



UK SANCTIONS STATUTORY INSTRUMENTS REVIEW: BURMA

This review of the UK's autonomous sanctions regimes has been prepared for general information purposes and in order to illustrate the potential impact of the new UK sanctions provisions. This review does not constitute legal advice and should not be relied on by UK Finance members or any other parties. The impact and applicability of the new autonomous sanctions regimes will differ from firm to firm. It is important, therefore, for all parties to consider and assess the impact of the new sanctions regimes individually and, if appropriate, with the benefit of their own legal advice which takes into account their relevant activities.

INTRODUCTION

Three sources have traditionally driven sanctions legislation in the United Kingdom. The UK currently applies and implements sanctions originating from the United Nations; sanctions originating from the European Union, commonly referred to as restrictive measures; as well as its own domestic sanctions.

European sanctions have been implemented through regulations made under the European Communities Act 1972¹. As the Transition Period comes to an end on 31st December 11:00pm GMT as agreed in the Withdrawal Agreement², EU legislation and regulations will cease to have effect in the United Kingdom.

In 2018, the UK passed the Sanctions and Anti Money Laundering Act³ which allows ministers to make sanctions regulations in application of UN sanctions or any other international obligation, or for a range of purposes⁴ (including furthering the prevention of terrorism, furthering a foreign policy objective, in the interest of international peace and security, etc.). Under this Act, a number of statutory instruments have been laid before parliament in the past few months. Most will come into force at the end of the Transition Period, with the exception of the Global Human Rights Sanctions Regulations 2020⁵, the first UK autonomous sanctions regime, which came into force on 6th July 2020.

OBJECTIVES

This paper aims to provide a helpful resource for financial institutions and other firms with a responsibility to comply with UK sanctions legislation either in the UK or overseas.

SCOPE

This paper covers statutory instruments passed in application of SAMLA and replacing regulations made under the European Communities Act 1972, as well as new autonomous regimes such as the Global Human Rights Sanctions Regulations. This paper should be read in correlation with SAMLA provisions and relevant definitions.

This review focuses on financial sanctions and related trade sanctions that could impact financial institutions and firms in international trade. It does not provide an analysis of other types of sanctions such as immigration.

The paper studies all sanctions regulations, both country and "thematic" (e.g. Global Human Rights Sanctions) sanctions regimes. The tables that follow illustrate a range of areas in which members have indicated they face difficulty preparing for the end of the Transition period. The tables are not comprehensive as there are still UK Sanctions Statutory Instruments (SIs) to be published. Many firms are still working through their post-transition period sanctions obligations, and it is likely that other issues will arise as their analysis of the legislative and regulatory framework is finalised.

¹ European Communities Act 1972 (<https://www.legislation.gov.uk/ukpga/1972/68/contents>)

² <https://www.gov.uk/government/publications/new-withdrawal-agreement-and-political-declaration>

³ Sanctions and Anti-Money Laundering Act 2018 (<https://www.legislation.gov.uk/ukpga/2018/13/contents/enacted>)

⁴ Ibid., see Chapter 1, Section 1.

⁵ The Global Human Rights Sanctions Regulations 2020 (<https://www.legislation.gov.uk/uksi/2020/680/contents/made>)

The issues are divided into the following categories:

- a) Areas where existing EU-derived Sanctions requirements drop away and are not carried through to the equivalent UK autonomous SI.
- b) Areas where the UK autonomous SI brings in new Sanctions requirements not present in the equivalent EU-derived SI.
- c) Areas where the spirit of the requirement remains, but the wording or language changes and causes a different opinion or obligation to arise.
- d) UK autonomous Sanctions SIs that use a different interpretation or language for a provision, causing inconsistency in the total UK Sanctions SI framework

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The Burma (Sanctions) (EU Exit) Regulations 2019

Restrictive Measure / Category	UK SI reference	EU Legislative SI reference	Change to legal obligation	Impact
Power to designate	The Burma (Sanctions) (EU Exit) Regulations 2019 – Regs 5 to 6, Regs 8 and 9	-	(b)	<p>Low Impact</p> <p>The 2019 UK SI sets out specific designation criteria at Regulation 5 which the Secretary of State must adhere to. These are new requirements as the Secretary of State did not have the power to designate under the 2018 EU SI as designations were determined by the EU.</p> <p>Although this is unlikely to have a material impact on financial institutions, these institutions should monitor any new designations under the 2019 UK SI.</p>
Ownership and control provisions	The Burma (Sanctions) (EU Exit) Regulations 2019 – Reg 7		(c)	<p>High Impact</p> <p>The 2019 UK SI provides that, for the purposes of the asset freeze and prohibition on making funds or economic resources available, a person will be deemed to be "<i>owned or controlled directly or indirectly</i>" by another person if either of two conditions are met.</p> <p>(1) <i>A person who is not an individual ("C") is "owned or controlled directly or indirectly" by another person ("P") if either of the following two conditions is met (or both are met).</i></p> <p>(2) <i>The first condition is that P—</i></p> <p style="padding-left: 40px;"><i>(a) holds directly or indirectly more than 50% of the shares in C,</i></p> <p style="padding-left: 40px;"><i>(b) holds directly or indirectly more than 50% of the voting rights in C, or</i></p> <p style="padding-left: 40px;"><i>(c) holds the right directly or indirectly to appoint or remove a majority of the board of directors of C.</i></p> <p>(3) <i>Schedule 1 contains provision applying for the purpose of interpreting paragraph (2).</i></p> <p>(4) <i>The second condition is that it is reasonable, having regard to all the circumstances, to</i></p>

