal arrangement, or
    - (ii) a nominee shareholder for a person.
- (3) In paragraph (1)—
- “estate agency work” is to be read in accordance with section 1 of the Estate Agents Act 1979(**15**), but as if references in that section to disposing of or acquiring an interest in land included (despite anything in section 2 of that Act) references to disposing of or acquiring an estate or interest in land outside the United Kingdom where that estate or interest is capable of being owned or held as a separate interest;
- “firm” means any entity that, whether or not a legal person, is not an individual, and includes a body corporate and a partnership or other unincorporated body.
- (4) Paragraph (1)(a) and (b) are to be read with section 22 of the Financial Services and Markets Act 2000, any relevant order under that section and Schedule 2 to that Act.
- (5) For the purposes of regulation 50(1), information or another matter comes to a relevant firm “in the course of carrying on its business” if the information or other matter comes to the firm—
- (a) in the case of a relevant firm within paragraph (1)(a), in the course of carrying on an activity in respect of which the permission mentioned in that provision is required;
  - (b) in the case of a relevant firm within paragraph (1)(c)(i), in the course of carrying out statutory audit work within the meaning of section 1210 of the Companies Act 2006 (meaning of statutory auditor)(**16**);

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(14) 2005 c. 19.

(15) 1979 c. 38. Section 1 was amended by the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c. 73), Schedule 1, paragraph 40; the Planning (Consequential Provisions) Act 1990 (c. 11), Schedule 2, paragraph 42; the Planning (Consequential Provisions) (Scotland) Act 1997 (c. 11), Schedule 2, paragraph 28; the Planning Act (Northern Ireland) 2011 (c. 25), Schedule 6, paragraph 21; the Enterprise and Regulatory Reform Act 2013 (c. 24), section 70; S.I. 1991/1220; S.I. 1991/2684; S.S.I. 2000/121 and S.I. 2001/1283.

(16) Section 1210 was amended by S.I. 2008/565; S.I. 2008/1950; S.I. 2011/99; S.I. 2012/1809; S.I. 2013/3115; S.I. 2017/516; S.I. 2017/1164; and S.I. 2019/177.

- (c) in the case of a relevant firm within paragraph (1)(c)(ii), in the course of carrying out an audit required by the Local Audit and Accountability Act 2014;
- (d) in the case of a relevant firm within paragraph (1)(f), in the course of carrying on an activity in respect of which the licence mentioned in that provision is required;
- (e) in the case of a relevant firm within any other provision of paragraph (1), in the course of carrying on an activity mentioned in that provision.

**Finance: powers to request information**

- 52.—(1) The Treasury may request a designated person to provide information about—
- (a) funds or economic resources owned, held or controlled by or on behalf of the designated person, or
  - (b) any disposal of such funds or economic resources.
- (2) The Treasury may request a designated person to provide such information as the Treasury may reasonably require about expenditure—
- (a) by the designated person, or
  - (b) for the benefit of the designated person.
- (3) For the purposes of paragraph (2)(b), expenditure for the benefit of a designated person includes expenditure on the discharge (or partial discharge) of a financial obligation for which the designated person is wholly or partly responsible.
- (4) The power in paragraph (1) or (2) is exercisable only where the Treasury believe that it is necessary for the purpose of monitoring compliance with or detecting evasion of any provision of Part 3 (Finance).
- (5) The Treasury may request a person acting under a Treasury licence to provide information about—
- (a) funds or economic resources dealt with under the licence, or
  - (b) funds or economic resources made available under the licence.
- (6) The Treasury may request a person to provide information within paragraph (7) if the Treasury believe that the person may be able to provide the information.
- (7) Information within this paragraph is such information as the Treasury may reasonably require for the purpose of—
- (a) establishing for the purposes of any provision of Part 3—
    - (i) the nature and amount or quantity of any funds or economic resources owned, held or controlled by or on behalf of a designated person,
    - (ii) the nature and amount or quantity of any funds or economic resources made available directly or indirectly to, or for the benefit of, a designated person, or
    - (iii) the nature of any financial transactions entered into by a designated person;
  - (b) monitoring compliance with or detecting evasion of—
    - (i) any provision of Part 3,
    - (ii) regulation 50 (finance: reporting obligations), or
    - (iii) any condition of a Treasury licence;
  - (c) detecting or obtaining evidence of the commission of an offence under Part 3 or regulation 47 (finance: licensing offences) or regulation 50.
- (8) The Treasury may specify the way in which, and the period within which, information is to be provided.

(9) If no such period is specified, the information which has been requested must be provided within a reasonable time.

(10) A request may include a continuing obligation to keep the Treasury informed as circumstances change, or on such regular basis as the Treasury may specify.

(11) Information requested under this regulation may relate to any period of time during which a person is, or was, a designated person.

(12) Information requested by virtue of paragraph (1)(b), (2) or (7)(a)(iii) may relate to any period before a person became a designated person (as well as, or instead of, any subsequent period).

(13) Expressions used in this regulation have the same meaning as they have in Part 3.

### **Finance: production of documents**

**53.**—(1) A request under regulation 52 (finance: powers to request information) may include a request to produce specified documents or documents of a specified description.

(2) Where the Treasury request that documents be produced, the Treasury may—

- (a) take copies of or extracts from any document so produced,
- (b) request any person producing a document to give an explanation of it, and
- (c) where that person is a body corporate, partnership or unincorporated body other than a partnership, request any person who is—
  - (i) in the case of a partnership, a present or past partner or employee of the partnership, or
  - (ii) in any other case, a present or past officer or employee of the body concerned,
 to give such an explanation.

