

2021 No. 528

OVERSEAS TERRITORIES

SANCTIONS

The Myanmar (Sanctions) (Overseas Territories) Order 2021

Made - - - - 28th April 2021

Coming into force - - at 5.00 p.m. on 29th April 2021

At the Court at Windsor Castle, the 28th day of April 2021

Present,

The Queen's Most Excellent Majesty in Council

Her Majesty, in exercise of the powers conferred on Her by section 63(3)(c) and (4) of the Sanctions and Anti-Money Laundering Act 2018(a), is pleased, by and with the advice of Her Privy Council, to make the following Order:

Citation, commencement and extent

1.—(1) This Order may be cited as the Myanmar (Sanctions) (Overseas Territories) Order 2021 and comes into force at 5.00 p.m. on 29th April 2021.

(2) This Order extends to each British overseas territory listed in Schedule 1.

Extension of the Myanmar (Sanctions) Regulations 2021

2. The Myanmar (Sanctions) Regulations 2021(b) as amended from time to time extend to each British overseas territory listed in Schedule 1 with the modifications specified in Schedule 2.

Extension of the Sanctions and Anti-Money Laundering Act 2018

3. Subject to the modification set out in paragraph (c), the following provisions of the Sanctions and Anti-Money Laundering Act 2018 extend to each British overseas territory listed in Schedule 1 for the purposes of the Myanmar (Sanctions) Regulations 2021 as modified and extended to the territories by this Order—

- (a) section 44 (protection for acts done for purposes of compliance);
- (b) section 52(3) (Crown application);

(a) 2018 c. 13.
(b) S.I. 2021/496.

(c) after that paragraph insert—

“(2) In the application of these Regulations to a particular British overseas territory, the expression “the Territory” means that territory.”

3. In regulation 3 (application of prohibitions and requirements outside the United Kingdom)—

- (a) in the heading, for “United Kingdom” substitute “Territory”;
- (b) in paragraphs (1) and (4), for “United Kingdom person” substitute “Territory person”;
- (c) in paragraphs (1), (4) and (7), for “United Kingdom” substitute “Territory”;
- (d) in paragraphs (2) and (5), after “in the territorial sea” insert “of the Territory”;
- (e) in paragraphs (3) and (6), for “Treasury licence” substitute “financial sanctions licence”.

4. At the end of Part 1 (General), insert—

“Functions of the Governor

4A.—(1) In these Regulations, “the Governor” means, in relation to the Territory, the person holding or acting in the office of Governor of the Territory, or, if there is no such office, the officer for the time being administering the Territory.

(2) The Governor may, to such extent and subject to such restrictions and conditions as the Governor thinks proper, delegate or authorise the delegation of any of the Governor’s powers under these Regulations to any person, or class or description of persons, and any references in these Regulations to the Governor are to be construed accordingly.

(3) In the exercise of any power conferred on the Governor by these Regulations, the Governor is to act in their discretion.”

5. Omit regulation 5 (power to designate persons) (including the heading).

6. Omit regulation 6 (designation criteria) (including the heading).

7. For regulation 8 (notification and publicity where designation power used), substitute—

“Requirement to publish a list of designated persons

8.—(1) Subject to paragraph (2), the Governor must—

- (a) publish a list of designated persons, and
- (b) keep the list up to date.

(2) Where, in accordance with regulation 8 (notification and publicity where designation power used) (as it has effect in the United Kingdom) the Secretary of State is not required to publicise generally a designation, variation or revocation, the Governor must not include in the list under paragraph (1) any details of that designation, variation or revocation.

(3) The Governor may publish the list under paragraph (1) in any form the Governor considers appropriate, including by means of a website.

(4) For the purpose of this regulation, “designated person” means any person for the time being designated by the Secretary of State under regulation 5 (power to designate persons) (as it has effect in the United Kingdom).”

