

EXPLANATORY MEMORANDUM TO
THE MYANMAR (SANCTIONS) REGULATIONS 2021
2021 No. 496

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Foreign, Commonwealth and Development Office and is laid before Parliament by Command of Her Majesty.
- 1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

- 2.1 This instrument establishes a UK autonomous sanctions regime in respect of Myanmar comprising financial, immigration and trade sanctions. The purposes of this sanctions regime are to: promote the peace, stability and security of Myanmar; promote respect for democracy, the rule of law and good governance in Myanmar; discourage actions, policies or activities which repress the civilian population in Myanmar; and promote compliance with international human rights law and respect for human rights in Myanmar.
- 2.2 This instrument replaces the existing sanctions regime established by the Burma (Sanctions) (EU Exit) Regulations 2019 (S.I. 2019/136) (“the Burma sanctions regulations”).

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 This instrument, which is subject to the made affirmative procedure, is laid before Parliament under section 55(3) of the Sanctions and Anti-Money Laundering Act 2018 (“the Sanctions Act”) and comes into force on the same day that it is laid. The provisions in the instrument relating to the designation of persons come into force at 2.00 p.m., and the remainder of the instrument – including the substantive prohibitions and requirements and the provision revoking the Burma sanctions regulations - comes into force at 5.00 p.m. Bringing the instrument into force on the same day it is laid guards against the risk that persons who may be designated under the regime, or others who may potentially be affected by the sanctions, remove their assets from UK jurisdiction. It also ensures that there is no implementation gap between the revocation of the existing sanctions regime and the bringing into operation of its replacement.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

- 3.2 The territorial application of this instrument includes Scotland and Northern Ireland.

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is the whole of the UK.
- 4.2 Subject to paragraph 4.3, the territorial application of this instrument is the UK.

- 4.3 This instrument also applies to conduct by UK persons where that conduct is wholly or partly outside the UK, and some parts of it also apply to conduct by any person in the territorial sea adjacent to the UK. In addition, the maritime enforcement powers contained in Part 9 (Maritime enforcement) of this instrument apply in relation to British ships in international or foreign waters, ships without nationality in international waters and foreign ships in international waters.

5. European Convention on Human Rights

- 5.1 The Minister of State for South Asia and the Commonwealth at the Foreign, Commonwealth and Development Office, Lord Ahmad of Wimbledon, has made the following statement regarding human rights:

“In my view the provisions of the Myanmar (Sanctions) Regulations 2021 are compatible with the Convention rights.”

6. Legislative Context

- 6.1 The Sanctions Act establishes a legal framework which enables Her Majesty’s Government (“HMG”) to impose sanctions in order to comply with United Nations obligations and other international obligations, as well as for a number of other purposes, which include: furthering the prevention of terrorism; national security; promoting international peace and security; promoting compliance with international human rights law and respect for human rights; or furthering foreign policy objectives.
- 6.2 The current UK sanctions regime in respect of Myanmar was established by the Burma sanctions regulations. This instrument replaces that regime and revokes the Burma sanctions regulations.

7. Policy background

What is being done and why?

- 7.1 This instrument is laid in response to a change in HMG’s policy towards Myanmar, following the coup d’état staged by the Myanmar military on 1 February 2021.
- 7.2 HMG’s policy includes the use of sanctions to promote peace and stability in Myanmar, ensuring respect for democracy, good governance and the rule of law. It aims to encourage all actors, and in particular the Myanmar Security Forces, to respect human rights and, where relevant, comply with their obligations under international human rights law. Sanctions also signal the UK’s concern over human rights violations and the lack of investigation and accountability for recent serious human rights violations in Myanmar by the military junta following the military coup, and ongoing and historical atrocities against the Rohingya and other ethnic minorities in Myanmar.
- 7.3 The human rights situation in Myanmar remains of serious concern. There is widespread evidence of serious human rights violations perpetrated by the Myanmar Security Forces following the recent military coup. Prior to the coup, the UN independent international fact finding mission had established consistent patterns of serious human rights violations and abuses in Kachin, Rakhine and Shan States and attributed responsibility to the Myanmar Security Forces, particularly the military (the Tatmadaw). Atrocities committed by the Myanmar Security Forces include: systematic burning of Rohingya villages, massacre, torture, arbitrary detention and

targeted sexual violence. In light of this, sanctions form one part of international efforts to encourage the Myanmar Security Forces to comply with international human rights law and to respect human rights.

