

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) section 53 (saving for prerogative powers), except that, in its application to a particular British overseas territory, the reference in subsection (1) of that section to the United Kingdom is to be read as a reference to that territory.

Revocation

4. The Burma (Sanctions) (Overseas Territories) Order 2020^(a) is revoked.

Richard Tilbrook
Clerk of the Privy Council

SCHEDULE 1

Article 1(2)

British overseas territories

Anguilla
British Antarctic Territory
British Indian Ocean Territory
Cayman Islands
Falkland Islands
Montserrat
Pitcairn, Henderson, Ducie and Oeno Islands
St Helena, Ascension and Tristan da Cunha
South Georgia and the South Sandwich Islands
The Sovereign Base Areas of Akrotiri and Dhekelia in the Island of Cyprus
Turks and Caicos Islands
Virgin Islands

SCHEDULE 2

Article 2

Modifications to be made in the extension of the Myanmar (Sanctions) Regulations 2021 to each British overseas territory listed in Schedule 1

1. In regulation 1 (citation and commencement)—
- (a) in the heading, omit “and commencement”;
 - (b) omit paragraphs (2) and (3).
2. In regulation 2 (interpretation)—
- (a) the existing text becomes paragraph (1);
 - (b) in that paragraph—
 - (i) in the appropriate places, insert the following definitions—
 - ““aircraft” has the same meaning as it has in section 6(9) of the Act;”;
 - ““authorised officer” means, in relation to the Territory—

(a) S.I. 2020/1264.

- (a) a member of Her Majesty’s forces in the Territory,
- (b) a police or customs officer of the Territory,
- (c) a person authorised by the Governor for the purposes of exercising, whether generally or in a particular case, any power conferred by—
 - (i) regulation 52 (finance: powers to request information),
 - (ii) regulation 53 (finance: production of documents),
 - (iii) regulation 55 (trade: information powers),
 - (iv) regulation 57 (general trade licences: inspection of records),
 - (v) regulation 58 (disclosure of information),
 - (vi) regulation 59A (suspected ships, aircraft or vehicles), or
 - (vii) regulation 59B (search warrants), or
- (d) any person acting under the authority of a person falling within any of paragraphs (a) to (c);”;

““financial sanctions licence” means, in relation to the Territory, a licence issued by the Governor under regulation 44(1);”;

““the Governor” is to be read in accordance with regulation 4A;”;

““Her Majesty’s forces” does not include a force of any country, other than the United Kingdom, that is a member of the Commonwealth;”;

““ship” has the same meaning as it has in section 7(14) of the Act;”;

““territorial sea of the Territory” means the territorial sea as defined in an enactment applicable in the Territory or, in the absence of such an enactment, the territorial sea adjacent to the Territory;”;

““Territory aircraft” means, in relation to the Territory—

- (a) an aircraft registered in the Territory, or
- (b) an aircraft which is not registered under the law of a country outside the Territory but is wholly owned by persons each of whom is a Territory person;”;

““Territory person” means, in relation to the Territory, a person who is—

- (a) an individual ordinarily resident in the Territory who is—
 - (i) a British citizen, a British overseas territories citizen, a British National (Overseas) or a British Overseas citizen,
 - (ii) a person who under the British Nationality Act 1981(a) is a British subject, or
 - (iii) a British protected person within the meaning of that Act, or
- (b) a body incorporated or constituted under the law of any part of the Territory;”;

““Territory ship” means, in relation to the Territory—

- (a) a ship registered in the Territory, or
- (b) a ship which is not registered under the law of a country outside the Territory but is wholly owned by persons each of whom is a Territory person;”;

““vehicle” means a land transport vehicle.”;

(ii) omit the definitions of—

- (aa) “the Commissioners”,
- (bb) “serious human rights violation or abuse”,
- (cc) “Treasury licence”, and
- (dd) “United Kingdom person”;

(a) 1981 c. 61. Part 4 has been amended by the British Overseas Territories Act 2002 (c. 8), section 1(1)(b); and the Nationality, Immigration and Asylum Act 2002 (c. 41), Schedule 2, paragraph 1(i).