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Restrictive Measure / Category	UK SI reference	EU Legislative SI reference	Change to legal obligation	Impact
				<p><i>expect that P would (if P chose to) be able, in most cases or in significant respects, by whatever means and whether directly or indirectly, to achieve the result that affairs of C are conducted in accordance with P's wishes.</i></p> <p>This new provision extends and replaces existing guidance previously provided by the EU. Schedule 1 of the 2019 UK SI sets out the rules of interpretation for determining ownership and control.</p> <p>The rules of interpretation may have an impact on financial institutions in relation to the due diligence and investigational efforts to determine whether the conditions in Regulation 7 are met.</p>
Asset freezes in relation to designated persons	The Burma (Sanctions) (EU Exit) Regulations 2019 – Reg 11(5)(b)	The Burma (European Union Financial Sanctions) Regulations 2018 – Reg 3(2)(b)	(c)	<p>Low Impact</p> <p>For the purposes of the prohibition on dealing with economic resources owned, held or controlled by a designated person, the 2018 EU SI previously defined the phrase "<i>deal with</i>" as the "<i>exchange, or use in exchange, for funds, goods or services</i>".</p> <p>This definition is extended in the 2019 UK SI to add "<i>(whether by pledging them as security or otherwise)</i>".</p> <p>Although it is unlikely to have an impact on financial institutions, it will be important to monitor the publication of any guidance provided by the UK government in relation to this</p>

Restrictive Measure / Category	UK SI reference	EU Legislative SI reference	Change to legal obligation	Impact
				additional wording.
Asset freezes in relation to designated persons	The Burma (Sanctions) (EU Exit) Regulations 2019 – Reg 11(6)	The Burma (European Union Financial Sanctions) Regulations 2018 – Reg 3	(b)	<p>Low Impact</p> <p>The 2019 UK SI includes a new provision stating that funds or economic resources that are "<i>owned, held or controlled</i>" by a person includes a reference to: (i) funds or economic resources in which the person has any legal or equitable interest, regardless of whether the interest is held jointly with any other person and regardless of whether any other person holds an interest in the funds or economic resources, or (ii) any tangible property (other than real property), or bearer security, that is comprised in funds or economic resources and is in the possession of the person.</p> <p>This change is unlikely to have a material impact on the obligations of financial institutions.</p>
Asset freezes in relation to designated persons	The Burma (Sanctions) (EU Exit) Regulations 2019 – Reg 11(7)	The Burma (European Union Financial Sanctions) Regulations 2018 – Reg 3	(b)	<p>High Impact</p> <p>The 2019 UK SI provides that funds or economic resources are considered "<i>owned, held or controlled by a designated person if they are owned, held or controlled by a person who is owned or controlled directly or indirectly (within the meaning of regulation 7) by the designated person</i>".</p> <p>This extends the scope of the wording in the 2018 EU SI by adding an express prohibition on dealing with funds and economic resources of entities owned or controlled by a designated person.</p> <p>This change appears to reflect existing OFSI guidance on ownership and control (July 2020).</p>

Restrictive Measure / Category	UK SI reference	EU Legislative SI reference	Change to legal obligation	Impact
Making funds and economic resources available to designated persons	The Burma (Sanctions) (EU Exit) Regulations 2019 – Reg 12 and Reg 14	The Burma (European Union Financial Sanctions) Regulations 2018 – Reg 4 and Reg 6	(c)	<p>High Impact</p> <p>The 2018 EU SI states that “a person (“P”) must not make funds/economic resources available, directly or indirectly, to a designated person if P knows, or has reasonable cause to suspect, that P is making the funds/economic resources so available”. In relation to economic resources it is a further requirement that the designated person would be likely to exchange the economic resources, or use them in exchange, for funds, goods or services.</p> <p>The 2019 UK SI explicitly states making funds/economic resources available indirectly to a designated person includes making them available to a person who is owned or controlled directly or indirectly by the designated person.</p> <p>The 2019 UK SI appears to be more restrictive than existing EU guidance which provides that making available funds and economic resources to a non-designated person owned or controlled by a designated person, is considered to be making available these funds and economic resources to the designated person, albeit this could be rebutted on the facts.⁶ The 2019 UK SI does not include a rebuttable presumption.</p>
Trade Controls	The Burma (Sanctions) (EU Exit) Regulations 2019 – Reg. 28	-	(b)	<p>High Impact</p> <p>New restrictions are imposed in the UK SI concerning the provision of “<i>brokering services</i>” in relation to activity relating to restricted goods and restricted technology.</p> <p>This change is unlikely to have a material impact on the obligations of financial institutions.</p>
Exceptions	The Burma (Sanctions) (EU Exit) Regulations 2019 – Reg 33(1)	-	(b)	<p>Low Impact</p> <p>For the purposes of the prohibition on dealing with funds or economic resources owned, held or controlled by a designated person, the 2019 UK SI sets out the following new exception:</p>

⁶<https://data.consilium.europa.eu/doc/document/ST-8519-2018-INIT/en/pdf> para. 66

Restrictive Measure / Category	UK SI reference	EU Legislative SI reference	Change to legal obligation	Impact
				<p>(1) <i>The prohibition in regulation 11 (asset-freeze in relation to designated persons) is not contravened by an independent person ("P") transferring to another person a legal or equitable interest in funds or economic resources where, immediately before the transfer, the interest—</i></p> <p style="padding-left: 40px;">(a) <i>is held by P, and</i></p> <p style="padding-left: 40px;">(b) <i>is not held jointly with the designated person.</i></p> <p>(2) <i>In paragraph (1) "independent person" means a person who—</i></p> <p style="padding-left: 40px;">(a) <i>is not the designated person, and</i></p> <p style="padding-left: 40px;">(b) <i>is not owned or controlled directly or indirectly (within the meaning of regulation 7) by the designated person.</i></p> <p>This change is unlikely to have a material impact on the obligations of financial institutions.</p>
Exceptions	The Burma (Sanctions) (EU Exit) Regulations 2019 – Reg 33(6)	-	(b)	<p>Low Impact</p> <p>The 2019 UK SI sets out the following new exception to the prohibitions on dealing with funds or economic resources owned, held or controlled by a designated person, and on making funds available to or for the benefit of a designated person, allowing designated persons to transfer funds between two accounts:</p> <p>(3) <i>The prohibitions in regulations 11 to 13 are not contravened in relation to a designated person ("P") by a transfer of funds from account A to account B, where—</i></p> <p style="padding-left: 40px;">(a) <i>account A is with a relevant institution which carries on an excluded activity within the meaning of section 142D of the Financial Services and Markets Act 2001,</i></p> <p style="padding-left: 40px;">(b) <i>account B is with a ring-fenced body within the meaning of section 142A of the Financial Services and Markets Act 2002, and</i></p> <p style="padding-left: 40px;">(c) <i>accounts A and B are held or controlled (directly or indirectly) by P.</i></p>