(3) Where the Treasury request a designated person or a person acting under a Treasury licence to produce documents, that person must—

- (a) take reasonable steps to obtain the documents (if they are not already in the person's possession or control);
- (b) keep the documents under the person's possession or control (except for the purpose of providing them to the Treasury or as the Treasury may otherwise permit).

(4) In this regulation, "designated person" has the same meaning as it has in Part 3 (Finance).

### **Finance: information offences**

**54.**—(1) A person commits an offence if that person—

- (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 under regulation 52 (finance: powers to request information);
- (b) knowingly or recklessly gives any information, or produces any document, which is false in a material particular in response to such a request;
- (c) with intent to evade any provision of regulation 52 or 53 (finance: production of documents), destroys, mutilates, defaces, conceals or removes any document;
- (d) otherwise intentionally obstructs the Treasury in the exercise of their powers under regulation 52 or 53.

(2) Where a person is convicted of an offence under this regulation, the court may make an order requiring that person, within such period as may be specified in the order, to comply with the request.

### **Trade: application of information powers in CEMA**

**55.**—(1) Section 77A of CEMA(17) applies in relation to a person carrying on a relevant activity as it applies in relation to a person concerned in the importation or exportation of goods but as if—

- (a) in subsection (1), the reference to a person concerned in the importation or exportation of goods for which for that purpose an entry or specification is required by or under CEMA were to a person carrying on a relevant activity;
  - (b) any other reference to importation or exportation were to a relevant activity;
  - (c) any other reference to goods were to the goods, technology, services or funds to which the relevant activity relates.
- (2) For the purposes of paragraph (1), a “relevant activity” means an activity—
- (a) which would, unless done under the authority of a trade licence, constitute a contravention of any prohibition in Chapters 2 to 5 of Part 5 (Trade), except the prohibitions in regulation 22(1) or regulation 30(1) to (3) (export of goods), or
  - (b) which would constitute a contravention of a prohibition in regulation 39 (circumventing etc. prohibitions).

### **General trade licences: records**

**56.**—(1) This regulation applies in relation to a person (“P”) who does any act authorised by a general licence issued under regulation 45 (trade licences) (“the licence”).

(2) P must keep a register or record containing such details as may be necessary to allow the following information to be identified in relation to each act done under the authority of the licence—

- (a) a description of the act;
- (b) a description of any goods, technology, services or funds to which the act relates;
- (c) the date of the act or the dates between which the act took place;
- (d) the quantity of any goods or funds to which the act relates;
- (e) P’s name and address;
- (f) the name and address of any consignee of goods to which the act relates or any recipient of technology, services or funds to which the act relates;
- (g) in so far as it is known to P, the name and address of the end-user of the goods, technology, services or funds to which the act relates;
- (h) if different from P, the name and address of the supplier of any goods to which the act relates;
- (i) any further information required by the licence.

(3) The register or record relating to an act must be kept until the end of the calendar year in which the register or record is created and for a further period of 4 years from the end of that calendar year.

(4) P must notify the Secretary of State in writing of P’s name and the address at which the register or record may be inspected, and must make a further such notification if those details change.

(5) A notification under paragraph (4) must be given no later than 30 days after—

- (a) P first does any act authorised by the licence, or
- (b) there is any change to the details previously notified.

(6) A person who fails to comply with a requirement in paragraph (2), (3) or (4) commits an offence.

**General trade licences: inspection of records**

57.—(1) A person authorised by the Secretary of State or the Commissioners (an “official”) may at any reasonable hour enter premises notified under regulation 56(4) (general trade licences: records) for the purposes of monitoring compliance with or detecting evasion of regulation 56(2) or (3).

(2) An official may require any person on the premises to produce any register or record required to be kept under regulation 56, or any document included in such a register or record, that is in the person’s possession or control.

(3) An official may inspect and copy any such register, record or document.

(4) An official must, if requested to do so, produce documentary evidence that he or she is authorised to exercise a power conferred by this regulation.

(5) A person commits an offence if, without reasonable excuse, the person—

- (a) intentionally obstructs an official in the performance of any of the official’s functions under this regulation, or
- (b) fails to produce a register, record or document when reasonably required to do so by an official under this regulation.

**Disclosure of information**

58.—(1) The Secretary of State, the Treasury or the Commissioners may, in accordance with this regulation, disclose—

- (a) any information obtained under or by virtue of Part 6 (Exceptions and licences), this Part or Part 9 (Maritime enforcement), or
- (b) any information held in connection with—
  - (i) anything done under or by virtue of Part 2 (Designation of persons), Part 3 (Finance) or Part 5 (Trade), or
  - (ii) any exception or licence under Part 6 or anything done in accordance with such an exception or under the authority of such a licence.

(2) Information referred to in paragraph (1) may be disclosed for, or in connection with, any of the following purposes—

- (a) any purpose stated in regulation 4 (purposes);
- (b) the exercise of functions under these Regulations;
- (c) facilitating, monitoring or ensuring compliance with these Regulations;
- (d) taking any action with a view to instituting, or otherwise for the purposes of, any proceedings in the United Kingdom—
  - (i) for an offence under any provision of these Regulations,
  - (ii) for an offence under CEMA in connection with a prohibition mentioned in regulation 22(1) or regulation 30(1) to (3) (export of goods), or
  - (iii) in relation to a monetary penalty under section 146 of the Policing and Crime Act 2017 (breach of financial sanctions legislation)(18);
- (e) taking any action with a view to instituting, or otherwise for the purposes of, any proceedings in any of the Channel Islands, the Isle of Man or any British overseas territory for an offence—

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(18) 2017 c. 3.



