

EXPLANATORY MEMORANDUM TO
THE BURMA/MYANMAR (FINANCIAL SANCTIONS) REGULATIONS 2009

2009 No. 1495

1. This explanatory memorandum has been prepared by Her Majesty's Treasury and is laid before Parliament by Command of Her Majesty.
2. **Purpose of the instrument**
 - 2.1 The Burma/Myanmar (Financial Sanctions) Regulations 2009 ("the Burma/Myanmar Regulations") provide for prohibitions, criminal sanctions and enforcement mechanisms in relation to financial restrictions set out in Council Regulation (EC) No. 194/2008 of 25th February 2008 renewing and strengthening the restrictive measures in respect of Burma/Myanmar and repealing Regulation (EC) No 817/2006 ("the EC Regulation"). There are also provisions relating to information gathering and information sharing in order to ensure compliance with the Burma/Myanmar Regulations.
3. **Matters of special interest to the Joint Committee on Statutory Instruments**
 - 3.1 The Treasury is breaching the customary 21-day rule in relation to this SI. This is due to the current trial of the Burmese/Myanmar opposition leader Aung San Suu Kyi, in which the verdict is expected very soon. Considerable consensus has already been built in the EU to take additional measures against the Burmese/Myanmar regime if a guilty verdict is reached and sentence handed down. If this happens, we would expect sanctions to be rapidly adopted as soon as possible after the verdict. This is likely to be before the SI (with its ambulatory reference) would otherwise take effect; although the measures have direct effect in the UK by virtue of the EC Regulation, no penalties would be in place. The Treasury is therefore breaching the 21-day rule in order that the SI will be in force at the time of any new EU sanctions and will automatically include those new EC sanctions. The SI is also required to provide penalties for breaching existing sanctions, which were recently reaffirmed.
4. **Legislative Context**
 - 4.1 The Burma/Myanmar Regulations update the existing UK legislation following the publication of the EC Regulation, which makes additions to the list of persons subject to the EC Regulation, and provides for new, substantive prohibitions in respect of investment in certain industry sectors in Burma/Myanmar.
 - 4.2 These Regulations take advantage of paragraph 1A of Schedule 2 to the European Communities Act 1972 (inserted by section 28 of the Legislative and Regulatory Reform Act 2006) so as to provide for an ambulatory reference to the EC Regulation.

5. Territorial Extent and Application

5.1 This instrument applies to the United Kingdom and, outside the United Kingdom, to British citizens and those with a UK connection.

6. European Convention on Human Rights

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

7. Policy background

- *What is being done and why*

7.1 The Burma/Myanmar Regulations is an updating instrument. As the EC Regulation is directly applicable in the United Kingdom, persons who have been added to the EC Regulation since the date of the UK instrument are immediately subject to the financial restrictions, but the Burma/Myanmar Regulations are required to enable criminal penalties to apply to any breaches of the restrictions in relation to these new persons.

The Burma/Myanmar Regulations also implement the new prohibitions in investment in certain industry sectors (wood and wood products, coal, gold, silver certain base metals and precious and semi-precious stones) and create criminal penalties for breaches of those prohibitions.

- *Consolidation*

7.2 It is not expected that there will be any consolidation of this instrument.

8. Consultation outcome

8.1 There has been no consultation on this instrument.

9. Guidance

9.1 General guidance with regard to financial sanctions and the relevant legislation is available on Her Majesty's Treasury website. In addition financial sanctions notifications are released every time there is a substantive change to the sanctions.

10. Impact

10.1 The impact on business, charities or voluntary bodies is expected to be minimal.

10.2 The impact on the public sector is minimal.

10.3 An Impact Assessment is attached to this memorandum.

11. Regulating small business

11.1 The legislation applies to small business.

11.2 The basis for the final decision on what action to take to assist small business was not subject to consultation.

12. Monitoring & review

12.1 The instrument will be monitored and reviewed at any point when the EC Regulation is amended.

13. Contact

The Asset Freezing Unit at Her Majesty's Treasury, Tel: 0207 270 5454 or email: assetfreezingunit@hm-treasury.gsi.gov.uk can answer any queries regarding the instrument.