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				This change is unlikely to have a material impact on the obligations of financial institutions.
Exceptions	The Burma (Sanctions) (EU Exit) Regulations 2019 – Reg 34	-	(b)	<p>Low Impact</p> <p>The 2019 UK SI contains a new exception which provides that prohibitions within the SI do not apply where it is in the interests of national security or to prevent or detect a serious crime in the UK or elsewhere.</p> <p>This is unlikely to have an impact on financial institutions.</p>
Credits to frozen accounts	The Burma (Sanctions) (EU Exit) Regulations 2019 – Reg 33	The Burma (European Union Financial Sanctions) Regulations 2018 – Reg 8 and Schedule	(a), (b) and (c)	<p>Medium impact</p> <p>Both the 2018 EU SI and the 2019 UK SI contain exceptions relating to certain credits to frozen accounts. However, the following should be noted:</p> <ul style="list-style-type: none"> - in the 2018 EU SI the exceptions applied to “a person”, whereas in the 2019 UK SI the exceptions also apply to “relevant institutions”, which is defined as a person that has permission under Part 4A of the Financial services and Markets Act 2000 (permission to carry on regulated activity); - and - the exception under the 2018 EU SI which permitted a person to credit a frozen account with payments due under judicial, administrative or arbitral decisions rendered in an EU Member State or enforceable in the Member State concerned without contravening the prohibitions on making funds available to or for the benefit of a designated person has been deleted and this exception is not present in the 2019 UK SI; <p>Financial institutions should ensure they understand the amended provisions to ensure any credits made to frozen accounts are in accordance with the new and amended exceptions.</p>

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Treasury licences	The Burma (Sanctions) (EU Exit) Regulations 2019 – Reg 35 (1)-(2), 38, Schedule 4	The Burma (European Union Financial Sanctions) Regulations 2018 – Reg 9	(b)	<p>Low Impact</p> <p>The 2019 UK SI limits the ability of the Treasury to issue a licence authorising acts by a particular person where the Treasury considers a licence appropriate for a purpose as set out in Schedule 4 of the 2019 UK SI. Similar restrictions did not apply expressly under the 2018 EU SI.</p> <p>Although it is unlikely to have a material impact on financial institutions, such institutions should familiarise themselves with the circumstances in which licences can be granted and ensure the terms of any licence are complied with when a licence is granted.</p>
Treasury licences	The Burma (Sanctions) (EU Exit) Regulations 2019 – Reg 37 (4) – (6)	The Burma (European Union Financial Sanctions) Regulations 2018 – Reg 9	(b)	<p>Low Impact</p> <p>Under the 2018 EU SI the Treasury may vary or revoke a licence at any time. The new 2019 UK SI further provides that a person who issues a licence may also <i>suspend</i> it at any time.</p> <p>This is unlikely to have a material impact on financial institutions although the ability of the Treasury to issue general licence should be monitored.</p>
Treasury licences	The Burma (Sanctions) (EU Exit) Regulations 2019 – Reg 38	The Burma (European Union Financial Sanctions) Regulations 2018	(c)	<p>Low Impact</p> <p>Under the 2018 EU SI, a person commits an offence if they “<i>knowingly or recklessly provides information that is false in a material respect, or provides or produces a document that is not what it purports to be.</i>” The 2019 UK SI adds that this is applicable in the event that the licence</p>

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		– Reg 9 (5)		is sought “ <i>whether for P or anyone else</i> ”. This change is unlikely to have a material impact on the obligations of financial institutions.
Reporting obligations	The Burma (Sanctions) (EU Exit) Regulations 2019 – Reg 41 and 42	The Burma (European Union Financial Sanctions) Regulations 2018 – Reg 15 and Schedule	(c)	Low Impact The 2018 EU SI imposed reporting obligations on “ <i>relevant institutions</i> ” or “ <i>relevant business or profession</i> ”. In the 2019 UK SI this has been replaced with “ <i>relevant firm</i> ”. Regulation 42 in the 2019 UK SI clearly defines what a “ <i>relevant firm</i> ” is, extending the scope of the entities concerned by the information and reporting obligations. This change is unlikely to have a material impact on the obligations of financial institutions.
Reporting obligations	The Burma (Sanctions) (EU Exit) Regulations 2019 – Reg 41(4)	The Burma (European Union Financial Sanctions) Regulations 2018 – Schedule, Reg 1 (4)	(c)	Low Impact The 2018 EU SI required relevant institutions which had a customer who was a designated person to inform the treasury of the “ <i>nature and amount or quantity of any funds or economic resources held by it for the customer</i> ”. The 2019 UK SI adds “ <i>at the time when it first had the knowledge or suspicion</i> ” to this existing obligation, thereby adding an additional element to the reporting obligation. This change is unlikely to have a material impact on the obligations of financial institutions.
Treasury and trade licences	The Burma (Sanctions) (EU Exit) Regulations 2019 – Reg 41(4)	The Burma (European Union Financial Sanctions) Regulations 2018,	(c)	Medium Impact The EU Burma Financial Sanctions SI requires a relevant institution to inform the Treasury without delay if it credits a frozen account with payments due under contracts, agreements or obligations that were concluded or arose before the account became a frozen account, or