- (i) under a provision in any such jurisdiction that is similar to a provision of these Regulations, or
    - (ii) in connection with a prohibition in any such jurisdiction that is similar to a prohibition referred to in sub-paragraph (d)(ii);
  - (f) compliance with an international obligation<sup>(19)</sup>;
  - (g) facilitating the exercise by an authority outside the United Kingdom or by an international organisation of functions which correspond to functions under these Regulations.
- (3) Information referred to in paragraph (1) may be disclosed to the following persons—
- (a) a police officer;
  - (b) any person holding or acting in any office under or in the service of—
    - (i) the Crown in right of the Government of the United Kingdom,
    - (ii) the Crown in right of the Scottish Government, the Northern Ireland Executive or the Welsh Government,
    - (iii) the States of Jersey, Guernsey or Alderney or the Chief Pleas of Sark,
    - (iv) the Government of the Isle of Man, or
    - (v) the Government of any British overseas territory;
  - (c) any law officer of the Crown for Jersey, Guernsey or the Isle of Man;
  - (d) the Scottish Legal Aid Board;
  - (e) the Financial Conduct Authority, the Prudential Regulation Authority, the Bank of England, the Jersey Financial Services Commission, the Guernsey Financial Services Commission or the Isle of Man Financial Services Authority;
  - (f) any other regulatory body (whether or not in the United Kingdom);
  - (g) any organ of the United Nations;
  - (h) the Council of the European Union, the European Commission or the European External Action Service;
  - (i) the Government of any country;
  - (j) any other person, where the Secretary of State, the Treasury or the Commissioners (as the case may be) consider that it is appropriate to disclose the information.
- (4) Information referred to in paragraph (1) may be disclosed to any person with the consent of a person who, in their own right, is entitled to the information.
- (5) In paragraph (4), “in their own right” means not merely in the capacity as a servant or agent of another person.
- (6) In paragraph (1)(b)—
- (a) the reference to information includes information obtained at a time when any provision of these Regulations is not in force, and
  - (b) the reference to a licence under Part 6 includes—
    - (i) a licence or authorisation which is treated as if it were a licence which had been issued under that Part, and
    - (ii) a licence which is deemed to have been issued under that Part.

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<sup>(19)</sup> Section 1(8) of the Sanctions and Anti-Money Laundering Act 2018 defines an “international obligation” as an obligation of the United Kingdom created or arising by or under any international agreement.

**Part 7: supplementary**

**59.**—(1) A disclosure of information under regulation 58 (disclosure of information) does not breach any restriction on such disclosure imposed by statute or otherwise.

(2) But nothing in that regulation authorises a disclosure that—

- (a) contravenes the data protection legislation, or
- (b) is prohibited by any of Parts 1 to 7 or Chapter 1 of Part 9 of the Investigatory Powers Act 2016<sup>(20)</sup>.

(3) Nothing in this Part is to be read as requiring a person who has acted or is acting as counsel or solicitor for any person to disclose any privileged information in their possession in that capacity.

(4) Regulation 58 does not limit the circumstances in which information may be disclosed apart from that regulation.

(5) Nothing in this Part limits any conditions which may be contained in a Treasury licence or a trade licence.

(6) In this regulation—

“the data protection legislation” has the same meaning as in the Data Protection Act 2018 (see section 3 of that Act)<sup>(21)</sup>;

“privileged information” means information with respect to which a claim to legal professional privilege (in Scotland, to confidentiality of communications) could be maintained in legal proceedings.

**PART 8****Enforcement****Penalties for offences**

**60.**—(1) A person who commits an offence under any provision of Part 3 (Finance) or regulation 47 (finance: licensing offences), 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 6 months or a fine not exceeding the statutory maximum (or both);
- (d) on conviction on indictment, to imprisonment for a term not exceeding 7 years or a fine (or both).

(2) A person who commits an offence under any provision of Part 5 (Trade) is liable—

- (a) on summary conviction in England and Wales, to imprisonment for a term not exceeding 12 months or a fine (or both);

(20) 2016 c. 25. Amendments have been made by the Policing and Crime Act 2017, Schedule 9, paragraph 74; the Data Protection Act 2018 (c. 12), Schedule 19, paragraphs 198-203; the Counter-Terrorism and Border Security Act 2019 (c. 3), Schedule 4, paragraph 33; the Sanctions and Anti-Money Laundering Act 2018, section 59(4), Schedule 3, paragraph 7; the Crime (Overseas Production Orders) Act 2019 (c. 5), section 16; S.I. 2018/378; S.I. 2018/652; S.I. 2018/905; S.I. 2018/1123; S.I. 2019/419; S.I. 2019/742; S.I. 2019/939; and S.I. 2020/661. Saving provisions are made by S.I. 2017/859.

(21) 2018 c. 12. There are amendments to this Act that are not relevant to these Regulations.

- (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 6 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).
- (3) A person who commits an offence under regulation 9(6) (confidentiality), 48, 56(6) or 57(5) (offences in connection with trade licences) 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 6 months or a fine not exceeding the statutory maximum (or both);
  - (d) on conviction on indictment, to imprisonment for a term not exceeding 2 years or a fine (or both).
- (4) A person who commits an offence under regulation 50(6) or 54 (information offences in connection with Part 3) is liable—
- (a) on summary conviction in England and Wales, to imprisonment for a term not exceeding 6 months or a fine (or both);
  - (b) on summary conviction in Scotland, to imprisonment for a term not exceeding 6 months or a fine not exceeding level 5 on the standard scale (or both);
  - (c) on summary conviction in Northern Ireland, to imprisonment for a term not exceeding 6 months or a fine not exceeding level 5 on the standard scale (or both).
- (5) In relation to an offence committed before paragraph 24(2) of Schedule 22 to the Sentencing Act 2020(22) comes into force, the reference in each of paragraphs (1)(a), (2)(a) and (3)(a) to 12 months is to be read as a reference to 6 months.