(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;

- (c) a firm or sole practitioner that provides to other persons, by way of business—
 - (i) accountancy services,
 - (ii) advice about tax affairs,
 - (iii) auditing services,
 - (iv) legal or notarial services, or
 - (v) trust or company services;
- (d) a firm or sole practitioner that carries out, or whose employees carry out, estate agency work;
- (e) the holder of a licence to operate a casino in the Territory;
- (f) a person engaged in the business of making, supplying, selling (including selling by auction) or exchanging—
 - (i) articles made from gold, silver, platinum or palladium, or
 - (ii) precious stones or pearls.

(2) For the purposes of paragraph (1), the following definitions apply—

“estate agency work”, in relation to the Territory, is to be read in accordance with section 1 of the Estate Agents Act 1979(a), but as if references in that section to disposing of or acquiring an interest in land included (despite anything in section 2 of that Act) references to disposing of or acquiring an estate or interest in land outside the Territory where that estate or interest is capable of being owned or held as a separate interest;

“firm” means any entity that, whether or not a legal person, is not an individual, and includes a body corporate and a partnership or other unincorporated body;

“relevant institution” has the same meaning as it has in regulation 41;

“trust or company services” means any of the following services—

- (a) forming companies or other legal persons;
- (b) acting, or arranging for another person to act—
 - (i) as a director or secretary of a company,
 - (ii) as a partner of a partnership, or
 - (iii) in a similar capacity in relation to other legal persons;
- (c) providing a registered office, business address, correspondence or administrative address or other related services for a company, partnership or any other legal person or arrangement;
- (d) acting, or arranging for another person to act, as—
 - (i) a trustee of an express trust or similar legal arrangement, or
 - (ii) a nominee shareholder for a person.

(3) For the purposes of regulation 50(1), information or another matter comes to a relevant firm “in the course of carrying on its business” if the information or other matter comes to the firm—

- (a) in the case of a relevant firm within paragraph (1)(a), in the course of carrying on an activity in respect of which permission under Part 4A of the Financial Services and Markets Act 2000 would be required if it had its registered office (or if it does not have one, its head office) in the United Kingdom, and

(a) 1979 c. 38. Section 1 was amended by the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c. 73), Schedule 1, paragraph 40; the Planning (Consequential Provisions) Act 1990 (c. 11), Schedule 2, paragraph 42; the Planning (Consequential Provisions) (Scotland) Act 1997 (c. 11), Schedule 2, paragraph 28; the Planning Act (Northern Ireland) 2011 (c. 25), Schedule 6, paragraph 21; the Enterprise and Regulatory Reform Act 2013 (c. 24), section 70; S.I. 1991/2684; S.S.I. 2000/121; and S.I. 2001/1283.

(b) in the case of a relevant firm within any other provision of paragraph (1), in the course of carrying on an activity mentioned in that provision.”

29. In regulation 52 (finance: powers to request information)—

- (a) in paragraph (1), for “The Treasury” substitute “An authorised officer”;
- (b) in paragraph (2)—
 - (i) for “The Treasury”, in the first place it occurs, substitute “An authorised officer”;
 - (ii) for “the Treasury”, in the second place it occurs, substitute “the authorised officer”;
- (c) in paragraph (4), for “the Treasury believe” substitute “the authorised officer believes”;
- (d) in paragraph (5)—
 - (i) for “The Treasury” substitute “An authorised officer”;
 - (ii) for “Treasury licence” substitute “financial sanctions licence”;
- (e) for paragraph (6) substitute—

“(6) An authorised officer may request a person to provide information within paragraph (7) if the authorised officer believes that the person may be able to provide the information.”
- (f) in paragraph (7)—
 - (i) for “the Treasury” substitute “the authorised officer”;
 - (ii) in sub-paragraph (b)(iii), for “Treasury licence” substitute “financial sanctions licence”;
- (g) in paragraph (8), for “The Treasury” substitute “The authorised officer”;
- (h) in paragraph (10), for “the Treasury”, in both places it occurs, substitute “the authorised officer”.