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		Regulation 8(3)		with payments due under judicial, administrative or arbitral decisions rendered in an EU Member State or enforceable in the UK. Under the UK Burma SI, a relevant institution must inform the Treasury without delay if that institution credits an account in accordance with Regulation 33(4) (receipt of funds to credit a frozen account) or transfers funds from a frozen account in accordance with Regulation 33(6).
Disclosure of information	The Burma (Sanctions) (EU Exit) Regulations 2019 – Reg 49	The Burma (European Union Financial Sanctions) Regulations 2018 – Schedule	(b)	<p>Medium Impact</p> <p>Both the 2018 EU SI and the 2019 UK SI set out provisions regarding the disclosure of information obtained pursuant to the relevant regulations. However, there are some key differences in the new 2019 UK SI, including:</p> <ul style="list-style-type: none"> - The 2018 EU SI authorised the disclosure of information by the Treasury, whereas the 2019 UK SI authorises the disclosure of information by the Treasury <i>or the Secretary of State</i>; - Both the 2018 EU SI and the 2019 UK SI permit disclosure to “any other regulatory body”, however, the 2018 EU SI stated “including those of other Member States”, whereas the 2019 UK SI is broader and states “whether or not in the United Kingdom”; - Both the 2018 EU SI and the 2019 UK SI permit disclosure to other Governments, however, the 2018 EU SI stated “the Government of a Member State” whereas the 2019 UK SI is broader and states “the Government of any country”; - Both the 2018 EU SI and the 2019 UK SI permit disclosure to the Council of the European Union and the European Commission, however the 2019 UK SI also includes the European External Action Service; and - The 2019 UK SI also has a new category for disclosure which states that disclosure can be made to “<i>any other person where the Secretary of State or the Treasury (as the case may be) consider that it is appropriate to disclose the information</i>”.
Consent to prosecute	-	The Burma (European Union	(a)	<p>Low Impact</p> <p>The 2018 EU SI stated that proceedings for offences under the regulations (other than for</p>

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		Financial Sanctions) Regulations 2018 – Reg 14		summary offences) could only be instituted with the consent of the Attorney General (in England and Wales) and with the consent of the Advocate General for Northern Ireland or the Director of Public Prosecutions for Northern Ireland (depending on the circumstances). This requirement does not appear to be present in the new 2019 UK SI. –
Application of prohibitions and requirement outside the United Kingdom	The Burma (Sanctions) (EU Exit) Regulations 2019 – Reg (3)(2) & (5)	The Export Control (Burma Sanctions) (No2) Order 2018– Reg 2	(b)	Low impact The 2019 UK SI adds the additional provision that a United Kingdom person or any person may contravene a relevant prohibition or ‘ <i>may comply, or fail to comply, with a relevant requirement by conduct in the territorial sea.</i> ’ This is more specific than the 2018 Export Order that refers to ‘ <i>conduct wholly or partly outside the United Kingdom.</i> ’ This change is unlikely to have a material impact on the obligations of financial institutions.
Restricted goods and restricted technology	The Burma (Sanctions) (EU Exit) Regulations 2019 – Reg 18 &19	The Export Control (Burma Sanctions) (No2) Order 2018 – Reg 5	(c)	Low Impact The 2018 Export Order refers to “ <i>equipment</i> ”, “ <i>goods</i> ”, “ <i>technology</i> ”, “ <i>dual-use goods</i> ” and “ <i>software</i> ” whereas the 2019 UK SI refers to these as “ <i>restricted goods</i> ” and “ <i>restricted technology</i> ”. “Restricted goods” means: <ul style="list-style-type: none"> - (a) military goods - (b) dual-use goods - (c) internal repression goods, and - (d) interception and monitoring goods “Restricted technology” means: <ul style="list-style-type: none"> - (a) military technology - (b) dual-use technology

Restrictive Measure / Category	UK SI reference	EU Legislative SI reference	Change to legal obligation	Impact
				<ul style="list-style-type: none"> - (c) internal repression technology, and - (d) interception and monitoring technology <p>The change in definitions is unlikely to have a significant impact on financial institutions.</p>
Scope of prohibition	The Burma (Sanctions) (EU Exit) Regulations 2019 – Reg 21(4)	The Export Control (Burma Sanctions) (No2) Order 2018 – Reg 5 (a) – (k)	(c)	<p>Low impact</p> <p>The 2019 UK SI clarifies the scope of the prohibitions. The 2018 Export Order states the prohibitions relate to “<i>any natural or legal person, entity or body in, or for use in, Myanmar/Burma</i>” whereas the 2019 UK SI refers to “<i>any person connected with Burma</i>”.</p> <p>A person is to be regarded as “<i>connected with Burma</i>” if the person is:</p> <ul style="list-style-type: none"> (a) an individual who is, or an association or combination of individuals who are, ordinarily resident in Burma; (b) an individual who is, or an association or combination of individuals who are, located in Burma; (c) a person, other than an individual, which is incorporated or constituted under the law of Burma, or (d) a person, other than an individual, which is domiciled in Burma. <p>This definition differs in relation to the provision of interception and monitoring services and in this regard a person is “<i>connected with Burma</i>” if the person works for the Government of Burma or otherwise carries on activities on its behalf or under its direction.</p> <p>Given the nature of restricted goods and technology, the impact on financial institutions is likely to be low.</p>
Exporting, supplying,	The Burma (Sanctions) (EU	The Export Control (Burma	(c)	<p>Low Impact</p> <p>The 2018 Export Order prohibits the sale of equipment listed in Annex 1 which might be used</p>

Restrictive Measure / Category	UK SI reference	EU Legislative SI reference	Change to legal obligation	Impact
delivering, making available and transferring restricted goods and restricted technology	Exit) Regulations 2019 – Regs 22 to 25	Sanctions) (No2) Order 2018 – Reg 5 (2) (a), (f), and (i)		<p>for internal repression, the provision of technical assistance relating to military activities and the provision of financial assistance in relation to military activities amongst other activities.</p> <p>The 2019 UK SI separates restricted items into “restricted goods” and “restricted technology” and prohibits:</p> <ul style="list-style-type: none"> - the export of restricted goods - the supply and delivery of restricted goods; - making restricted goods and restricted technology available; and - the transfer of restricted technology. <p>The 2019 UK SI therefore mirrors the trade embargo imposed by the 2018 Export Order, but clarifies the scope.</p> <p>Given the nature of restricted goods and technology, the impact on financial institutions is likely to be low.</p>
Provision of military-related services	The Burma (Sanctions) (EU Exit) Regulations 2019 – 30 (1)	The Export Control (Burma Sanctions) (No2) Order 2018 – Reg 5 (b), (c), (g), (h)	(c)	<p>Low Impact</p> <p>The 2018 Export Order trade prohibitions refer to “military end users”, “Border Guard Police” and/or “military use”.</p> <p>The 2019 UK SI imposes a specific obligation to <i>‘not directly or indirectly provide military-related services to or for the benefit of the Tatmadaw, or to any person acting on its behalf or under its direction.’</i></p> <p>This prohibition specifically targets the Tatmadaw (the Burmese army), by prohibiting military-related services, defined as the provision of technical assistance, armed personnel, financial services and brokering services. Although the 2019 UK SI no longer specifically mentions other military end users and the Board Guard Police, by virtue of Regulation 21(4), these would fall within the scope of persons connected to Burma.</p>