#### **Liability of officers of bodies corporate etc.**

**61.**—(1) Where an offence under these Regulations, committed by a body corporate—

- (a) is committed with the consent or connivance of any director, manager, secretary or other similar officer of the body corporate, or any person who was purporting to act in any such capacity, or
- (b) is attributable to any neglect on the part of any such person,

that person as well as the body corporate is guilty of the offence and is liable to be proceeded against and punished accordingly.

(2) In paragraph (1), “director”, in relation to a body corporate whose affairs are managed by its members, means a member of the body corporate.

(3) Paragraph (1) also applies in relation to a body that is not a body corporate, with the substitution for the reference to a director of the body of a reference—

- (a) in the case of a partnership, to a partner;
- (b) in the case of an unincorporated body other than a partnership—
  - (i) where the body’s affairs are managed by its members, to a member of the body;

(ii) in any other case, to a member of the governing body.

(4) Section 171(4) of CEMA (which is a provision similar to this regulation) does not apply to any offence under these Regulations to which that provision would, in the absence of this paragraph, apply.

### **Jurisdiction to try offences**

**62.**—(1) Where an offence under regulation 9(6) (confidentiality), Part 3 (Finance), regulation 47 (finance: licensing offences) or regulation 50(6) or 54 (information offences in connection with Part 3) is committed in the United Kingdom—

- (a) proceedings for the offence may be taken at any place in the United Kingdom, and
- (b) the offence may for all incidental purposes be treated as having been committed at any such place.

(2) Where an offence under these Regulations is committed outside the United Kingdom—

- (a) proceedings for the offence may be taken at any place in the United Kingdom, and
- (b) the offence may for all incidental purposes be treated as having been committed at any such place.

(3) In the application of paragraph (2) to Scotland, any such proceedings against a person may be taken—

- (a) in any sheriff court district in which the person is apprehended or is in custody, or
- (b) in such sheriff court district as the Lord Advocate may determine.

(4) In paragraph (3), “sheriff court district” is to be read in accordance with the Criminal Procedure (Scotland) Act 1995 (see section 307(1) of that Act)(**23**).

### **Procedure for offences by unincorporated bodies**

**63.**—(1) Paragraphs (2) and (3) apply if it is alleged that an offence under these Regulations has been committed by an unincorporated body (as opposed to by a member of the body).

(2) Proceedings in England and Wales or Northern Ireland for such an offence must be brought against the body in its own name.

(3) For the purposes of proceedings for such an offence brought against an unincorporated body—

- (a) rules of court relating to the service of documents have effect as if the body were a body corporate;
- (b) the following provisions apply as they apply in relation to a body corporate—
  - (i) section 33 of the Criminal Justice Act 1925(**24**) and Schedule 3 to the Magistrates’ Courts Act 1980(**25**);
  - (ii) section 18 of the Criminal Justice Act (Northern Ireland) 1945(**26**) and Article 166 of, and Schedule 4 to, the Magistrates’ Courts (Northern Ireland) Order 1981(**27**).

(4) A fine imposed on an unincorporated body on its conviction of an offence under these Regulations is to be paid out of the funds of the body.

(23) 1995 c. 46.

(24) 1925 c. 86. Section 33 was amended by the Statute Law (Repeals) Act 2004 (c. 14), section 1(1) and Schedule 1, Part 17. Other amendments have been made to section 33 that are not relevant to these Regulations.

(25) 1980 c. 43. Amendments have been made to Schedule 3 that are not relevant to these Regulations.

(26) 1945 c. 15 (N.I.).

(27) S.I. 1981/1675 (N.I.26).

### **Time limit for proceedings for summary offences**

**64.**—(1) Proceedings for an offence under these Regulations which is triable only summarily may be brought within the period of 12 months beginning with the date on which evidence sufficient in the opinion of the prosecutor to justify the proceedings comes to the prosecutor’s knowledge.

(2) But such proceedings may not be brought by virtue of paragraph (1) more than 3 years after the commission of the offence.

(3) A certificate signed by the prosecutor as to the date on which the evidence in question came to the prosecutor’s knowledge is conclusive evidence of the date on which it did so; and a certificate to that effect and purporting to be so signed is to be treated as being so signed unless the contrary is proved.

(4) In relation to proceedings in Scotland—

- (a) section 136(3) of the Criminal Procedure (Scotland) Act 1995 (date of commencement of summary proceedings) applies for the purposes of this regulation as it applies for the purposes of that section, and
- (b) references in this regulation to the prosecutor are to be treated as references to the Lord Advocate.

### **Trade enforcement: application of CEMA**

**65.**—(1) Where the Commissioners investigate or propose to investigate any matter with a view to determining—

- (a) whether there are grounds for believing that a relevant offence 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 paragraph (1), “assigned matter” has the meaning given by section 1(1) of CEMA(28).

(3) In this regulation, a “relevant offence” means an offence under—

- (a) Part 5 (Trade),
- (b) regulation 48 (trade: licensing offences),
- (c) regulation 56(6) (general trade licences: records), or
- (d) regulation 57(5) (general trade licences: inspection of records).