Summary: Intervention & Options

Department /Agency: HM Treasury	Title: Impact Assessment of the Burma/Myanmar (Financial Restrictions) Regulations 2009	
Stage: Final/Implementation	Version: Draft 1	Date: 15 June 2009
Related Publications: Burma/Myanmar (Financial Restrictions) Regulations 2009 (draft) and Council Regulation (EC) No 194/2008		

Available to view or download at:

http://www.hm-treasury.gov.uk/fin_sanctions_burma.htm

Contact for enquiries: Patrick Guthrie

Telephone: 020 7270 5067

What is the problem under consideration? Why is government intervention necessary?

The Regulations gives effect to Council Regulation (EC) No 194/2008, as amended from time-to-time by Commission Regulations (the "EC Regulation"), which concern, inter alia, financial sanctions against those involved in, or who have connections with, the regime in Burma/Myanmar and, in particular, those involved with serious violations of human rights by the Burmese government.

What are the policy objectives and the intended effects?

The EC's Common Position 96/635/CFSP of 28 October 1996 set out the concerns of the European Council about the human rights abuses in Burma/Myanmar and the need to apply pressure on the regime to address these concerns. The continued position on restrictive measures was confirmed in Commission Regulation (EC) No. 353/2009 of 28 April 2009. The EC Regulation is directly applicable in the United Kingdom but UK secondary legislation is needed because the EC Regulation leaves it to member states to introduce criminal sanctions for breaches of the financial sanctions prohibitions.

What policy options have been considered? Please justify any preferred option.

As a Statutory Instrument is required to provide the mechanisms for enforcing the existing EC Regulation there are no alternative policy options. This Statutory Instrument is consistent with other country based financial sanctions Statutory Instruments.

When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects? N/A

Ministerial Sign-off For SELECT STAGE Impact Assessments:

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible Minister:

Kitty UsherDate: 16/06/09

Summary: Analysis & Evidence

Policy Option: Agree to Statutory Instrument	Description: Introduction of Statutory Instrument
---	--

COSTS	ANNUAL COSTS	Description and scale of key monetised costs by 'main affected groups' Our expectation is that, as the compliance costs of administering financial sanctions regimes are negligible, there will be no additional financial cost associated with the introduction of this specific legislation, as the EC Regulation is already in effect and must be complied with within the EU.
	One-off (Transition) Yrs	
	£ N/A	
	Average Annual Cost (excluding one-off)	
£ N/A	Total Cost (PV)	£ N/A
Other key non-monetised costs by 'main affected groups' No additional cost expected.		

BENEFITS	ANNUAL BENEFITS	Description and scale of key monetised benefits by 'main affected groups' Financial sanctions against individuals involved in the regime in Burma/Myanmar are intended to exert pressure on those individuals and support international efforts for a peaceful resolution of the human rights situation in Burma/Myanmar.
	One-off Yrs	
	£ N/A	
	Average Annual Benefit (excluding one-off)	
£ N/A	Total Benefit (PV)	£ N/A
Other key non-monetised benefits by 'main affected groups' As above for key monetised benefits.		

Key Assumptions/Sensitivities/Risks

The EC Regulation is already directly applicable in the United Kingdom. Secondary legislation is needed only to provide for criminal sanctions for breaches of the prohibitions. No specific sensitivities or risks with the introduction of this secondary legislation.

Price Base Year	Time Period Years	Net Benefit Range (NPV) £	NET BENEFIT (NPV Best estimate) £
--------------------	----------------------	-------------------------------------	---

What is the geographic coverage of the policy/option?	UK				
On what date will the policy be implemented?	Already Implemented				
Which organisation(s) will enforce the policy?	Police/FSA/CPS				
What is the total annual cost of enforcement for these organisations?	£ N/A				
Does enforcement comply with Hampton principles?	Yes				
Will implementation go beyond minimum EU requirements?	No				
What is the value of the proposed offsetting measure per year?	£ N/A				
What is the value of changes in greenhouse gas emissions?	£ N/A				
Will the proposal have a significant impact on competition?	No				
Annual cost (£-£) per organisation (excluding one-off)	<table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 25%; text-align: center;">Micro</td> <td style="width: 25%; text-align: center;">Small</td> <td style="width: 25%; text-align: center;">Medium</td> <td style="width: 25%; text-align: center;">Large</td> </tr> </table>	Micro	Small	Medium	Large
Micro	Small	Medium	Large		
Are any of these organisations exempt?	<table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 25%; text-align: center;">No</td> <td style="width: 25%; text-align: center;">No</td> <td style="width: 25%; text-align: center;">N/A</td> <td style="width: 25%; text-align: center;">N/A</td> </tr> </table>	No	No	N/A	N/A
No	No	N/A	N/A		