Restrictive Measure / Category	UK SI reference	EU Legislative SI reference	Change to legal obligation	Impact
				Given the nature of this prohibition, the impact on financial institutions is likely to be low.
Licences	The Burma (Sanctions) (EU Exit) Regulations 2019 – 39 (1)	The Export Control (Burma Sanctions) (No2) Order 2018 – Reg 4 (7) (b)	(c)	<p>Low impact</p> <p>Under the 2018 Export Order, a person commits an offence if they “<i>knowingly or recklessly provide[s] information that is false in a material respect, or provides or produces a document that is not what it purports to be.</i>” The 2019 UK SI adds that this is applicable in the event that the licence is sought “<i>whether for P or anyone else</i>”.</p> <p>This change is unlikely to have a material impact on the obligations of financial institutions.</p>

High Impact

Restrictive Measure / Category	UK SI reference	EU Legislative SI reference	Change to legal obligation	Impact
Ownership and control provisions	The Burma (Sanctions) (EU Exit) Regulations 2019 – Reg 7		(c)	<p>High Impact</p> <p>The 2019 UK SI provides that, for the purposes of the asset freeze and prohibition on making funds or economic resources available, a person will be deemed to be "<i>owned or controlled directly or indirectly</i>" by another person if either of two conditions are met.</p> <p><i>(1) A person who is not an individual ("C") is "owned or controlled directly or indirectly" by another person ("P") if either of the following two conditions is met (or both are met).</i></p> <p><i>(2) The first condition is that P—</i></p> <p style="padding-left: 40px;"><i>(a) holds directly or indirectly more than 50% of the shares in C,</i></p> <p style="padding-left: 40px;"><i>(b) holds directly or indirectly more than 50% of the voting rights in C, or</i></p> <p style="padding-left: 40px;"><i>(c) holds the right directly or indirectly to appoint or remove a majority of the board of directors of C.</i></p> <p><i>(3) Schedule 1 contains provision applying for the purpose of interpreting paragraph (2).</i></p> <p><i>(4) The second condition is that it is reasonable, having regard to all the circumstances, to expect that P would (if P chose to) be able, in most cases or in significant respects, by whatever means and whether directly or indirectly, to achieve the result that affairs of C are conducted in accordance with P's wishes.</i></p> <p>This new provision extends and replaces existing guidance previously provided by the EU. Schedule 1 of the 2019 UK SI sets out the rules of interpretation for determining ownership and control.</p>

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				The rules of interpretation may have an impact on financial institutions in relation to the due diligence and investigational efforts to determine whether the conditions in Regulation 7 are met.
Asset freezes in relation to designated persons	The Burma (Sanctions) (EU Exit) Regulations 2019 – Reg 11(7)	The Burma (European Union Financial Sanctions) Regulations 2018 – Reg 3	(b)	<p>High Impact</p> <p>The 2019 UK SI provides that funds or economic resources are considered “<i>owned, held or controlled by a designated person if they are owned, held or controlled by a person who is owned or controlled directly or indirectly (within the meaning of regulation 7) by the designated person</i>”.</p> <p>This extends the scope of the wording in the 2018 EU SI by adding an express prohibition on dealing with funds and economic resources of entities owned or controlled by a designated person.</p> <p>This change appears to reflect existing OFSI guidance on ownership and control (July 2020).</p>
Making funds and economic resources available to designated persons	The Burma (Sanctions) (EU Exit) Regulations 2019 – Reg 12 and Reg 14	The Burma (European Union Financial Sanctions) Regulations 2018 – Reg 4 and Reg 6	(c)	<p>High Impact</p> <p>The 2018 EU SI states that “<i>a person (“P”) must not make funds/economic resources available, directly or indirectly, to a designated person if P knows, or has reasonable cause to suspect, that P is making the funds/economic resources so available</i>”. In relation to economic resources it is a further requirement that the designated person would be likely to exchange the economic resources, or use them in exchange, for funds, goods or services.</p> <p>The 2019 UK SI explicitly states making funds/economic resources available indirectly to a designated person includes making them available to a person who is owned or controlled directly or indirectly by the designated person.</p>

Restrictive Measure / Category	UK SI reference	EU Legislative SI reference	Change to legal obligation	Impact
				The 2019 UK SI appears to be more restrictive than existing EU guidance which provides that making available funds and economic resources to a non-designated person owned or controlled by a designated person, is considered to be making available these funds and economic resources to the designated person, albeit this could be rebutted on the facts. ⁷ The 2019 UK SI does not include a rebuttable presumption.
Trade Controls	The Burma (Sanctions) (EU Exit) Regulations 2019 – Reg. 28	-	(b)	High Impact New restrictions are imposed in the UK SI concerning the provision of " <i>brokering services</i> " in relation to activity relating to restricted goods and restricted technology. This change is unlikely to have a material impact on the obligations of financial institutions.