8. In regulation 9 (confidential information in certain cases where designation power used)—

- (a) in the heading, omit “where designation power used”;
- (b) omit paragraph (1);
- (c) in paragraph (2)(a), for “that is to be treated as confidential in accordance with paragraph (1)” substitute “which the Secretary of State has specified is to be treated as confidential under regulation 9(1) (as it has effect in the United Kingdom)”;
- (d) paragraph (7)—

- (i) for “High Court (in Scotland, the Court of Session)” substitute “Supreme Court of the Territory”;
- (ii) omit “(in Scotland, an interdict)”;
- (e) at the end, insert—

“(9) In this regulation, “Supreme Court of the Territory” means—

- (a) in relation to Anguilla, Montserrat and the Virgin Islands, the High Court of the Eastern Caribbean Supreme Court;
- (b) in relation to the Cayman Islands, the Grand Court of the Cayman Islands;
- (c) in relation to the British Antarctic Territory, the British Indian Ocean Territory, the Falkland Islands, Pitcairn, Henderson, Ducie and Oeno Islands, St Helena, Ascension and Tristan da Cunha, South Georgia and the South Sandwich Islands and the Turks and Caicos Islands, the Supreme Court of that territory;
- (d) in relation to the Sovereign Base Areas of Akrotiri and Dhekelia in the Island of Cyprus, the Senior Judges’ Court of those Areas.”

9. For regulation 10 (meaning of “designated person” in Part 3) substitute—

“**10.** In this Part, a “designated person” means a person who is designated from time to time by the Secretary of State under regulation 5 (power to designate persons) (as it has effect in the United Kingdom) for the purposes of regulations 11 to 15 (asset-freeze etc.) (as they have effect in the United Kingdom).”

10. For regulation 17 (immigration) substitute—

“**17.**—(1) A person who is designated from time to time by the Secretary of State under regulation 5 (power to designate persons) (as it has effect in the United Kingdom) for the purposes of regulation 17 (immigration) (as it has effect in the United Kingdom) must not enter, transit or remain in the Territory.

(2) Paragraph (1) does not apply to a person who—

- (a) belongs to the Territory, or
- (b) in respect of the Sovereign Base Areas, is permitted to reside in the Sovereign Base Areas under the law applicable to the Sovereign Base Areas.

(3) Paragraph (1) does not apply to a person if the application of that paragraph to that person would be contrary to the United Kingdom’s obligations under —

- (a) the European Convention on Human Rights, or
- (b) the Refugee Convention.

(4) Paragraph (1) is subject to regulation 49 (immigration directions).

(5) For the purposes of this regulation, a person (“P”) belongs to the Territory if—

- (a) in respect of Anguilla, P is an Anguillian (within the meaning given to that term in the law of Anguilla);
- (b) in respect of the Cayman Islands, P is a Caymanian (within the meaning given to that term in the law of the Cayman Islands);
- (c) in respect of the Falkland Islands, P has Falkland Islands status (within the meaning given to that term in the law of the Falkland Islands);
- (d) in respect of Montserrat, P is a Montserratian (within the meaning given to that term in the law of Montserrat);
- (e) in respect of Pitcairn, P has the right of abode in Pitcairn under the law of Pitcairn;
- (f) in respect of St Helena, P has St Helenian status (within the meaning given to that term in the law of St Helena);
- (g) in respect of Tristan da Cunha, P has the right of abode in Tristan da Cunha under the law of Tristan da Cunha;

- (h) in respect of the Turks and Caicos Islands, P is a Turks and Caicos Islander (within the meaning given to that term in the law of the Turks and Caicos Islands);
- (i) in respect of the Virgin Islands, P belongs to the Virgin Islands (within the meaning given to that term in the law of the Virgin Islands).

(6) In this regulation—

“the European Convention on Human Rights” means the Convention for the Protection of Human Rights and Fundamental Freedoms done at Rome on 4th November 1950 and the Protocols to the Convention^(a);

“the Refugee Convention” means the Convention relating to the Status of Refugees done at Geneva on 28th July 1951 and the Protocol to the Convention^(b);

“Pitcairn” means Pitcairn, Henderson, Ducie and Oeno Islands;

“the Sovereign Base Areas” means the Sovereign Base Areas of Akrotiri and Dhekelia in the Island of Cyprus.”

11. In regulation 21 (interpretation of other expressions used in this Part)—

(a) for paragraph (1) substitute—

“(1) For the purposes of this Part—

- (a) “export” means export from the Territory, and
- (b) goods transported out of the Territory by aircraft or ship as stores within the meaning of CEMA (see section 1(1) and (4) of that Act) are to be regarded as exported.

(1A) Paragraph 36 of Schedule 1 to the Act (trade sanctions) applies for the purpose of interpreting expressions in this Part.”