(4) Section 138 of CEMA(29) (arrest of persons) applies to a person who has committed, or whom there are reasonable grounds to suspect of having committed, a relevant offence 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(30), but as if—

- (a) any reference to an offence under, or for which a person is liable to be arrested under, the customs and excise Acts were to a relevant offence;
- (b) in subsection (2), the reference to any person so liable were to a person who has committed, or whom there are reasonable grounds to suspect of having committed, a relevant offence.

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

(29) Section 138 of CEMA was amended by the Police and Criminal Evidence Act 1984 (c. 60), section 114(1), Schedule 6, paragraph 37 and Schedule 7, Part 1; the Finance Act 1988 (c. 39), section 11; the Serious Organised Crime and Police Act 2005 (c. 15), Schedule 7, paragraph 54; S.I. 1989/1341 (N.I.12); and S.I. 2007/288.

(30) “the customs and excise Acts” is defined in section 1 of CEMA.

(5) The provisions of CEMA mentioned in paragraph (6) apply in relation to proceedings for a relevant offence as they apply in relation to proceedings for an offence under the customs and excise Acts, but as if—

- (a) any reference to the customs and excise Acts were to any of the provisions mentioned in paragraph (3)(a) to (d);
- (b) in section 145(6), the reference to an offence for which a person is liable to be arrested under the customs and excise Acts were to a relevant offence;
- (c) in section 151, the reference to any penalty imposed under the customs and excise Acts were to any penalty imposed under these Regulations in relation to a relevant offence;
- (d) in section 154(2)—
  - (i) the reference to proceedings relating to customs or excise were to proceedings under any of the provisions mentioned in paragraph (3)(a) to (d), and
  - (ii) the reference to the place from which any goods have been brought included a reference to the place to which goods have been exported, supplied or delivered or the place to or from which technology has been transferred.

(6) The provisions of CEMA are sections 145, 146, 147, 148(1), 150, 151, 152, 154 and 155(31) (legal proceedings).

#### **Trade offences in CEMA: modification of penalty**

**66.**—(1) Paragraph (2) applies where a person is guilty of an offence under section 68(2) of CEMA in connection with a prohibition mentioned in regulation 22(1) or regulation 30(1) to (3) (export of goods).

(2) Where this paragraph applies, the reference to 7 years in section 68(3)(b) of CEMA(32) 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 CEMA in connection with a prohibition mentioned in regulation 22(1) or regulation 30(1) to (3).

(4) Where this paragraph applies, the reference to 7 years in section 170(3)(b) of CEMA(33) is to be read as a reference to 10 years.

#### **Application of Chapter 1 of Part 2 of the Serious Organised Crime and Police Act 2005**

**67.** Chapter 1 of Part 2 of the Serious Organised Crime and Police Act 2005 (investigatory powers)(34) applies to any offence under Part 3 (Finance) or regulation 47 (finance: licensing offences).

(31) Section 145 of CEMA was amended by the Police and Criminal Evidence Act 1984, section 114(1); the Commissioners for Revenue and Customs Act 2005 (c. 11), Schedule 4, paragraph 23(a); and S.I. 2014/834. Section 147 was amended by the Magistrates Courts Act 1980 (c. 43), section 154 and Schedule 7, paragraph 176; the Criminal Justice Act 1982 (c. 48), section 77 and Schedule 14, paragraph 42; the Finance Act 1989 (c. 26), section 16(2); and the Criminal Justice Act 2003 (c. 44), section 41 and Schedule 3, paragraph 50. Section 152 was amended by the Commissioners for Revenue and Customs Act 2005, section 50 and Schedule 4, paragraph 26, and section 52 and Schedule 5. Section 155 was amended by the Commissioners for Revenue and Customs Act 2005, section 50 and Schedule 4, paragraph 27, and section 52 and Schedule 5.

(32) The words “7 years” were inserted in section 68(3)(b) of CEMA by the Finance Act 1988, section 12.

(33) The words “7 years” were inserted in section 170(3)(b) of CEMA by the Finance Act 1988, section 12.

(34) 2005 c. 15. Chapter 1 of Part 2 has been amended by the Terrorism Act 2006 (c. 11), section 33(3) and (4); the Northern Ireland (Miscellaneous Provisions) Act 2006 (c. 33), sections 26(2) and 30(2) and Schedules 3 and 5; the Bribery Act 2010 (c. 23), section 17(2) and Schedule 1; the Criminal Justice and Licensing (Scotland) Act 2010 asp 13, section 203 and Schedule 7, paragraph 77; the Crime and Courts Act 2013 (c. 22), section 15 and Schedule 8, paragraphs 157 and 159; the Criminal Finances Act 2017 (c. 22), section 51(1); the Sanctions and Anti-Money Laundering Act 2018, section 59(4) and Schedule 3, paragraph 4; S.I. 2006/1629; and S.I. 2014/834.

## Monetary penalties

68. Each provision in Part 5 (Trade) which contains a prohibition imposed for a purpose mentioned in section 3(1) or (2) of the Act is to be regarded as not being financial sanctions legislation for the purposes of Part 8 of the Policing and Crime Act 2017(35).

## PART 9

### Maritime enforcement

#### Exercise of maritime enforcement powers

69.—(1) A maritime enforcement officer may, for a purpose mentioned in paragraph (2) or (3), exercise any of the maritime enforcement powers in relation to—

- (a) a British ship in foreign waters or international waters,
- (b) a ship without nationality in international waters, or
- (c) a foreign ship in international waters,

and a ship within sub-paragraph (a), (b) or (c) is referred to in this Part as “a relevant ship”.