⁷<https://data.consilium.europa.eu/doc/document/ST-8519-2018-INIT/en/pdf> para. 66

Medium Impact

Restrictive Measure / Category	UK SI reference	EU Legislative SI reference	Change to legal obligation	Impact
Credits to frozen accounts	The Burma (Sanctions) (EU Exit) Regulations 2019 – Reg 33	The Burma (European Union Financial Sanctions) Regulations 2018 – Reg 8 and Schedule	(a), (b) and (c)	<p>Medium impact</p> <p>Both the 2018 EU SI and the 2019 UK SI contain exceptions relating to certain credits to frozen accounts. However, the following should be noted:</p> <ul style="list-style-type: none"> - in the 2018 EU SI the exceptions applied to “a person”, whereas in the 2019 UK SI the exceptions also apply to “relevant institutions”, which is defined as a person that has permission under Part 4A of the Financial services and Markets Act 2000 (permission to carry on regulated activity); - and - the exception under the 2018 EU SI which permitted a person to credit a frozen account with payments due under judicial, administrative or arbitral decisions rendered in an EU Member State or enforceable in the Member State concerned without contravening the prohibitions on making funds available to or for the benefit of a designated person has been deleted and this exception is not present in the 2019 UK SI; <p>Financial institutions should ensure they understand the amended provisions to ensure any credits made to frozen accounts are in accordance with the new and amended exceptions.</p>
Treasury and trade licences	The Burma (Sanctions) (EU Exit) Regulations 2019 – Reg 41(4)	The Burma (European Union Financial Sanctions) Regulations 2018, Regulation 8(3)	(c)	<p>Medium Impact</p> <p>The EU Burma Financial Sanctions SI requires a relevant institution to inform the Treasury without delay if it credits a frozen account with payments due under contracts, agreements or obligations that were concluded or arose before the account became a frozen account, or with payments due under judicial, administrative or arbitral decisions rendered in an EU Member State or enforceable in the UK.</p> <p>Under the UK Burma SI, a relevant institution must inform the Treasury without delay if that</p>

Restrictive Measure / Category	UK SI reference	EU Legislative SI reference	Change to legal obligation	Impact
				institution credits an account in accordance with Regulation 33(4) (receipt of funds to credit a frozen account) or transfers funds from a frozen account in accordance with Regulation 33(6).
Disclosure of information	The Burma (Sanctions) (EU Exit) Regulations 2019 – Reg 49	The Burma (European Union Financial Sanctions) Regulations 2018 – Schedule	(b)	<p>Medium Impact</p> <p>Both the 2018 EU SI and the 2019 UK SI set out provisions regarding the disclosure of information obtained pursuant to the relevant regulations. However, there are some key differences in the new 2019 UK SI, including:</p> <ul style="list-style-type: none"> - The 2018 EU SI authorised the disclosure of information by the Treasury, whereas the 2019 UK SI authorises the disclosure of information by the Treasury <i>or the Secretary of State</i>, - Both the 2018 EU SI and the 2019 UK SI permit disclosure to “any other regulatory body”, however, the 2018 EU SI stated “including those of other Member States”, whereas the 2019 UK SI is broader and states “whether or not in the United Kingdom”; - Both the 2018 EU SI and the 2019 UK SI permit disclosure to other Governments, however, the 2018 EU SI stated “the Government of a Member State” whereas the 2019 UK SI is broader and states “the Government of any country”; - Both the 2018 EU SI and the 2019 UK SI permit disclosure to the Council of the European Union and the European Commission, however the 2019 UK SI also includes the European External Action Service; and - The 2019 UK SI also has a new category for disclosure which states that disclosure can be made to “<i>any other person where the Secretary of State or the Treasury (as the case may be) consider that it is appropriate to disclose the information</i>”.

Low Impact

Restrictive Measure / Category	UK SI reference	EU Legislative SI reference	Change to legal obligation	Impact
Power to designate	The Burma (Sanctions) (EU Exit) Regulations 2019 – Regs 5 to 6, Regs 8 and 9	-	(b)	<p>Low Impact</p> <p>The 2019 UK SI sets out specific designation criteria at Regulation 5 which the Secretary of State must adhere to. These are new requirements as the Secretary of State did not have the power to designate under the 2018 EU SI as designations were determined by the EU.</p> <p>Although this is unlikely to have a material impact on financial institutions, these institutions should monitor any new designations under the 2019 UK SI.</p>
Asset freezes in relation to designated persons	The Burma (Sanctions) (EU Exit) Regulations 2019 – Reg 11(5)(b)	The Burma (European Union Financial Sanctions) Regulations 2018 – Reg 3(2)(b)	(c)	<p>Low Impact</p> <p>For the purposes of the prohibition on dealing with economic resources owned, held or controlled by a designated person, the 2018 EU SI previously defined the phrase "<i>deal with</i>" as the "<i>exchange, or use in exchange, for funds, goods or services</i>".</p> <p>This definition is extended in the 2019 UK SI to add "<i>(whether by pledging them as security or otherwise)</i>".</p> <p>Although it is unlikely to have an impact on financial institutions, it will be important to monitor the publication of any guidance provided by the UK government in relation to this additional wording.</p>

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Restrictive Measure / Category	UK SI reference	EU Legislative SI reference	Change to legal obligation	Impact
Asset freezes in relation to designated persons	The Burma (Sanctions) (EU Exit) Regulations 2019 – Reg 11(6)	The Burma (European Union Financial Sanctions) Regulations 2018 – Reg 3	(b)	<p>Low Impact</p> <p>The 2019 UK SI includes a new provision stating that funds or economic resources that are "<i>owned, held or controlled</i>" by a person includes a reference to: (i) funds or economic resources in which the person has any legal or equitable interest, regardless of whether the interest is held jointly with any other person and regardless of whether any other person holds an interest in the funds or economic resources, or (ii) any tangible property (other than real property), or bearer security, that is comprised in funds or economic resources and is in the possession of the person.</p> <p>This change is unlikely to have a material impact on the obligations of financial institutions.</p>
Exceptions	The Burma (Sanctions) (EU Exit) Regulations 2019 – Reg 33(1)	-	(b)	<p>Low Impact</p> <p>For the purposes of the prohibition on dealing with funds or economic resources owned, held or controlled by a designated person, the 2019 UK SI sets out the following new exception:</p> <p><i>(1) The prohibition in regulation 11 (asset-freeze in relation to designated persons) is not contravened by an independent person ("P") transferring to another person a legal or equitable interest in funds or economic resources where, immediately before the transfer, the interest—</i></p> <p style="padding-left: 40px;"><i>(a) is held by P, and</i></p> <p style="padding-left: 40px;"><i>(b) is not held jointly with the designated person.</i></p> <p><i>(2) In paragraph (1) "independent person" means a person who—</i></p> <p style="padding-left: 40px;"><i>(a) is not the designated person, and</i></p> <p style="padding-left: 40px;"><i>(b) is not owned or controlled directly or indirectly (within the meaning of regulation 7) by the designated person.</i></p>