(b) for paragraph (2) substitute—

“(2) In this Part, any reference to the Territory includes a reference to the territorial sea of the Territory.”

12. In regulation 22 (export of restricted goods), at the end insert—

“(3) A person who contravenes a prohibition in paragraph (1) commits an offence, but it is a defence for a person charged with the offence of contravening paragraph (1) to show that the person did not know and had no reasonable cause to suspect that the export was to, or the goods were for use in, Myanmar (as the case may be).”

13. In regulation 23 (supply and delivery of restricted goods), in paragraph (4) for “United Kingdom, the Isle of Man” substitute “Territory”.

14. In regulation 28 (brokering services: non-UK activity relating to restricted goods and restricted technology)—

- (a) in the heading, for “non-UK” substitute “non-Territory”;
- (b) in paragraph (1), for “non-UK country”, in each place it occurs, substitute “non-Territory country”;
- (c) for paragraph (4) substitute—

“(4) In this regulation—

“non-Territory country” means a country that is not the Territory;

“third country” means a country that is not the Territory or Myanmar.”

15. In regulation 30 (export of dual-use goods), at the end insert—

(a) ETS Numbers 005, 009, 046, 114, 117, 177, 187 and CETS Numbers 194, 213 and 214.

(b) United Nations Treaty Series, vol. 189, p. 137 and vol. 606, p. 267.

“(5) A person who contravenes a prohibition in paragraphs (1) to (3) commits an offence, but—

- (a) it is a defence for a person charged with the offence of contravening paragraph (1) to show that the person did not know and had no reasonable cause to suspect that the export was to Myanmar;
- (b) it is a defence for a person charged with the offence of contravening paragraph (2) to show that the person did not know and had no reasonable cause to suspect that the goods were for military use in Myanmar;
- (c) it is a defence for a person charged with the offence of contravening paragraph (3) to show that the person did not know and had no reasonable cause to suspect that the export was to, or the goods were for use by, the Myanmar security forces (as the case may be).”

16. In regulation 31 (supply and delivery of dual-use goods), in paragraph (4) for “United Kingdom, the Isle of Man” substitute “Territory”.

17. In regulation 36 (brokering services: non-UK activity relating to dual-use goods and dual-use technology)—

- (a) in the heading, for “non-UK” substitute “non-Territory”;
- (b) in paragraph (1), for “non-UK country”, in each place it occurs, substitute “non-Territory country”;
- (c) for paragraph (4) substitute—

“(4) In this regulation—

“non-Territory country” means a country that is not the Territory;

“third country” means a country that is not the Territory or Myanmar.”

18. In regulation 38 (military activities or otherwise enabling or facilitating the conduct of armed hostilities)—

- (a) in paragraph (2)(d), for “non-UK country” substitute “non-Territory country”;
- (b) in paragraph (5), for the definition of “non-UK country” substitute—

““non-Territory country” means a country that is not the Territory;”.

19. In regulation 41 (finance: exceptions from prohibitions)—

- (a) omit paragraph (6);
- (b) in paragraph (7), for the definition of “relevant institution” substitute—

““relevant institution”, in relation to the Territory, means a person domiciled in the Territory who would satisfy the threshold conditions for permission under Part 4A of the Financial Services and Markets Act 2000^(a) if it had its registered office (or if it does not have one, its head office) in the United Kingdom.”
- (c) omit paragraph (8).

20. For regulation 42 (exception for authorised conduct in a relevant country) substitute—

“Exceptions for authorised conduct outside the Territory

42.—(1) Where a person’s conduct outside the Territory would, in the absence of this paragraph, contravene a prohibition in any of regulations 11 to 15 (asset-freeze etc.) or Chapters 2 to 5 of Part 5 (Trade), the prohibition is not contravened if the conduct is authorised by a licence issued under regulation 44 (Treasury licences) (as it has effect in the United Kingdom) or regulation 45 (trade licences) (as it has effect in the United Kingdom).

(a) 2000 c. 8. Part 4A was inserted by the Financial Services Act 2012 (c. 21), section 11(2); and most recently amended by S.I. 2019/632.