(2) The maritime enforcement powers may be exercised for the purpose of enforcing any of the following—

- (a) a prohibition in any of regulations 22 to 25 (trade prohibitions relating to restricted goods and restricted technology);
- (b) a prohibition in any of regulations 30 to 33 (trade prohibitions relating to dual-use goods and dual-use technology);
- (c) a prohibition imposed by a condition of a trade licence in relation to a prohibition mentioned in sub-paragraph (a) or (b).

(3) The maritime enforcement powers may also be exercised in relation to a relevant ship for the purpose of—

- (a) investigating the suspected carriage of relevant goods on the ship, or
- (b) preventing the continued carriage on the ship of goods suspected to be relevant goods.

(4) In this Part, “the maritime enforcement powers” are the powers conferred by regulation 71 (power to stop, search, board etc.) and regulation 72 (seizure power).

(5) This regulation is subject to regulation 73 (restrictions on exercise of maritime enforcement powers).

#### Maritime enforcement officers

70.—(1) The following persons are “maritime enforcement officers” for the purposes of this Part—

- (a) a commissioned officer of any of Her Majesty’s ships;
- (b) a member of the Ministry of Defence Police (within the meaning of section 1 of the Ministry of Defence Police Act 1987(36));

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(35) See section 143(4)(f) and (4A), as inserted by the Sanctions and Anti-Money Laundering Act 2018, Schedule 3, paragraph 8(1) and (3).

(36) 1987 c. 4. Section 1 was amended by the Police Act 1996 (c. 16), Schedule 7, paragraph 41; the Police (Northern Ireland) Act 1998 (c. 32), Schedule 4, paragraph 16; the Police (Northern Ireland) Act 2000 (c. 32), section 78(2); the Police Reform Act 2002 (c. 30), section 79(3); and S.I. 2013/602.

- (c) a constable—
    - (i) who is a member of a police force in England and Wales,
    - (ii) within the meaning of section 99 of the Police and Fire Reform (Scotland) Act 2012<sup>(37)</sup>, or
    - (iii) who is a member of the Police Service of Northern Ireland or the Police Service of Northern Ireland Reserve;
  - (d) a special constable—
    - (i) appointed under section 27 of the Police Act 1996<sup>(38)</sup>,
    - (ii) appointed under section 9 of the Police and Fire Reform (Scotland) Act 2012, or
    - (iii) in Northern Ireland, appointed by virtue of provision incorporating section 79 of the Harbours, Docks, and Piers Clauses Act 1847<sup>(39)</sup>;
  - (e) a constable who is a member of the British Transport Police Force;
  - (f) a port constable, within the meaning of section 7 of the Marine Navigation Act 2013<sup>(40)</sup>, or a person appointed to act as a constable under provision made by virtue of section 16 of the Harbours Act 1964<sup>(41)</sup>;
  - (g) a designated customs official within the meaning of Part 1 of the Borders, Citizenship and Immigration Act 2009 (see section 14(6) of that Act)<sup>(42)</sup>;
  - (h) a designated NCA officer who is authorised by the Director General of the National Crime Agency (whether generally or specifically) to exercise the powers of a maritime enforcement officer under this Part.
- (2) In this regulation, “a designated NCA officer” means a National Crime Agency officer who is either or both of the following—
- (a) an officer designated under section 10 of the Crime and Courts Act 2013<sup>(43)</sup> as having the powers and privileges of a constable;
  - (b) an officer designated under that section as having the powers of a general customs official.

### **Power to stop, board, search etc.**

**71.**—(1) This regulation applies if a maritime enforcement officer has reasonable grounds to suspect that a relevant ship is carrying prohibited goods or relevant goods.

- (2) The officer may—
  - (a) stop the ship;
  - (b) board the ship;
  - (c) for the purpose of exercising a power conferred by paragraph (3) or regulation 72 (seizure power), require the ship to be taken to, and remain in, a port or anchorage in the United Kingdom or any other country willing to receive it.
- (3) Where the officer boards a ship by virtue of this regulation, the officer may—

<sup>(37)</sup> 2012 asp 8.

<sup>(38)</sup> 1996 c.16. Section 27 was amended by the Police and Justice Act 2006 (c. 48), Schedule 2, paragraph 23; the Policing and Crime Act 2009 (c. 26), Schedule 7, paragraphs 1 and 6; and the Police Reform and Social Responsibility Act 2011 (c. 13), Schedule 16, paragraph 26.

<sup>(39)</sup> 1847 c. 27. Section 79 was amended by S.I. 2006/2167.

<sup>(40)</sup> 2013 c. 23.

<sup>(41)</sup> 1964 c. 40. Section 16 was amended by section 29(2) of the Wales Act 2017 (c. 4); S.I. 1970/1681; and S.I. 1999/672. Other amendments have been made to section 16 that are not relevant to these Regulations.

<sup>(42)</sup> 2009 c. 11. Designated customs officials are designated, as either a general customs official or a customs revenue official, under sections 3 and 11 of this Act respectively.

<sup>(43)</sup> 2013 c. 22.



- (a) stop any person found on the ship and search that person for—
  - (i) prohibited goods or relevant goods, or
  - (ii) any thing that might be used to cause physical injury or damage to property or to endanger the safety of any ship;
- (b) search the ship, or any thing found on the ship (including cargo) for prohibited goods or relevant goods.
- (4) The officer may—
  - (a) require a person found on a ship boarded by virtue of this regulation to provide information or produce documents;
  - (b) inspect and copy such information or documents.
- (5) The officer may exercise a power conferred by paragraph (3)(a)(i) or (b) only to the extent reasonably required for the purpose of discovering prohibited goods or relevant goods.
- (6) The officer may exercise the power conferred by paragraph (3)(a)(ii) in relation to a person only where the officer has reasonable grounds to believe that the person might use a thing to cause physical injury or damage to property or to endanger the safety of any ship.
- (7) The officer may use reasonable force, if necessary, in the exercise of any power conferred by this regulation.