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Restrictive Measure / Category	UK SI reference	EU Legislative SI reference	Change to legal obligation	Impact
				This change is unlikely to have a material impact on the obligations of financial institutions.
Exceptions	The Burma (Sanctions) (EU Exit) Regulations 2019 – Reg 33(6)	-	(b)	<p>Low Impact</p> <p>The 2019 UK SI sets out the following new exception to the prohibitions on dealing with funds or economic resources owned, held or controlled by a designated person, and on making funds available to or for the benefit of a designated person, allowing designated persons to transfer funds between two accounts:</p> <p><i>(3) The prohibitions in regulations 11 to 13 are not contravened in relation to a designated person ("P") by a transfer of funds from account A to account B, where—</i></p> <p><i>(a) account A is with a relevant institution which carries on an excluded activity within the meaning of section 142D of the Financial Services and Markets Act 2001,</i></p> <p><i>(b) account B is with a ring-fenced body within the meaning of section 142A of the Financial Services and Markets Act 2002, and</i></p> <p><i>(c) accounts A and B are held or controlled (directly or indirectly) by P.</i></p> <p>This change is unlikely to have a material impact on the obligations of financial institutions.</p>
Exceptions	The Burma (Sanctions) (EU Exit) Regulations 2019 – Reg 34	-	(b)	<p>Low Impact</p> <p>The 2019 UK SI contains a new exception which provides that prohibitions within the SI do not apply where it is in the interests of national security or to prevent or detect a serious crime in the UK or elsewhere.</p>

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Restrictive Measure / Category	UK SI reference	EU Legislative SI reference	Change to legal obligation	Impact
				This is unlikely to have an impact on financial institutions.
Treasury licences	The Burma (Sanctions) (EU Exit) Regulations 2019 – Reg 35 (1)-(2), 38, Schedule 4	The Burma (European Union Financial Sanctions) Regulations 2018 – Reg 9	(b)	<p>Low Impact</p> <p>The 2019 UK SI limits the ability of the Treasury to issue a licence authorising acts by a particular person where the Treasury considers a licence appropriate for a purpose as set out in Schedule 4 of the 2019 UK SI. Similar restrictions did not apply expressly under the 2018 EU SI.</p> <p>Although it is unlikely to have a material impact on financial institutions, such institutions should familiarise themselves with the circumstances in which licences can be granted and ensure the terms of any licence are complied with when a licence is granted.</p>
Treasury licences	The Burma (Sanctions) (EU Exit) Regulations 2019 – Reg 37 (4) – (6)	The Burma (European Union Financial Sanctions) Regulations 2018 – Reg 9	(b)	<p>Low Impact</p> <p>Under the 2018 EU SI the Treasury may vary or revoke a licence at any time. The new 2019 UK SI further provides that a person who issues a licence may also <i>suspend</i> it at any time.</p> <p>This is unlikely to have a material impact on financial institutions although the ability of the Treasury to issue general licence should be monitored.</p>
Treasury licences	The Burma (Sanctions) (EU Exit) Regulations 2019 – Reg 38	The Burma (European Union Financial	(c)	<p>Low Impact</p> <p>Under the 2018 EU SI, a person commits an offence if they “<i>knowingly or recklessly provides information that is false in a material respect, or provides or produces a document that is not</i></p>

Restrictive Measure / Category	UK SI reference	EU Legislative SI reference	Change to legal obligation	Impact
		Sanctions) Regulations 2018 – Reg 9 (5)		<p><i>what it purports to be.</i>” The 2019 UK SI adds that this is applicable in the event that the licence is sought “<i>whether for P or anyone else</i>”.</p> <p>This change is unlikely to have a material impact on the obligations of financial institutions.</p>
Reporting obligations	The Burma (Sanctions) (EU Exit) Regulations 2019 – Reg 41 and 42	The Burma (European Union Financial Sanctions) Regulations 2018 – Reg 15 and Schedule	(c)	<p>Low Impact</p> <p>The 2018 EU SI imposed reporting obligations on “<i>relevant institutions</i>” or “<i>relevant business or profession</i>”. In the 2019 UK SI this has been replaced with “<i>relevant firm</i>”. Regulation 42 in the 2019 UK SI clearly defines what a “<i>relevant firm</i>” is, extending the scope of the entities concerned by the information and reporting obligations.</p> <p>This change is unlikely to have a material impact on the obligations of financial institutions.</p>
Reporting obligations	The Burma (Sanctions) (EU Exit) Regulations 2019 – Reg 41(4)	The Burma (European Union Financial Sanctions) Regulations 2018 – Schedule, Reg 1 (4)	(c)	<p>Low Impact</p> <p>The 2018 EU SI required relevant institutions which had a customer who was a designated person to inform the treasury of the “<i>nature and amount or quantity of any funds or economic resources held by it for the customer</i>”. The 2019 UK SI adds “<i>at the time when it first had the knowledge or suspicion</i>” to this existing obligation, thereby adding an additional element to the reporting obligation.</p> <p>This change is unlikely to have a material impact on the obligations of financial institutions.</p>
Consent to prosecute	-	The Burma (European Union Financial Sanctions)	(a)	<p>Low Impact</p> <p>The 2018 EU SI stated that proceedings for offences under the regulations (other than for summary offences) could only be instituted with the consent of the Attorney General (in England and Wales) and with the consent of the Advocate General for Northern Ireland or the</p>

