

THE MYANMAR (SANCTIONS) REGULATIONS 2021

REPORT UNDER SECTION 2(4) OF THE SANCTIONS AND ANTI-MONEY LAUNDERING ACT 2018

Introduction

1. This is a report under section 2(4) of the Sanctions and Anti-Money Laundering Act 2018 (“the Act”) in relation to the Myanmar (Sanctions) Regulations 2021 (“the Regulations”). Section 2(4) requires a report to be laid before Parliament which explains why the appropriate Minister making regulations under section 1 of the Act considers, in respect of each discretionary purpose stated in the regulations, that carrying out that purpose meets one or more of the conditions in paragraphs (a) to (i) of section 1(2) of the Act;ⁱ why the Minister considers that there are good reasons to pursue that purpose; and why the Minister considers that the imposition of sanctions is a reasonable course of action for that purpose.
2. Sanctions will continue to contribute to the UK’s efforts to “defend the rules-based international order”. The UK will continue to be a global leader on sanctions, based on the smart, targeted use of sanctions, as part of wider political and diplomatic strategies. The UK will enhance its leadership role in developing robust evidence to support sanctions regimes and designations – for national and multilateral sanctions. At the international level, the UK will continue to seek multilateral cooperation on sanctions in response to shared threats, given that a collective approach to sanctions achieves the greatest impact.
3. The Regulations revoke and replace the Burma (Sanctions) (EU Exit) Regulations 2019 (“the 2019 Regulations”), which came fully into force on 31 December 2020 and were intended to deliver substantially the same policy effects as the existing EU sanctions regime in respect of Myanmar. This is being done in response to a change in Her Majesty’s Government’s (HMG’s) policy towards Myanmar, following the coup d’état staged by the Myanmar military on 1 February 2021 and the arbitrary detention of members of the democratically elected government. HMG’s policy includes the use of sanctions to promote peace and stability in Myanmar, to ensure respect for democracy, good governance and the rule of law and to encourage the military-led junta, in particular members of the Myanmar Security Forces, to comply with international human rights law. Sanctions also signal the UK’s concern over human rights violations and the lack of investigation and accountability for recent violence against unarmed civilians in Myanmar by the military-led junta following the military coup, and ongoing and historical atrocities against the Rohingya and other ethnic minorities in Myanmar.

Purposes and reasons for pursuing the purposes

4. The Regulations confer a power on the Secretary of State to designate persons who have been involved in undermining democracy, the rule of law or good governance in Myanmar; the repression of the civilian population in Myanmar; the commission of, or the obstruction of an independent investigation into, a serious human rights violation or abuse in Myanmar; the

commission of a violation of international humanitarian law in Myanmar; the obstruction of a humanitarian assistance activity in Myanmar; or any other action, policy or activity which threatens the peace, stability or security of Myanmar. The sanctions measures that can be imposed on a designated person consist of an asset freeze or a travel ban.

5. The Regulations impose trade restrictions on military goods and technology, dual-use goods and technology, and specified goods and technology which may be used to repress the civilian population of Myanmar or for the interception and monitoring of communications. The Regulations also impose further trade restrictions, which prohibit 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), or to any person acting on its behalf or under its direction, where such provision relates to the military activities of the recipient in Myanmar or otherwise enables or facilitates the conduct of armed hostilities in Myanmar.
6. The purposes of the sanctions regime, as set out in regulation 4 of the Regulations, 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.

7. Carrying out these purposes meets one or more of the conditions set out in section 1(2) of the Act. In particular, carrying out these purposes would fall within the purpose of paragraphs:
 - (c), as it would be in the interests of international peace and security;
 - (d), as it would further a foreign policy objective of the government of the United Kingdom;
 - (e), as it would promote the resolution of armed conflicts or the protection of civilians in conflict zones;
 - (f), as it would provide accountability for or be a deterrent to gross violations of human rights, or otherwise promote compliance with international human rights law or respect for human rights;
 - (g), as it would promote compliance with international humanitarian law; and
 - (i), as it would promote respect for democracy, the rule of law and good governance.