(2) Where a person's conduct in a relevant country would, in the absence of this paragraph, contravene a prohibition in any of regulations 11 to 15 or Chapters 2 to 5 of Part 5 ("the relevant prohibition"), the relevant prohibition is not contravened if the conduct is authorised by a licence or other authorisation which is issued—

- (a) under the law of the relevant country, and
- (b) for the purpose of disapplying a prohibition in that jurisdiction which corresponds to the relevant prohibition.

(3) In this regulation—

"relevant country" means—

- (a) any of the Channel Islands,
- (b) the Isle of Man, or
- (c) any British overseas territory other than the Territory."

21. For regulation 43 (exception for acts done for purposes of national security or prevention of serious crime), substitute—

"43.—(1) Where an act would, in the absence of this paragraph, be prohibited by the prohibition in regulation 9(2) (confidentiality) or any prohibition in Part 3 (Finance) or Part 5 (Trade), that prohibition does not apply to the act if the act is one which—

- (a) a responsible officer has determined would be in the interests of—
 - (i) national security, or
 - (ii) the prevention or detection of serious crime in the United Kingdom or elsewhere, or
- (b) the Governor, with the consent of the Secretary of State, has determined would be in the interests of the prevention or detection of serious crime in the Territory.

(2) Where, in the absence of this paragraph, a thing would be required to be done under or by virtue of a provision of Part 7 (Information and records) or Part 9 (Maritime enforcement), that requirement does not apply if—

- (a) a responsible officer has determined that not doing the thing in question would be in the interests of—
 - (i) national security, or
 - (ii) the prevention or detection of serious crime in the United Kingdom or elsewhere, or
- (b) the Governor, with the consent of the Secretary of State, has determined that not doing the thing in question would be in the interests of the prevention or detection of serious crime in the Territory.

(3) In this regulation, "responsible officer" means a person in the service of the Crown or holding office under the Crown in the United Kingdom, acting in the course of that person's duty."

22. For regulation 44 (Treasury licences), substitute—

"Financial sanctions licences

44.—(1) The prohibitions in regulations 11 to 15 (asset-freeze etc.) do not apply to anything done under the authority of a licence issued by the Governor under this paragraph.

(2) The Governor may issue a financial sanctions licence only with the consent of the Secretary of State.

(3) The Governor may issue a financial sanctions licence which authorises acts by a particular person only where the Governor considers that it is appropriate to issue the licence for a purpose set out in Schedule 4."

23. In regulation 45 (trade licences)—

- (a) the existing text becomes paragraph (1);
- (b) in that paragraph, for “Secretary of State” substitute “Governor”;
- (c) at the end insert—

“(2) The Governor may issue a licence under paragraph (1) only with the consent of the Secretary of State.”

24. In regulation 46 (licences: general provisions)—

- (a) in paragraph (1), for “Treasury licences” substitute “financial sanctions licences”;
- (b) in paragraph (5), after “a licence may” insert “, with the consent of the Secretary of State,”.

25. In regulation 47 (finance: licensing offences), for “Treasury licence”, in both places it occurs, substitute “financial sanctions licence”.

26. For regulation 49 (section 8B(1) to (3) of the Immigration Act 1971: directions) substitute—

“Immigration directions

49.—(1) The Governor may, with the consent of the Secretary of State, direct that, in relation to any person falling within regulation 17 (immigration) whose name is specified, or who is of a specified description, that regulation has effect subject to specified exceptions.

(2) A direction under this regulation—

- (a) may contain conditions;
- (b) must be of a defined duration (and that duration may be expressed in any way, including, for example, being expressed in a way such that the direction ceases to have effect on, or within a specified period after, the occurrence of a specified event).

(3) The Governor may, with the consent of the Secretary of State, vary, revoke or suspend a direction under this regulation at any time.

(4) On the issue, variation, revocation or suspension of a direction under this regulation, the Governor may take such steps as the Governor considers appropriate to publicise the issue, variation, revocation or suspension of the direction.

(5) In this regulation, “specified” means specified in a direction under this regulation.”

27. In regulation 50 (finance: reporting obligations)—

- (a) for “Treasury”, in each place it occurs, substitute “Governor”;
- (b) for paragraph (5) substitute—

“(5) A relevant institution must inform the Governor without delay if that institution credits a frozen account in accordance with regulation 41(4) (finance: exceptions from prohibitions).”