30. In regulation 53 (finance: production of documents)—

- (a) in paragraph (2), for “the Treasury request that documents be produced, the Treasury” substitute “an authorised officer requests that documents be produced, the authorised officer”;
- (b) for paragraph (3), substitute—

“(3) Where an authorised officer requests a designated person or a person acting under a financial sanctions licence to produce documents, that person must—

 - (a) take reasonable steps to obtain the documents (if they are not already in the person’s possession or control);
 - (b) keep the documents under the person’s possession or control (except for the purpose of providing them to the authorised officer or as the authorised officer may otherwise permit).”

31. In regulation 54 (finance: information offences), in paragraph (1)(d), for “the Treasury” substitute “an authorised officer”.

32. For regulation 55 (trade: application of information powers in CEMA) substitute—

“Trade: information powers

55.—(1) An authorised officer may request a person who is concerned (in whatever capacity) in a relevant activity to provide such information as the authorised officer may reasonably require about the relevant activity.

(2) The authorised officer may specify the way in which, and the period within which, information is to be provided.

(3) If no such period is specified, the information which has been requested must be provided within a reasonable time.

(4) A request under paragraph (1) may include a request to produce specified documents or documents of a specified description.

(5) Where the authorised officer requests that documents be produced, the authorised officer may—

- (a) take copies or extracts from any document so produced,
- (b) request any person producing a document to give an explanation of it,
- (c) where that person is a body corporate, partnership or unincorporated body other than a partnership, request any person who is—
 - (i) in the case of a partnership, a present or past partner or employee of the partnership, or
 - (ii) in any other case, a present or past officer or employee of the body concerned, to give such an explanation, and
- (d) remove, at a reasonable time and for a reasonable period, any document so produced if the authorised officer considers it is necessary to do so.

(6) Where a document has been removed by an authorised officer under paragraph (5)(d)—

- (a) the authorised officer must, on request, provide a receipt for the document;
- (b) if the document is reasonably required for the proper conduct of a business, the authorised officer must, as soon as practicable and free of charge, provide a copy of the document to the person who produced it.

(7) Where a document requested to be produced under paragraph (4) is subject to a lien, the production or removal of the document in accordance with this regulation does not affect, and is not to be regarded as breaking, the lien.

(8) For the purposes of paragraph (1), a “relevant activity” means an activity—

- (a) which would, unless done under the authority of a trade licence, constitute a contravention of any prohibition in Chapters 2 to 5 of Part 5 (Trade), or
- (b) which would constitute a contravention of the prohibition in regulation 39 (circumventing etc. prohibitions).”

33. After regulation 55 (trade: information powers) insert—

“Trade: information offences

55A.—(1) A person commits an offence if that person—

- (a) without reasonable excuse, refuses or fails within the time and in the manner specified (or, if no time has been specified, within a reasonable time) to comply with any request under regulation 55 (trade: information powers);
- (b) knowingly or recklessly gives any information, or produces any document, which is false in a material particular in response to such a request;
- (c) with intent to evade any provision of regulation 55, destroys, mutilates, defaces, conceals or removes any document;
- (d) otherwise intentionally obstructs an authorised officer in the exercise of their powers under regulation 55.

(2) Where a person is convicted of an offence under this regulation, the court may make an order requiring that person, within such period as may be specified in the order, to comply with the request.”