8. On 1 February 2021 the Myanmar military staged a coup d'état seizing power and refusing to respect the overwhelming outcome of Myanmar's November 2020 general election, where the National League for Democracy (NLD) won 396 of the 498 available seats in parliament in a poll that domestic and international observers agreed to be credible and without major irregularities. They have since carried out a brutal crackdown on the civilian population and peaceful protests. These actions reverse Myanmar's positive trajectory towards a democratic and peaceful state, enhancing the risks to peace and security in the region. Wilfully disregarding the outcomes of Myanmar's election, along with the arbitrary detention and arrest of thousands of innocent civilians, is a serious breach of democratic and good governance principles and further undermines Myanmar's development of a fair and effective judicial system and the wider rule of law. The military-led junta, comprising both members of the Myanmar Security Forces and civilians, continue to violate Myanmar's international human rights obligations and the UK continues to lead international efforts to encourage the Myanmar Security Forces to halt violence against protestors and to improve human rights conditions across Myanmar. The military's approach towards ethnic states and failure to engage meaningfully in the peace process has perpetuated the ongoing conflicts around the periphery of the country and the regime's seizure of all the apparatus of power will make it harder to resolve those conflicts as the positions of ethnic armed organisations consolidate in opposition to the military-led junta. We will achieve these goals by putting pressure on those responsible for such acts, including senior members of the Myanmar Security Forces, and the State Administration Council, the governing body of the ruling military-led junta, to change their behaviour. The sanctions regime is part of a broader international effort to pressure the military-led junta to take steps to protect the rights of their people and to ensure that security, the rule of law and accountability prevail across Myanmar.

9. In addition to responding to the widespread repression of the civilian population since the coup, the sanctions regime can be used to apply pressure on the Myanmar Security Forces to address human rights violations in ethnic states (notably Rakhine, Kachin, Shan and Kayin, where the military is responsible for serious human rights violations). The challenges of achieving peaceful outcomes in these states, along with the ability to adequately distribute humanitarian aid in those areas of most need and often beyond centralised control, have been significantly worsened by the regime's actions.

10. There are good reasons for pursuing these purposes, namely to address the deterioration of democracy, the rule of law and human rights in Myanmar since the coup on 1 February 2021, and to address the ongoing human rights violations and abuses taking place in Myanmar.
11. Since the coup more than 700 people have been killed during protests¹. There are multiple credible reports of the military torturing protestors, in some cases to death². The Myanmar military has also engaged in night raids of residential areas, where live ammunition is fired indiscriminately into neighbourhoods, in order to intimidate popular opposition to the coup. During one of these raids a seven year old girl was shot dead³. The situation in the ethnic states remains of serious concern to both the UK and the international community.
12. These most recent human rights violations carried out since the seizure of power by the military follow a well-documented pattern of the Myanmar Security Forces perpetrating serious human rights violations prior to the coup. Reports by Amnesty International⁴, Human Rights Watch⁵ and the UN Independent International Fact Finding Mission⁶ have detailed military atrocities taking place during the Rohingya crisis of 2017 and beyond: systematic burning of Rohingya villages, massacre, torture, arbitrary detention and targeted sexual violence. They consistently document violations of human rights including: violations of the right to life; of the prohibition of torture and other ill-treatment; of the rights and freedoms of religious and ethnic minorities. The UN Independent International Fact Finding Mission established consistent patterns of serious human rights violations and abuses in Kachin, Rakhine and Shan States and attributes primary responsibility for violations to the Myanmar Security Forces, particularly the military. The Rohingya population has specifically been targeted and has been subjected to serious systematic human rights violations. Similar violations are experienced by ethnic minorities throughout Myanmar.
13. In refusing to accept the overwhelming result of the 2020 general election and the will of the majority of Myanmar's people, the military-led junta have fundamentally undermined the prospects for democratic consolidation in the country and the hopes of ordinary people for a peaceful and prosperous future. They have arbitrarily arrested or detained senior, democratically elected politicians and ordinary peacefully protesting civilians alike. They have sought to cover up reporting of their violations and the right of Myanmar's people to access information through internet shutdowns. They have closed down the flourishing civil society space and any journalistic freedom through threats and brutal reprisals. They have arbitrarily arrested civil servants for participating in – or even being seen to support - the Civil Disobedience Movement and beaten healthcare workers attempting to treat victims of the regime's unjustified violence. They continue to refuse access for humanitarian relief to reach some of Myanmar's already most impoverished and persecuted minorities. This humanitarian crisis extends beyond Myanmar's own border, with thousands fleeing the violence into India

¹ <https://aappb.org/?p=14454>, accessed 20/4/21

² For example - <https://www.independent.co.uk/asia/southeast-asia/myanmar-activist-death-torture-military-detention-b1817803.html/>, accessed on 26/03/21

³ <https://www.bbc.co.uk/news/world-asia-56501871>, accessed 26/03/21

⁴ <https://www.amnesty.org/en/documents/asa16/7288/2017/en/>, Amnesty International 2017