28. For regulation 51 (“relevant firm”) substitute—

“51.—(1) The following are relevant firms for the purposes of regulation 50 (finance: reporting obligations)—

- (a) a relevant institution;
- (b) an undertaking that by way of business—
 - (i) operates a currency exchange office,
 - (ii) transmits money (or any representation of monetary value) by any means, or
 - (iii) cashes cheques that are made payable to customers;

- (a) in paragraph (1), for “A person authorised by the Secretary of State or the Commissioners (an “official”)” substitute “An authorised officer”;
- (b) in paragraphs (2) to (5), for “official”, in each place it occurs, substitute “authorised officer”;
- (c) in paragraph (5)(a), for “official’s functions” substitute “authorised officer’s functions”.

36. In regulation 58 (disclosure of information)—

- (a) in paragraph (1), for “Secretary of State, the Treasury or the Commissioners” substitute “Governor or an authorised officer”;
- (b) in paragraph (2)—
 - (i) after sub-paragraph (c) insert—

“(ca) taking any action with a view to instituting, or otherwise for the purposes of, any proceedings in the Territory for an offence under any provisions of these Regulations;”;
 - (ii) in sub-paragraph (d)—
 - (aa) in paragraph (i), after “Regulations” insert “(as they have effect in the United Kingdom)”;
 - (bb) in paragraph (ii), after “regulation 30(1) to (3) (export of goods)” insert “(as they have effect in the United Kingdom)”;
 - (iii) in sub-paragraph (e), after “any British overseas territory” insert “other than the Territory”;
 - (iv) in sub-paragraph (g), for “United Kingdom” substitute “Territory”;
- (c) in paragraph (3)(j), for “Secretary of State, the Treasury or the Commissioners (as the case may be) consider” substitute “Governor considers”.

37. In regulation 59 (Part 7: supplementary)—

- (a) for paragraph (2) substitute—

“(2) But nothing in that regulation authorises a disclosure that would contravene the data protection legislation if that legislation were applicable to the Territory.”;
- (b) in paragraph (5), for “Treasury licence” substitute “financial sanctions licence”;
- (c) after paragraph (5) insert—

“(5A) An authorised officer must, if requested to do so, produce evidence of their authority before exercising any power conferred by this Part.”;
- (d) in paragraph (6), in the definition of “privileged information”, omit “(in Scotland, to confidentiality of communications)”.

38. In Part 8 (Enforcement), at the beginning insert—

“Suspected ships, aircraft or vehicles

59A.—(1) Where an authorised officer has reasonable cause to suspect that a ship, aircraft or vehicle has been, or is being, or is about to be, used in the commission of an offence under Part 5 (Trade) or regulation 48(2) (trade: licensing offences), the authorised officer may—

- (a) in relation to an aircraft or vehicle, require the relevant person to keep the aircraft or vehicle and any goods it is carrying in the Territory, until the authorised officer notifies the relevant person that the aircraft or vehicle (as the case may be) may depart, or
- (b) in relation to a ship, require the relevant person—

Search warrants

59B.—(1) A magistrate or justice of the peace may issue a search warrant if satisfied by information on oath that—

- (a) there is reasonable cause to suspect that a relevant offence under these Regulations has been, or is being, or is about to be, committed, and
- (b) evidence in relation to the offence is to be found on a ship, aircraft, vehicle or premises specified in the information.

(2) A search warrant issued under this regulation is a warrant empowering an authorised officer to enter and search the ship, aircraft, vehicle or premises specified in the information, at any time within one month from the date of the warrant.

(3) The powers conferred on an authorised officer by a search warrant under this regulation include powers to—

- (a) in the case of a power to enter a ship, aircraft or vehicle, stop that ship, aircraft or vehicle;
- (b) enter any land, where such entry appears to the authorised officer to be necessary in order to enter the ship, aircraft, vehicle or premises specified in the information;
- (c) take such other persons and such equipment on to the ship, aircraft, vehicle or premises as appear to the authorised officer to be necessary;
- (d) inspect and seize any thing found in the course of a search if the authorised officer has reasonable cause to suspect that—
 - (i) it is evidence in relation to a relevant offence under these Regulations, or
 - (ii) it is necessary to seize it in order to prevent it being concealed, lost, damaged, altered or destroyed;
- (e) take copies of any document.