### **Seizure power**

- 72.**—(1) This regulation applies if a maritime enforcement officer is lawfully on a relevant ship (whether in exercise of the powers conferred by regulation 71 (power to stop, board, search etc.) or otherwise).
- (2) The officer may seize any of the following which are found on the ship, in any thing found on the ship, or on any person found on the ship—
- (a) goods which the officer has reasonable grounds to suspect are prohibited goods or relevant goods, or
  - (b) things within regulation 71(3)(a)(ii).
- (3) The officer may use reasonable force, if necessary, in the exercise of any power conferred by this regulation.

### **Restrictions on exercise of maritime enforcement powers**

- 73.**—(1) The authority of the Secretary of State is required before any maritime enforcement power is exercised in reliance on regulation 69 (exercise of maritime enforcement powers) in relation to—
- (a) a British ship in foreign waters, or
  - (b) a foreign ship in international waters.
- (2) In relation to a British ship in foreign waters other than the sea and other waters within the seaward limits of the territorial sea adjacent to any relevant British possession, the Secretary of State may give authority under paragraph (1) only if the State in whose waters the power would be exercised consents to the exercise of the power.
- (3) In relation to a foreign ship in international waters, the Secretary of State may give authority under paragraph (1) only if—
- (a) the home state has requested the assistance of the United Kingdom for a purpose mentioned in regulation 69(2) or (3),
  - (b) the home state has authorised the United Kingdom to act for such a purpose, or

- (c) the United Nations Convention on the Law of the Sea 1982<sup>(44)</sup> or a UN Security Council Resolution otherwise permits the exercise of the power in relation to the ship.

### Interpretation of Part 9

74.—(1) Subject to paragraph (2), any expression used in this Part and in section 19 or 20 of the Act has the same meaning in this Part as it has in section 19 or (as the case may be) section 20 of the Act.

(2) For the purpose of interpreting any reference to “prohibited goods” or “relevant goods” in this Part, any reference in section 19 or 20 of the Act to a “relevant prohibition or requirement” is to be read as a reference to any prohibition specified in regulation 69(2)(a) to (c) (exercise of maritime enforcement powers).

## PART 10

### Supplementary and final provision

#### Notices

75.—(1) This regulation applies in relation to a notice required by regulation 46 (licences: general provisions) to be given to a person.

(2) The notice may be given to an individual—

- (a) by delivering it to the individual,
- (b) by sending it to the individual by post addressed to the individual at his or her usual or last-known place of residence or business, or
- (c) by leaving it for the individual at that place.

(3) The notice may be given to a person other than an individual—

- (a) by sending it by post to the proper officer of the body at its principal office, or
- (b) by addressing it to the proper officer of the body and leaving it at that office.

(4) The notice may be given to the person by other means, including by electronic means, with the person’s consent.

(5) In this regulation, the reference in paragraph (3) to a “principal office”—

- (a) in relation to a registered company, is to be read as a reference to the company’s registered office;
- (b) in relation to a body incorporated or constituted under the law of a country other than the United Kingdom, includes a reference to the body’s principal office in the United Kingdom (if any).

(6) In this regulation—

“proper officer”—

- (a) in relation to a body other than a partnership, means the secretary or other executive officer charged with the conduct of the body’s general affairs, and
- (b) in relation to a partnership, means a partner or a person who has the control or management of the partnership business;

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<sup>(44)</sup> Command 8941.

“registered company” means a company registered under the enactments relating to companies for the time being in force in the United Kingdom.

#### **Article 20 of the Export Control Order 2008**

76. Article 20 of the Export Control Order 2008 (embargoed destinations) is not to be taken to prohibit anything prohibited by Part 5 (Trade).

#### **Trade: overlapping offences**

77. A person is not to be taken to commit an offence under the Export Control Order 2008 if the person would, in the absence of this regulation, commit an offence under both—

- (a) article 34, 35, 37 or 38 of that Order(45), and
- (b) any provision of Part 5 (Trade) or regulation 48 (trade: licensing offences), regulation 56(6) or regulation 57(5) (information offences in connection with general trade licences).

#### **Revocation of the Burma (Sanctions) (EU Exit) Regulations 2019**

78. The Burma (Sanctions) (EU Exit) Regulations 2019(46) are revoked.

#### **Transitional provision: prior obligations etc.**

79.—(1) — This regulation applies to a person (“P”) who, immediately before the relevant date, was designated by the Secretary of State under regulation 5 (power to designate persons) of the 2019 Regulations for the purposes of—

- (a) regulations 11 to 15 (asset-freeze etc.) of those Regulations, or
- (b) regulation 17 (immigration) of those Regulations.

(2) Subject to paragraph (3), any reference in a provision mentioned in paragraph (4) to the date on which P became a designated person is a reference to the date on which P was designated by the Secretary of State under regulation 5 of the 2019 Regulations.

(3) Where P was named in Annex I of the EU Burma Regulation immediately before IP completion day(47), any reference in a provision mentioned in paragraph (4) to the date on which P became a designated person is a reference to the date on which P was named in that Annex.