- 7.4 The Burma sanctions regulations established an autonomous sanctions regime in UK law. Establishing an updated and expanded sanctions regime, using the powers in the Sanctions Act, will enable the effective operation of sanctions measures in response to the changed situation in Myanmar. It will also enable HMG to amend and lift the sanctions, or impose further sanctions, as the situation develops.
- 7.5 This instrument is accompanied by two statutory reports that are required to be published under the Sanctions Act.
- 7.6 Firstly, and in accordance with section 2(4) of the Sanctions Act, a report has been produced to explain why the Minister considers that the carrying out of the stated purposes of this instrument would meet one or more of the discretionary purposes (i.e. purposes other than implementing UN obligations) set out in the Sanctions Act; why there are good reasons to pursue those purposes; and why the Minister considers that the imposition of sanctions is a reasonable course of action for those purposes.
- 7.7 Secondly, and in accordance with section 18 of the Sanctions Act, a report has been produced that identifies the offences contained in this instrument and the prohibitions and requirements to which they relate; explains why there are good reasons for those prohibitions and requirements to be enforceable by criminal proceedings; and explains why there are good reasons for the prescribed penalties in relation to those offences. Offences include, for example, contravening the principal prohibitions in the Regulations (e.g. breaching an asset-freeze) or trying to circumvent those principal prohibitions.
- 7.8 Part 2 (Designation of persons) of this instrument deals with the designation of persons (including individuals, entities and organisations) under the sanctions regime. It lists the criteria against which the Secretary of State may make a decision to designate a person as being subject to a travel ban or asset freeze (“designated persons”).
- 7.9 The names of designated persons are not included in this instrument. The names of those designated by the Secretary of State will be held on a separate administrative list on GOV.UK to enable immediate publication following a decision to make, vary or revoke a designation. This limits the opportunity for designated persons to remove assets from the UK.
- 7.10 Part 3 (Finance) sets out financial sanctions measures that can be imposed on designated persons. These financial sanctions consist of an asset freeze, ensuring a designated person’s funds and economic resources (non-monetary assets, such as property or vehicles) are not dealt with, and prohibitions ensuring that funds and economic resources are not made available, directly or indirectly, to or for the benefit of a designated person.
- 7.11 Part 4 (Immigration) sets out the effect of immigration measures made under this instrument. A designation for the purpose of regulation 17 (immigration) of the instrument means that section 8B of the Immigration Act 1971 then applies to the person: a designated person is excluded from entering or transiting the UK and any permission they may have to stay in the UK is cancelled.

- 7.12 Part 5 (Trade) imposes trade restrictions on military goods and technology, on dual-use goods and technology, and on specified goods and technology which may be used to repress the civilian population of Myanmar (as specified in Schedule 2) or for intercepting or monitoring their communications (as specified in Schedule 3). It also imposes further trade restrictions in respect of the provision of interception and monitoring services to, or for the benefit of, the Government of Myanmar, or the provision of certain services, funds or armed personnel to, or for the benefit of, the Tatmadaw (i.e. the Myanmar Armed Forces).
- 7.13 Part 6 (Exceptions and licences) makes provision in respect of exceptions and licences that may apply or be available, as the case may be, in respect of prohibitions and requirements under this regime. For example, in relation to Treasury licences, a designated person can apply for a licence allowing funds to be released or made available in order to pay for basic needs, such as food. It states that the Treasury may issue licences which permit activity prohibited by Part 3 by a particular person where it is appropriate for a purpose set out in Schedule 4 of the instrument. Part 6 also makes provision for trade licences to be issued by the Secretary of State. The prohibitions in Part 5 do not apply to anything done under the authority of such a licence. Guidance provides further detail about licensing. The Secretary of State may direct, on an individual basis, that the travel ban does not apply, for example for the purposes of attending UN meetings.
- 7.14 Part 9 (Maritime enforcement) confers powers on maritime enforcement officers. These powers are analogous to maritime enforcement powers contained in existing legislation, such as Chapter 5 of the Policing and Crime Act 2017. The key distinction is that those powers are contingent on there being reasonable grounds to suspect that a criminal offence has been committed, whereas the purpose of these powers is to identify, seize and dispose of goods which are being dealt with in contravention, or deemed contravention, of certain trade sanctions.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

- 8.1 This instrument does not relate to the withdrawal of the UK from the EU. It revokes and replaces existing UK legislation made under the Sanctions Act.