34. In regulation 56(4) (general trade licences: records), for “Secretary of State” substitute “Governor”.

35. In regulation 57 (general trade licences: inspection of records)—

- (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—

- (i) not to cause or permit the ship to proceed with the voyage on which it is engaged or about to engage, until the authorised officer notifies the relevant person that the ship may proceed;
- (ii) not to land any part of the ship's cargo at any port specified by the authorised officer, except with the authorised officer's prior consent;
- (iii) if the ship is in port in the Territory, to cause the ship to remain there until the authorised officer notifies the relevant person that the ship may depart;
- (iv) if the ship is in any other place, to cause it to proceed to a port specified by the authorised officer and keep it there, until the authorised officer notifies the relevant person that the ship may depart.

(2) Where the authorised officer considers it necessary in order to secure compliance with a requirement made under paragraph (1), the authorised officer may detain the ship, aircraft or vehicle and any goods it is carrying.

(3) Where an authorised officer detains a ship, aircraft or vehicle and any goods it is carrying in accordance with paragraph (2), the authorised officer must deliver to the master of the ship, the aircraft operator or the owner of the vehicle (as the case may be) a detention direction.

(4) A detention direction under paragraph (3) must—

- (a) be in writing,
- (b) state the grounds on which the ship, aircraft or vehicle is detained, and
- (c) state that—
 - (i) the power to detain is exercised under this regulation, and
 - (ii) any requirements subject to which the detention is carried out must be complied with.

(5) Paragraph (6) applies, in relation to a ship or aircraft, if—

- (a) the ship or aircraft (as the case may be) is not a Territory ship or Territory aircraft, and
- (b) there is in the Territory a consular officer for the country to which the ship or aircraft belongs.

(6) A copy of the detention direction must be sent as soon as practicable to the nearest consular officer for the country to which the ship or aircraft belongs.

(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) In this regulation—

“consular officer”, in relation to a foreign country, means the officer recognised by Her Majesty as a consular officer of that foreign country in the Territory;

“the relevant person” means any of the following—

- (a) in relation to a ship, the owner, master or charterer of the ship;
- (b) in relation to an aircraft, the owner, charterer, operator or commander of the aircraft;
- (c) in relation to a vehicle, the owner, driver or operator of the vehicle.

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;

“justice of the peace” includes other competent judicial authorities within the Territory responsible for issuing search warrants;

“prohibited goods” means restricted goods or dual-use goods which have been or are being dealt with in contravention of any prohibition in Chapter 2 or 3 of Part 5 (Trade);

“relevant offence” means an offence which is punishable with a term of imprisonment of more than 6 months;

“restricted goods” has the meaning given in regulation 18 (definition of “restricted goods” and “restricted technology”).”

39. For regulation 60 (penalties for offences) substitute—

“**60.**—(1) Paragraphs (3) to (7) apply to—

- (a) Anguilla;
- (b) British Antarctic Territory;
- (c) British Indian Ocean Territory;
- (d) Cayman Islands;
- (e) Montserrat;
- (f) Pitcairn, Henderson, Ducie and Oeno Islands;
- (g) Turks and Caicos Islands;
- (h) Virgin Islands.

(2) Paragraphs (8) to (12) apply to—

- (a) Falkland Islands;
- (b) St Helena, Ascension and Tristan da Cunha;
- (c) South Georgia and the South Sandwich Islands;
- (d) the Sovereign Base Areas of Akrotiri and Dhekelia in the Island of Cyprus.

(3) A person who commits an offence under any provision of Part 3 (Finance) or regulation 47 (finance: licensing offences) is liable—

- (a) on summary conviction, to imprisonment for a term not exceeding 6 months, or a fine not exceeding £5,000 or its equivalent in the currency of the Territory, or both;
- (b) on conviction on indictment, to imprisonment for a term not exceeding 7 years, or a fine, or both.

(4) A person who commits an offence under any provision of Part 5 (Trade) is liable—

- (a) on summary conviction, to imprisonment for a term not exceeding 6 months, or a fine not exceeding £5,000 or its equivalent in the currency of the Territory, or both;
- (b) on conviction on indictment, to imprisonment for a term not exceeding 10 years, or a fine, or both.