<https://www.amnesty.org/en/documents/asa16/8630/2018/en/>, Amnesty International 2018

⁵ <https://www.hrw.org/report/2017/12/19/massacre-river/burmese-army-crimes-against-humanity-tula-toli>, Human Rights Watch 2017

⁶ https://www.ohchr.org/Documents/HRBodies/HRCouncil/FFM-Myanmar/A_HRC_39_64.pdf, United Nations Office of the High Commission for Human Rights 2018

and Thailand, with little prospect of immediate return without a significant de-escalation in the military-led junta's policy and tactical approach, which this sanctions regime will address. The military and security forces have also failed to provide any accountability for these serious human rights violations or to tackle their organisational culture of impunity. For example, previous action against violations during and after the Rohingya crisis of 2017 and beyond were largely symbolic, with minimal investigation and rapid acquittal and/or pardoning of those involved in the massacres associated with the Tatmadaw's actions in Rakhine.

Why sanctions are a reasonable course of action

14. The imposition of prohibitions and requirements of the kind imposed by these Regulations is a reasonable course of action for the purposes of the regime, including promoting respect for democracy and human rights in Myanmar.
15. Sanctions can be used to change behaviour; constrain damaging action; or send a signal of condemnation. HMG believes sanctions can be an effective and reasonable foreign policy tool if they are one part of a broader foreign policy strategy for a country or thematic issue, and are appropriate to the purposes they are intending to achieve.
16. The gravity of the political and human rights situation in Myanmar means that putting sanctions in place is a reasonable measure to take. They send a powerful signal of disapproval, as well as deterring the military-led junta from committing future human rights violations and constraining their ability to commit human rights violations by limiting access to certain goods and services. For example, it is believed that the Tatmadaw is keen to avoid the scrutiny and the reputational damage that sanctions bring and they have in the past dismissed military officials from their positions following the announcement of EU sanctions. The recent pressure on the military regime and the Myanmar Security Forces is the result of sustained international efforts on the issue, including sanctions. The sanctions regime established by the 2019 Regulations was tightly framed and largely designed to respond to serious human rights violations by the Myanmar Security Forces, including in ethnic states such as Rakhine. This new sanctions regime will give the government broader powers to target any individuals or entities for, inter alia, undermining democracy, committing serious human rights violations, or providing financial services, funds or economic resources to, or for the benefit of, the Myanmar Security Forces. The Regulations will also allow HMG to better target the military's financial interests that it uses to fund these acts.
17. There are three principal kinds of prohibition in the Regulations: those relating to financial sanctions, those relating to immigration sanctions, and those relating to trade sanctions.
 - a. Financial and immigration sanctions. These restrictions consist of an asset freeze (including a restriction on providing funds and economic resources to or for the benefit of a designated person) and a travel ban. These restrictions can only be imposed upon specified individuals and entities who meet the criteria set out in the Regulations, namely: that there are reasonable grounds to suspect involvement in undermining democracy, the rule of law or good governance in Myanmar; the repression of the civilian population in Myanmar; the commission of, or the obstruction of an independent investigation into, a serious human rights violation or abuse in Myanmar; the commission of a violation of international humanitarian law in Myanmar; the obstruction of a humanitarian assistance activity in Myanmar; or any other action,

policy or activity which threatens the peace, stability or security of Myanmar; and that their designation is appropriate having regard to the purposes of the regime and the likely significant effects of the designation on that person. This is in order to ensure that the sanctions are clearly targeted at those who, inter alia, violate or abuse human rights, or who disregard democratic principles and the rule of law, and therefore fulfil the stated purpose of the sanctions. The intention is to apply pressure on the military-led junta to change their behaviour, and to send in particular a strong message of disapproval for human rights violations. Current evidence suggests that serious human rights violations in Myanmar are committed mainly, but not solely by members of the Myanmar Security Forces or by persons associated with them. The previous sanctions regulations were unnecessarily restrictive in only targeting the Myanmar Security Forces. The military-led junta is comprised of both military and civilians; senior generals also have significant business interests. The Regulations allow exemptions to the travel ban and also provide for the financial sanctions to be subject to certain exceptions and a licensing framework. The exceptions and licensing provisions support the reasonableness of imposing these sanctions measures on designated persons, as they mitigate any possible negative or counter-productive impacts.