Impact on Admin Burdens Baseline (2005 Prices)		(Increase - Decrease)
Increase of £ N/A/	Decrease of £ N/A	Net Impact £ None

Key: Annual costs and benefits: Constant Prices (Net) Present Value

Evidence Base (for summary sheets)

[Use this space (with a recommended maximum of 30 pages) to set out the evidence, analysis and detailed narrative from which you have generated your policy options or proposal. Ensure that the information is organised in such a way as to explain clearly the summary information on the preceding pages of this form.]

1. Purpose and intended effect

In its Common Position 96/635/CFSP of 28 October 1996, the Council of the European Union Council expressed its concern at the absence of progress towards democratisation and at the continuing violation of human rights in Burma/Myanmar. It deplored, in particular, the practice of torture, summary and arbitrary executions, forced labour, abuse of women, political arrests, forced displacement of the population and restrictions on the fundamental rights of freedom of speech, movement and assembly. Sanctions were implemented to put pressure on the regime to reform.

The continued position on restrictive measures was recently confirmed in Council Common Position 2009/351/CFSP of 27 April 2009. Council Regulation (EC) No 194/2008 gives effect to the restrictive measures, and is amended from time-to-time by Commission Regulations principally to include new targets who are to be subject to financial sanctions as having been identified as being involved in, and connected with, the regime in Burma/Myanmar and in particular those involved with serious violations of human rights by the government.

The EC Regulation is directly applicable in the United Kingdom but UK secondary legislation is needed to provide for criminal sanctions for breaches of the prohibitions.

2. Consultation

None

3. Options

The UK is required to provide the mechanisms for enforcing the EC Regulation.

4. Costs and benefits

Sectors and groups affected:

Financial institutions

Benefits:

Financial sanctions against individuals involved in the regime in Burma/Myanmar are intended to exert pressure on those individuals and support international efforts for a peaceful resolution of the human rights situation in Burma/Myanmar. The UK is required to provide for the enforcement of the EC Regulation in the UK.

Costs:

There are some compliance costs for financial institutions in implementing all financial sanctions. The Government is mindful of these compliance costs and seeks to ensure that international sanctions regimes are well targeted and are based on good identifying information to help financial institutions administer them. There will be no additional financial costs associated with the introduction of this legislation, given that the prohibitions are given direct effect by EC legislation.

5. Small Firms Impact Test

Not applicable – no particular impact on small firms

6. Competition assessment

Not applicable – no particular competition impact

7. Enforcement, sanctions and monitoring

The provisions are set out in the Order

8. Implementation and delivery plan

Not applicable – no further implementation is required

9. Post-implementation review

Not applicable – no further implementation is required.

11. Summary and recommendation

The Burma/Myanmar (Financial Restrictions) Regulations 2009 are required to give effect to financial sanctions against Burma/Myanmar that have been agreed at EU level.

Recommendation is that the Minister agrees to the introduction of this Statutory Instrument by signing the Ministerial Sign-off box above.

Specific Impact Tests: Checklist

Use the table below to demonstrate how broadly you have considered the potential impacts of your policy options.

Ensure that the results of any tests that impact on the cost-benefit analysis are contained within the main evidence base; other results may be annexed.

Type of testing undertaken	<i>Results in Evidence Base?</i>	<i>Results annexed?</i>
Competition Assessment	Yes	No
Small Firms Impact Test	Yes	No
Legal Aid	No	No
Sustainable Development	No	No
Carbon Assessment	No	No
Other Environment	No	No
Health Impact Assessment	No	No
Race Equality	No	No
Disability Equality	No	No
Gender Equality	No	No
Human Rights	Yes	No
Rural Proofing	No	No

Annexes