(5) A person who commits an offence under regulation 9(6) (confidentiality), 48, 56(6) or 57(5) (offences in connection with trade licences) is liable—

- (a) on summary conviction, to imprisonment for a term not exceeding 6 months, or a fine not exceeding £5,000 or its equivalent in the currency of the Territory, or both;
- (b) on conviction on indictment, to imprisonment for a term not exceeding 2 years, or a fine, or both.

(6) A person who commits an offence under regulation 50(6) or 54 (information offences in connection with Part 3) is liable, on summary conviction, to imprisonment for a term not exceeding 6 months, or a fine not exceeding £5,000 or its equivalent in the currency of the Territory, or both.

(7) A person who commits an offence under regulation 55A (trade: information offences) is liable, on summary conviction, to a fine not exceeding £1,000 or its equivalent in the currency of the Territory.

(8) A person who commits an offence under any provision of Part 3 (Finance) or regulation 47 (finance: licensing offences) is liable on conviction to imprisonment for a term not exceeding 7 years, or a fine, or both.

(9) A person who commits an offence under any provision of Part 5 (Trade) is liable on conviction to imprisonment for a term not exceeding 10 years, or a fine, or both.

(10) A person who commits an offence under regulation 9(6) (confidentiality), 48, 56(6) or 57(5) (offences in connection with trade licences) is liable on conviction to imprisonment for a term not exceeding 2 years, or a fine, or both.

(11) A person who commits an offence under regulation 50(6) or 54 (information offences in connection with Part 3) is liable on conviction to imprisonment for a term not exceeding 6 months, or a fine not exceeding £5,000 or its equivalent in the currency of the Territory, or both.

(12) A person who commits an offence under regulation 55A (trade: information offences) is liable on conviction to a fine not exceeding £1,000 or its equivalent in the currency of the Territory.

(13) Where a fine in this regulation is expressed to be a sum in sterling or its equivalent in the currency of the Territory, the Governor may issue guidance specifying how to calculate the amount in the currency of the Territory which is to be considered equivalent to that sum in sterling.”

40. In regulation 61 (liability of officers of bodies corporate etc.), omit paragraph (4).

41. In regulation 62 (jurisdiction to try offences)—

- (a) in paragraphs (1) and (2), for “United Kingdom”, in each place it occurs, substitute “Territory”;
- (b) omit paragraphs (3) and (4).

42. After regulation 62 (jurisdiction to try offences), insert—

“Consent to prosecutions

62A.—(1) Proceedings for an offence under these Regulations must not be instituted in the Territory except with the consent of the principal public officer of the Territory responsible for criminal prosecutions.

(2) Nothing in paragraph (1) prevents—

- (a) the arrest, or the issue or execution of a warrant for the arrest, of any person in respect of an offence under these Regulations, or
- (b) the remand in custody or on bail of any person charged with such an offence.”

43. For regulation 63 (procedure for offences by unincorporated bodies) substitute—

“63. Any provision in an enactment which applies in the Territory in relation to criminal proceedings brought against a body corporate applies also for the purposes of proceedings in the Territory for an offence under these Regulations brought against an unincorporated body.”

44. In regulation 64 (time limit for proceedings for summary offences), omit paragraph (4).

45. Omit regulation 65 (trade enforcement: application of CEMA) (including the heading).

46. Omit regulation 66 (trade offences in CEMA: modification of penalty) (including the heading).

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.

- (c) in paragraph (4)(b), for “Schedule 4 (Treasury licences: purposes)” substitute “Schedule 4 (Financial sanctions licences: purposes)”.

58. In regulation 80 (transitional provision: Treasury licences)—

- (a) in the heading, for “Treasury licences” substitute “financial sanctions licences”;
- (b) in paragraph (1)(a), for “Treasury” substitute “Governor”;
- (c) in paragraph (2), for “Treasury under regulation 44(1) (Treasury licences)” substitute “Governor under regulation 44(1) (financial sanctions licences)”.

