
STATUTORY INSTRUMENTS

2019 No. 136

The Burma (Sanctions) (EU Exit) Regulations 2019

PART 5

Trade

CHAPTER 1

Interpretation

Definition of “restricted goods” and “restricted technology”

18. In this Part—

“restricted goods” means—

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

“restricted technology” means—

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

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

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

“dual-use goods” means—

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

“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;

“interception and monitoring goods” means any item 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—

- (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(1), 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—

- (i) any thing which is interception and monitoring technology, or
- (ii) any thing for the time being specified in—
 - (aa) Schedule 2 to the Export Control Order 2008, or
 - (bb) 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

(1) 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; and S.I. 2018/939. There are other instruments which amend other parts of the Order, which are not relevant to these Regulations.

- (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).

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(2).

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;

“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, except for regulation 29 (provision of interception and monitoring services), a person is to be regarded as “connected with” Burma if the person is—

(a) an individual who is, or an association or combination of individuals who are, ordinarily resident in Burma,

(b) an individual who is, or an association or combination of individuals who are, located in Burma,

(c) a person, other than an individual, which is incorporated or constituted under the law of Burma, or

(d) a person, other than an individual, which is domiciled in Burma.

(5) For the purposes of regulation 29, a person is “connected with Burma” if the person works for the Government of Burma or otherwise carries on activities on its behalf or under its direction.

CHAPTER 2

Restricted goods and restricted technology

Export of restricted goods

- 22.—(1) The export of restricted goods to, or for use in, Burma 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 Burma.
- (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 Burma.
- (4) In this regulation, “third country” means a country that is not the United Kingdom, the Isle of Man or Burma.

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 Burma;
 - (b) directly or indirectly make restricted goods or restricted technology available for use in Burma.
- (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 Burma;
 - (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 Burma.

Transfer of restricted technology

- 25.—(1) A person must not—
- (a) transfer restricted technology to a place in Burma;
 - (b) transfer restricted technology to a person connected with Burma.
- (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 Burma;
 - (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 Burma.

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 Burma, or
 - (b) for use in Burma.
- (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 Burma;
 - (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 Burma.

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 Burma, 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 Burma 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, Burma,
 - (b) the direct or indirect supply or delivery of restricted goods to a place in Burma,
 - (c) directly or indirectly making restricted goods or restricted technology available—
 - (i) to a person connected with Burma, or
 - (ii) for use in Burma,
 - (d) the transfer of restricted technology—
 - (i) to a person connected with Burma, or
 - (ii) to a place in Burma, or
 - (e) the direct or indirect provision of technical assistance relating to restricted goods or restricted technology—
 - (i) to a person connected with Burma, or
 - (ii) for use in Burma.
- (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 Burma;
- (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 Burma,
- (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 Burma, or
 - (ii) to a place in Burma,
- (c) directly or indirectly making restricted technology available in a third country for transfer—
 - (i) to a person connected with Burma, or
 - (ii) to a place in Burma,
- (d) the transfer of restricted technology from a place in a third country—
 - (i) to a person connected with Burma, or
 - (ii) to a place in Burma,
- (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 Burma, or
 - (ii) for use in Burma,
- (f) the direct or indirect provision, in a non-UK country, of financial services—
 - (i) to a person connected with Burma, 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 Burma, 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 Burma, and
- (b) for the purposes of any other provision of paragraph (1), a country that is not the United Kingdom or Burma.

CHAPTER 3

Interception and monitoring services

Provision of interception and monitoring services

29.—(1) A person must not directly or indirectly provide interception and monitoring services to, or for the benefit of, a person connected with Burma.

(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 person to whom, or for whose benefit, the services were provided was connected with Burma.

CHAPTER 4

Military-related services

Provision of military-related services

30.—(1) A person must not directly or indirectly provide military-related services to or for the benefit of the Tatmadaw, or to any person acting on its behalf or under its direction.

(2) For the purposes of paragraph (1), “military-related service” means any of the following services to the extent that they relate to the military activities of the recipient in Burma—

- (a) the provision of technical assistance,
- (b) the provision of armed personnel,
- (c) the provision of financial services or funds, or
- (d) the provision of brokering services in relation to an arrangement whose object or effect is to provide, in a non-UK country, any of the services 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 to show that the person did not know and had no reasonable cause to suspect that the services—

- (a) were military-related, or
- (b) were provided to or for the benefit of the Tatmadaw, or to any person acting on its behalf or under its direction.

(5) In this regulation—

- (a) “non-UK country” means a country that is not the United Kingdom;
- (b) “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 Chapter 2 or 3.

CHAPTER 5

Further provision

Circumventing etc prohibitions

31.—(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 4 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

32.—(1) Paragraph (2) applies where a person relies on a defence under Chapter 2, 3 or 4 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.