- (4) The provisions referred to in paragraphs (2) and (3) are—
  - (a) regulation 41(5) (finance: exceptions from prohibitions), and
  - (b) paragraphs 6(b)(i) and 9(a) of Schedule 4 (Treasury licences: purposes).
- (5) In this regulation—

“the 2019 Regulations” means the Burma (Sanctions) (EU Exit) Regulations 2019;

“the EU 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](#)(48), as it has effect in EU law;

“the relevant date” means the date on which Part 3 (Finance) and Part 4 (Immigration) come into force.

(45) Article 34 was amended by the Sentencing Act 2020 (c. 17), Schedule 24, paragraph 446(1). Article 35 was amended by the Sentencing Act 2020, Schedule 24, paragraph 446(1); S.I. 2009/1305; S.I. 2009/2151; and S.I. 2019/137. Article 37 was amended by S.I. 2012/1910; and S.I. 2019/137. Article 38 was amended by S.I. 2017/85; and S.I. 2019/137.

(46) S.I. 2019/136, amended by the Sentencing Act 2020 (c. 17), Schedule 24, paragraph 446(1); S.I. 2020/590; and S.I. 2020/951.

(47) Schedule 1 to the Interpretation Act 1978 (c. 30) provides that “IP completion day” has the same meaning as in the European Union (Withdrawal Agreement) Act 2020 (c. 1) (see section 39(1) to (5) of that Act).

(48) OJ No. L 121, 3.5.2013, p.1.

**Transitional provision: Treasury licences**

**80.**—(1) Paragraphs (2) to (4) apply to a licence which—

- (a) was issued by the Treasury under regulation 35(1) of the 2019 Regulations,
- (b) was in effect immediately before the relevant date, and
- (c) authorises conduct which would (on and after the relevant date, and in the absence of paragraphs (2) to (4)) be prohibited under Part 3 (Finance),

and such a licence is referred to in this regulation as “an existing financial sanctions licence”.

(2) An existing financial sanctions licence which authorises an act which would otherwise be prohibited has effect on and after the relevant date as if it had been issued by the Treasury under regulation 44(1) (Treasury licences).

(3) Any reference in an existing financial sanctions licence to the 2019 Regulations is to be treated on and after the relevant date as a reference to these Regulations.

(4) Any reference in an existing financial sanctions licence to a prohibition in the 2019 Regulations is to be treated on and after the relevant date as a reference to the corresponding prohibition in Part 3.

(5) Paragraph (6) applies where—

- (a) an application for a licence, or for the variation of a licence, under the 2019 Regulations was made before the relevant date,
- (b) the application is for the authorisation of conduct which would (on and after the relevant date) be prohibited under Part 3, and
- (c) a decision to grant or refuse the application has not been made before that date.

(6) The application is to be treated on and after the relevant date as an application for a licence, or for the variation of a licence (as the case may be), under regulation 44(1).

(7) In this regulation—

“the 2019 Regulations” means the Burma (Sanctions) (EU Exit) Regulations 2019;

“the relevant date” means the date on which Part 3 comes into force.

**Transitional provision: trade licences**

**81.**—(1) Paragraph (2) applies to a licence or authorisation which—

- (a) was—
  - (i) issued by the Secretary of State under regulation 36 of the 2019 Regulations,
  - (ii) deemed to have been issued by the Secretary of State under regulation 36 of the 2019 Regulations<sup>(49)</sup>, or
  - (iii) treated as if it had been issued by the Secretary of State under regulation 36 of the 2019 Regulations<sup>(50)</sup>,
- (b) was in effect immediately before the relevant date, and
- (c) authorises an act which would (on and after the relevant date, and in the absence of paragraph (2)) be prohibited by Part 5 (Trade),

and such a licence or authorisation is referred to in this regulation as an “existing trade sanctions licence”.

<sup>(49)</sup> Regulation 72(2) of the Burma (Sanctions) (EU Exit) Regulations 2019 provides that a licence is deemed to have been issued under those Regulations in respect of an existing trade licence (as defined in that regulation).

<sup>(50)</sup> Regulation 72(4) of the Burma (Sanctions) (EU Exit) Regulations 2019 provides that an existing trade sanctions licence (as defined in that regulation) has effect as if it had been issued under those Regulations.

(2) An existing trade sanctions licence which authorises an act which would otherwise be prohibited has effect on and after the relevant date as if it had been issued by the Secretary of State under regulation 45 (trade licences).

(3) Any reference in an existing trade sanctions licence to—

- (a) a provision of the 2019 Regulations, or
- (b) a provision in any other enactment which was treated as a reference to the corresponding provision of the 2019 Regulations,

is to be treated on and after the relevant date as a reference to the corresponding provision of these Regulations.

(4) Paragraph (5) applies where—

- (a) an application for a licence, or for the variation of a licence, under the 2019 Regulations was made before the relevant date,
- (b) the application is for the authorisation of conduct which would (on and after the relevant date) be prohibited under Part 5, and
- (c) a decision to grant or refuse the application has not been made before that date.

(5) The application is to be treated on and after the relevant date as an application for a licence, or for the variation of a licence (as the case may be), under regulation 45.

(6) For the purposes of paragraph (4), the reference to an application for a licence under the 2019 Regulations includes an application that is treated as such an application by virtue of regulation 73 (transitional provision: pending applications for trade licences) of the 2019 Regulations.

(7) In this regulation—

“the 2019 Regulations” means the Burma (Sanctions) (EU Exit) Regulations 2019;

“the relevant date” means the date on which Part 5 comes into force.

26th April 2021

*Ahmad*  
Minister of State  
Foreign, Commonwealth and Development  
Office