
STATUTORY INSTRUMENTS

2021 No. 496

The Myanmar (Sanctions) Regulations 2021

PART 2

Designation of persons

Power to designate persons

5.—(1) The Secretary of State may designate persons⁽¹⁾ 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).

(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,

(1) “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.

- (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.