- b. Trade sanctions. The Regulations contain restrictions on the trade of restricted goods and technology, namely military goods and technology, and goods and technology that may be used to repress the civilian population in Myanmar or to intercept and monitor communications. The trade in dual-use goods and technology is also prohibited where those goods and technology are intended for military use or for use by the Myanmar Security Forces. The Regulations also impose restrictions on the provision of certain services, such as technical assistance, financial services or brokering services, relating to those goods or technology. Furthermore the Regulations prohibit the provision of interception and monitoring services to or for the benefit of the Government of Myanmar, and the provision of certain services, funds or armed personnel to or for the benefit of the Tatmadaw, or to any person acting on its behalf or under its direction, where such provision relates to the Tatmadaw's military activities or otherwise enables or facilitates the conduct of armed hostilities in Myanmar. The effect of these sanctions is to directly constrain potential human rights violations and abuses, and the repression of the civilian population, therefore fulfilling the stated purposes of this regime. The trade measures in the Regulations are targeted and provide for the trade sanctions to be subject to a licensing framework that will be overseen by the Department for International Trade. The power to grant licences under this regime supports the reasonableness of imposing these sanctions measures, as it will mitigate any unintended negative consequences.

18. These sanctions are not an end in themselves. They are one element of a broader strategy to achieve HMG's foreign policy goals in Myanmar. The UK wants to see a sustainable, secure, and equitable resolution to the coup in Myanmar. This includes the cessation of violence against protestors, and the release of all those who have been detained arbitrarily, including State Counsellor Aung San Suu Kyi and President Win Myint. The UK has lobbied all sides for an immediate return to peace, law and order that respects the results of the November 2020 election and accepts the wishes of the people of Myanmar. Direct lobbying alone has not proved sufficient. The military-led junta continues to perpetrate serious human rights violations and to disregard the results of the November 2020 elections. HMG is therefore combining sanctions

with bilateral lobbying, lobbying through international frameworks, supporting multilateral action (including through ASEAN) and supporting the UN Special Rapporteur and Special Representative of the Secretary General on the situation in Myanmar.

19. The policy intention is to keep the sanctions in place until HMG is assured that democracy has been restored and the human rights situation in Myanmar has improved, or has demonstrated steady and consistent improvement over a sustained period of time. The sanctions regime will remain until the military-led junta has demonstrably ended unjustifiable violence, restored democracy in line with international standards and respecting the wishes of Myanmar's people, and released those arbitrarily detained. This position may be reached by clear evidence of some concrete steps having been taken that show an improvement in the areas of concern outlined in the purposes of these Regulations. The UK Government will continue to coordinate with international partners, including on the future of the sanctions regime.
20. The Regulations also impose supplemental prohibitions and requirements, in particular those relating to the disclosure of confidential information, the reporting of information by relevant firms, and the holding of records. These kinds of prohibitions and requirements ensure that certain information is appropriately held by those involved with the operation of the sanctions regime, and that certain information is provided to authorities, and ensure that certain sensitive information is treated securely. These kinds of prohibitions and requirements enable the government to properly operate and enforce the sanctions regime, and therefore their imposition is also considered a reasonable course of action for the purposes of the Regulations.

Conclusions

21. The purposes of these Regulations are to promote the peace, stability and security of Myanmar; promote respect for democracy, the rule of law and good governance; 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. For the reasons set out in this report, carrying out those purposes meets one or more of the conditions in section 1(2) of the Act. As set out in this report, there are good reasons for pursuing those purposes, and the imposition of the kinds of prohibitions and requirements imposed by these Regulations for those purposes is a reasonable course of action for those purposes.

Lord Ahmad of Wimbledon

Minister of State for South Asia and the Commonwealth, Foreign, Commonwealth and Development Office, on behalf of the Secretary of State for Foreign, Commonwealth and Development Affairs

ⁱ Section 1(2) states:

“A purpose is within this subsection if the appropriate Minister making the regulations considers that carrying out that purpose would –

- a) further the prevention of terrorism, in the United Kingdom or elsewhere,*
- b) be in the interests of national security,*
- c) be in the interests of international peace and security,*
- d) further a foreign policy objective of the government of the United Kingdom,*
- e) promote the resolution of armed conflicts or the protection of civilians in conflict zones,*

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- f) *provide accountability for or be a deterrent to gross violations of human rights, or otherwise promote -*
 - (i) *compliance with international human rights law, or*
 - (ii) *respect for human rights,*
 - g) *promote compliance with international humanitarian law,*
 - h) *contribute to multilateral efforts to prevent the spread and use of weapons and materials of mass destruction, or*
 - i) *promote respect for democracy, the rule of law and good governance.”*