(4) An authorised officer who enters a ship, aircraft, vehicle or premises under a search warrant issued under this regulation may—

- (a) search any person found on the ship, aircraft, vehicle or premises whom the officer has reasonable cause to suspect to be in possession of any thing which may be required as evidence for the purposes of proceedings in respect of a relevant offence under these Regulations, and
- (b) seize any such thing found in such a search.

(5) Any thing seized under paragraphs (3)(d) or (4)(b)—

- (a) may be retained for so long as is necessary in all the circumstances, and
- (b) where that thing is prohibited goods and is not authorised by a trade licence, may be forfeited, disposed of or transferred as appropriate.

(6) A search of a person under paragraph (4)(a) must be carried out by a person of the same sex.

(7) An authorised officer may use reasonable force, if necessary, in the exercise of any power conferred by this regulation.

(8) An authorised officer must, if requested to do so, produce evidence of their authority before exercising any power conferred by this regulation.

(9) Nothing in this regulation affects any other provision of law conferring powers, imposing restrictions or enabling restrictions to be imposed in respect of ships, aircraft or vehicles.

(10) For the purposes of this regulation—

“dual-use goods” has the meaning given in regulation 21 (interpretation of other expressions used in this Part);

“information on oath” includes any other form of application for a search warrant applicable in the Territory;

47. Omit regulation 67 (application of Chapter 1 of Part 2 of the Serious Organised Crime and Police Act 2005(a)) (including the heading).

48. Omit regulation 68 (monetary penalties) (including the heading).

49. In regulation 69 (exercise of maritime enforcement powers)—

(a) for paragraph (1) substitute—

“(1) A maritime enforcement officer may, for a purpose mentioned in paragraph (2) or (3), exercise any of the maritime enforcement powers in relation to a relevant ship in international waters.”

(b) omit paragraph (5);

(c) at the end, insert—

“(6) In this Part, “a relevant ship” means, in relation to the Territory, a Territory ship.”

50. In regulation 70 (maritime enforcement officers)—

(a) in paragraph (1)—

(i) omit sub-paragraphs (b), (d), (e), (f) and (h);

(ii) for sub-paragraph (c) substitute—

“(c) a police officer of the Territory;”;

(iii) for sub-paragraph (g) substitute—

“(g) a customs officer of the Territory.”;

(b) omit paragraph (2).

51. In regulation 71(2)(c) (power to stop, board, search etc.), for “United Kingdom” substitute “Territory”.

52. Omit regulation 73 (restrictions on exercise of maritime enforcement powers) (including the heading).

53. In regulation 75 (notices), for “United Kingdom”, in each place it occurs, substitute “Territory”.

54. Omit regulation 76 (article 20 of the Export Control Order 2008) (including the heading).

55. Omit regulation 77 (trade: overlapping offences) (including the heading).

56. Omit regulation 78 (revocation of the Burma (Sanctions) (EU Exit) Regulations 2019) (including the heading).

57. In regulation 79 (transitional provision: prior obligations etc.)—

(a) in paragraph (1)—

(i) after “2019 Regulations” insert “(as it has effect in the United Kingdom)”;

(ii) in sub-paragraph (a), after “of those Regulations” insert “(as they have effect in the United Kingdom)”;

(iii) in sub-paragraph (b), after “of those Regulations” insert “(as it has effect in the United Kingdom)”;

(b) in paragraph (2), after “2019 Regulations” insert “(as it has effect in the United Kingdom)”;

(a) 2005 c. 15. Chapter 1 of Part 2 has been amended by the Terrorism Act 2006 (c. 11), section 33(2) to (4); the Northern Ireland (Miscellaneous Provisions) Act 2006 (c. 33), sections 26(2) and 30(2) and Schedules 3 and 5; the Bribery Act 2010 (c. 23), section 17(2) and Schedule 1; the Criminal Justice and Licensing (Scotland) Act 2010 (asp. 13), section 203 and Schedule 7, paragraph 77; the Crime and Courts Act 2013 (c. 22), section 15 and Schedule 8, paragraphs 157 and 159; the Criminal Finances Act 2017 (c. 22), section 51(1); the Sanctions and Anti-Money Laundering Act 2018, section 59(4) and Schedule 3, paragraph 4; S.I. 2006/1629; and S.I. 2014/834.