Restrictive Measure / Category	UK SI reference	EU Legislative SI reference	Change to legal obligation	Impact
		Regulations 2018 – Reg 14		Director of Public Prosecutions for Northern Ireland (depending on the circumstances). This requirement does not appear to be present in the new 2019 UK SI. –
Application of prohibitions and requirement outside the United Kingdom	The Burma (Sanctions) (EU Exit) Regulations 2019 – Reg (3)(2) & (5)	The Export Control (Burma Sanctions) (No2) Order 2018– Reg 2	(b)	Low impact The 2019 UK SI adds the additional provision that a United Kingdom person or any person may contravene a relevant prohibition or <i>‘may comply, or fail to comply, with a relevant requirement by conduct in the territorial sea.’</i> This is more specific than the 2018 Export Order that refers to <i>‘conduct wholly or partly outside the United Kingdom.’</i> This change is unlikely to have a material impact on the obligations of financial institutions.
Restricted goods and restricted technology	The Burma (Sanctions) (EU Exit) Regulations 2019 – Reg 18 & 19	The Export Control (Burma Sanctions) (No2) Order 2018 – Reg 5	(c)	Low Impact The 2018 Export Order refers to <i>“equipment”, “goods”, “technology”, “dual-use goods”</i> and <i>“software”</i> whereas the 2019 UK SI refers to these as <i>“restricted goods”</i> and <i>“restricted technology”</i> . “Restricted goods” means: <ul style="list-style-type: none">- (a) military goods- (b) dual-use goods- (c) internal repression goods, and- (d) interception and monitoring goods “Restricted technology” means: <ul style="list-style-type: none">- (a) military technology- (b) dual-use technology- (c) internal repression technology, and- (d) interception and monitoring technology

Restrictive Measure / Category	UK SI reference	EU Legislative SI reference	Change to legal obligation	Impact
				The change in definitions is unlikely to have a significant impact on financial institutions.
Scope of prohibition	The Burma (Sanctions) (EU Exit) Regulations 2019 – Reg 21(4)	The Export Control (Burma Sanctions) (No2) Order 2018 – Reg 5 (a) – (k)	(c)	<p>Low impact</p> <p>The 2019 UK SI clarifies the scope of the prohibitions. The 2018 Export Order states the prohibitions relate to “<i>any natural or legal person, entity or body in, or for use in, Myanmar/Burma</i>” whereas the 2019 UK SI refers to “<i>any person connected with Burma</i>”.</p> <p>A person is to be regarded as “<i>connected with Burma</i>” if the person is:</p> <ul style="list-style-type: none"> (a) an individual who is, or an association or combination of individuals who are, ordinarily resident in Burma; (b) an individual who is, or an association or combination of individuals who are, located in Burma; (c) a person, other than an individual, which is incorporated or constituted under the law of Burma, or (d) a person, other than an individual, which is domiciled in Burma. <p>This definition differs in relation to the provision of interception and monitoring services and in this regard a person is “<i>connected with Burma</i>” if the person works for the Government of Burma or otherwise carries on activities on its behalf or under its direction.</p> <p>Given the nature of restricted goods and technology, the impact on financial institutions is likely to be low.</p>
Exporting, supplying, delivering, making	The Burma (Sanctions) (EU Exit) Regulations 2019 – Regs 22 to	The Export Control (Burma Sanctions) (No2) Order 2018 – Reg	(c)	<p>Low Impact</p> <p>The 2018 Export Order prohibits the sale of equipment listed in Annex 1 which might be used for internal repression, the provision of technical assistance relating to military activities and the provision of financial assistance in relation to military activities amongst other activities.</p>

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Restrictive Measure / Category	UK SI reference	EU Legislative SI reference	Change to legal obligation	Impact
available and transferring restricted goods and restricted technology	25	5 (2) (a), (f), and (i)		<p>The 2019 UK SI separates restricted items into “restricted goods” and “restricted technology” and prohibits:</p> <ul style="list-style-type: none"> - the export of restricted goods - the supply and delivery of restricted goods; - making restricted goods and restricted technology available; and - the transfer of restricted technology. <p>The 2019 UK SI therefore mirrors the trade embargo imposed by the 2018 Export Order, but clarifies the scope.</p> <p>Given the nature of restricted goods and technology, the impact on financial institutions is likely to be low.</p>
Provision of military-related services	The Burma (Sanctions) (EU Exit) Regulations 2019 – 30 (1)	The Export Control (Burma Sanctions) (No2) Order 2018 – Reg 5 (b), (c), (g), (h)	(c)	<p>Low Impact</p> <p>The 2018 Export Order trade prohibitions refer to “military end users”, “Border Guard Police” and/or “military use”.</p> <p>The 2019 UK SI imposes a specific obligation to <i>‘not directly or indirectly provide military-related services to or for the benefit of the Tatmadaw, or to any person acting on its behalf or under its direction.’</i></p> <p>This prohibition specifically targets the Tatmadaw (the Burmese army), by prohibiting military-related services, defined as the provision of technical assistance, armed personnel, financial services and brokering services. Although the 2019 UK SI no longer specifically mentions other military end users and the Board Guard Police, by virtue of Regulation 21(4), these would fall within the scope of persons connected to Burma.</p> <p>Given the nature of this prohibition, the impact on financial institutions is likely to be low.</p>

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Licences	The Burma (Sanctions) (EU Exit) Regulations 2019 – 39 (1)	The Export Control (Burma Sanctions) (No2) Order 2018 – Reg 4 (7) (b)	(c)	<p>Low impact</p> <p>Under the 2018 Export Order, a person commits an offence if they “<i>knowingly or recklessly provide[s] information that is false in a material respect, or provides or produces a document that is not what it purports to be.</i>” The 2019 UK SI adds that this is applicable in the event that the licence is sought “<i>whether for P or anyone else</i>”.</p> <p>This change is unlikely to have a material impact on the obligations of financial institutions.</p>

Document Version Control

Version	Issue Date	Expiry Date	Notes
1.20	17 th February 2021		<ul style="list-style-type: none">Partner logos added to the authors page.
1.10	4 th December 2020		<ul style="list-style-type: none">Formatting corrections.
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