9. Consolidation

- 9.1 This instrument does not consolidate previous instruments.

10. Consultation outcome

- 10.1 HMG ran a public consultation on the Sanctions Act which was open for nine weeks. Over 30,000 individuals and companies received a copy of the White Paper, and 34 individuals provided written responses. Government officials held a number of roundtables with key sectors, including financial services, trade bodies, the legal profession, NGOs and industry professionals and regulators. The main areas of concern raised in consultation responses were around the legal threshold for sanctions designations, the rights of designated persons to challenge their designations, and licensing procedures. All of these concerns were taken into account in the drafting of the Sanctions Act.
- 10.2 There is neither a requirement in the Sanctions Act for public consultation on instruments made under the Act, nor is there any other legal obligation to consult in

respect of this instrument. HMG will continue engagement with stakeholders on the implementation of UK sanctions.

11. Guidance

- 11.1 In accordance with section 43 of the Sanctions Act, guidance will be published in relation to the prohibitions and requirements under this instrument. This guidance will be available on GOV.UK on the same day that the instrument is laid in Parliament.

12. Impact

- 12.1 The Foreign, Commonwealth & Development Office has undertaken a de minimis impact assessment to estimate costs to UK businesses and wider impacts resulting from these Regulations. We have estimated the costs to be beneath the threshold of £5m per annum for a full impact assessment, with costs resulting primarily from a small increase in the number of sanctions designations.
- 12.2 UK businesses must already comply with sanctions against the individuals and entities appearing on a regularly updated GOV.UK list. The process for informing businesses about sanctions and designated persons remains unchanged, so we do not expect significant changes to IT systems or administrative changes. Therefore, costs are limited to negligible transition costs, opportunity costs of travel bans and asset freezes, and costs relating to compliance, legal advice and other professional services.
- 12.3 There is no significant impact on the public sector, charities or voluntary bodies.
- 12.4 An impact assessment was also produced for the primary legislation and can be found at <https://publications.parliament.uk/pa/bills/lbill/2017-2019/0069/sanctions-and-anti-money-laundering-IA.pdf>. That assessment concluded that the introduction of the Sanctions Act, and statutory instruments under it to transfer existing sanctions regimes into UK law, would overall reduce uncertainty for business and would not result in significant costs or impact, apart from some familiarisation costs for businesses associated with adapting to the new legislative framework.

13. Regulating small business

- 13.1 This instrument applies to activities that are undertaken by small businesses.
- 13.2 This instrument is intended to continue the regulatory requirements under the existing UK sanctions regime. The Foreign, Commonwealth and Development Office does not believe it is possible to exempt smaller businesses from the requirements to comply with this instrument as this could provide a route for designated persons to circumvent or evade sanctions.

14. Monitoring & review

- 14.1 The Sanctions Act requires regular reviews of this instrument. Under section 30 of the Sanctions Act, the Secretary of State must consider whether or not this instrument is still appropriate for its stated purpose and lay an annual report before Parliament, confirming either that is the case or explaining what action has or will be taken in consequence of that review. As such, the Minister does not consider that a review clause in this instrument is appropriate.

15. Contact

- 15.1 Sarah Henson at the Foreign, Commonwealth and Development Office, telephone: 020 7008 0951 or email: Sanctions.SIs@fcdo.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Lisa Maguire, Deputy Director at the Foreign, Commonwealth and Development Office, can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Lord Ahmad of Wimbledon, Minister of State at the Foreign, Commonwealth and Development Office, can confirm that this Explanatory Memorandum meets the required standard.