59. In regulation 81 (transitional provision: trade licences), for “Secretary of State”, in each place it occurs, substitute “Governor”.

60. In Schedule 4 (Treasury licences: purposes)—

- (a) in the heading, for “Treasury licences” substitute “Financial sanctions licences”;
- (b) in the definition of “frozen funds or economic resources” in paragraph 1, for “the designation of that person for the purpose of that regulation” substitute “that person being a designated person for the purposes of Part 3 (Finance) as defined in regulation 10 (meaning of “designated person” in Part 3)”;
- (c) in paragraph 6(b)(ii) (pre-existing judicial decisions etc), for “United Kingdom” substitute “Territory”.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order extends with modifications the Myanmar (Sanctions) Regulations 2021 (S.I. 2021/496) (“the Myanmar Regulations”) as amended from time to time to all British overseas territories except Bermuda and Gibraltar (which implement sanctions under their own legislative arrangements).

Section 63(3)(c) of the Sanctions and Anti-Money Laundering Act 2018 (c. 13) (“the Sanctions Act”) provides that Her Majesty may by Order in Council provide for any provision of Part 1 of that Act, or any regulations under Part 1 of that Act, to extend with or without modifications to any of the British overseas territories. Section 63(4) provides that this includes the power to extend any regulations as amended from time to time.

The Myanmar Regulations were made under Part 1 of the Sanctions Act to establish a sanctions regime in relation to Myanmar for the purposes of: promoting the peace, stability and security of Myanmar; promoting respect for democracy, the rule of law and good governance in Myanmar; discouraging actions, policies or activities which repress the civilian population in Myanmar; and promoting compliance with international human rights law and respect for human rights in Myanmar.

The Myanmar Regulations, as modified and extended to the British overseas territories listed in Schedule 1 by this Order (“the modified Regulations”), provide that a person designated by the Secretary of State for being, or having been, involved in certain activities, is a designated person for the purposes of the modified Regulations. Designated persons may be excluded from the territory and may be made subject to financial sanctions, including having their funds or economic resources frozen.

The modified Regulations impose 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). They also impose 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).

The modified Regulations provide for certain exceptions to this sanctions regime (for example to allow for frozen accounts to be credited with interest or other earnings and to allow acts done for the purpose of national security or the prevention of serious crime). The Governor of a British overseas territory to which the modified Regulations extend may, with the consent of the Secretary of State issue a licence in respect of activities that would otherwise be prohibited under the modified Regulations. Schedule 4 sets out the purposes pursuant to which the Governor may issue a financial sanctions licence authorising acts by a particular person. The modified Regulations also require the Governor of the territory to publish an up-to-date list of designated persons.

The modified Regulations prescribe powers for the provision and sharing of information to enable the effective implementation and enforcement of the sanctions regime. The modified Regulations also prescribe enforcement powers in relation to suspected ships, aircraft or vehicles, or for the issue of a search warrant. The modified Regulations make it a criminal offence to contravene, or circumvent, any of the prohibitions in the modified Regulations and prescribe the penalties that apply to such offences.

This Order also extends to the territories for the purposes of the modified Regulations specific provisions of Part 1 of the Sanctions Act, namely provisions relating to protection for acts done for purposes of compliance, Crown application and saving for prerogative powers.

The Myanmar Regulations revoke and replace in the United Kingdom the existing sanctions regime established by the Burma (Sanctions) (EU Exit) Regulations 2019 (S.I. 2019/136) (“the Burma Regulations”). Therefore, this Order revokes the Burma (Sanctions) (Overseas Territories) Order 2020 (S.I. 2020/1264), which extended the Burma Regulations to the relevant British overseas territories.

An impact assessment has not been prepared for this instrument: the territorial extent of the instrument and the modified Regulations is the British overseas territories listed in Schedule 1, and no, or no significant, impact is foreseen on the private, voluntary or public sectors in the United Kingdom.

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