

2009 No. 1495

CRIMINAL LAW

The Burma/Myanmar (Financial Restrictions) Regulations 2009

<i>Made</i> - - - -	<i>17th June 2009</i>
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SCHEDULE — Information gathering provisions

The Treasury make these Regulations under the powers conferred by section 2(2) of, and paragraph 1A of Schedule 2 to, the European Communities Act 1972(a).

The Treasury are designated(b) for the purposes of section 2(2) of that Act in relation to (i) measures relating to the movement of capital and to payments between Member States and between Member States and countries which are not Member States, and (ii) measures relating to the interruption or reduction, in part or completely, of economic relations with one or more countries which are not Member States.

These Regulations make provision for a purpose mentioned in section 2(2) of that Act and it appears to the Treasury that it is expedient for the reference to Council Regulation (EC) No. 194/2008 of 25th February 2008 renewing and strengthening the restrictive measures in respect of Burma/Myanmar and repealing Regulation (EC) No. 817/2006(c) to be construed as a reference to Council Regulation (EC) No. 194/2008 as amended from time to time.

(a) 1972 c.68. Paragraph 1A of Schedule 2 was inserted by section 28 of the Legislative and Regulatory Reform Act 2006 (c.51).
(b) S.I. 1994/757.
(c) O.J. L 66, 10.3.2008, p.1. Regulation as amended by Commission Regulation (EC) No. 385/2008 of 29 April 2008 (O.J. L 66, 10.3.2008, p.1) and renewed and strengthened by Commission Regulation (EC) No. 353/2009 of 28 April 2009 (O.J. L 108, 29.4.2009, p.20).

PART 1

Preliminary and general

Citation, commencement and application

1.—(1) These Regulations may be cited as the Burma/Myanmar (Financial Restrictions) Regulations 2009 and come into force on 18th June 2009.

(2) An offence may be committed under these Regulations by any person in the United Kingdom or by any person elsewhere who is—

- (a) a British citizen;
- (b) a British overseas territories citizen who acquired his or her citizenship from a connection with Gibraltar;
- (c) a British subject under Part 4 of the British Nationality Act 1981^(a) with the right of abode in the United Kingdom; or
- (d) a body incorporated or constituted under the law of any part of the United Kingdom.

Interpretation

2.—(1) In these Regulations—

“the 2000 Act” means the Financial Services and Markets Act 2000^(b);

“body corporate” includes a Scottish partnership;

“designated enterprise” has the meaning given by regulation 11;

“designated person” has the meaning given by regulation 3;

“document” includes information recorded in any form and, in relation to information recorded otherwise than in legible form, references to its production include references to producing a copy of the information in legible form;

“the EC Regulation” means Council Regulation (EC) No. 194/2008 of 25th February 2008 renewing and strengthening the restrictive measures in respect of Burma/Myanmar and repealing Regulation (EC) No. 817/2006 as amended from time to time;

“economic resources” means assets of every kind, whether tangible or intangible, movable or immovable, which are not funds but may be used to obtain funds, goods or services;

“funds” means financial assets and benefits of every kind, including but not limited to—

- (a) cash, cheques, claims on money, drafts, money orders and other payment instruments;
- (b) deposits with financial institutions or other entities, balances on accounts, debts and debt obligations;
- (c) publicly and privately traded securities and debt instruments, including stocks and shares, certificates representing securities, bonds, notes, warrants, debentures and derivatives contracts;
- (d) interest, dividends or other income on or value accruing from or generated by assets;
- (e) credit, rights of set-off, guarantees, performance bonds or other financial commitments;
- (f) letters of credit, bills of lading, bills of sale;
- (g) documents providing evidence of an interest in funds or financial resources;

“officer”, in relation to a body corporate, means—

- (a) in relation to a Scottish partnership, a partner; and

(a) 1981 c.61. Part 4 has been amended by section 1(1)(b) of the British Overseas Territories Act 2002 (c.8) and sections 15 and 161 of and Schedules 2 (paragraphs 1(i) and 2) and 9 to the Nationality, Immigration and Asylum Act 2002 (c.41).

(b) 2000 c.8.

(b) in relation to any other body corporate, a director, manager, secretary or other similar officer of the body corporate or any person who has purported to act in any such capacity;

“relevant institution” means—

(a) a person who has permission under Part 4 of the 2000 Act (permission to carry on regulated activities); and

(b) an EEA firm of the kind mentioned in paragraph 5(b) of Schedule 3 to the 2000 Act (EEA passport rights)(a) which has permission under paragraph 15 of that Schedule(b) as a result of qualifying for authorisation under paragraph 12 of that Schedule to accept deposits.

(2) The definition of “relevant institution” in paragraph (1) must be read with—

(a) section 22 of the 2000 Act (the classes of activity and categories of investment);

(b) any relevant order under that section(c); and

(c) Schedule 2 to that Act (regulated activities).

PART 2

Designated persons

Designated persons

3. For the purposes of these Regulations a person is a designated person if—

(a) listed in Annex VI of the EC Regulation; or

(b) identified in a direction given by the Treasury under regulation 4(1).

Treasury’s power to designate persons

4.—(1) Where the Treasury have reasonable grounds for suspecting that a person is a person listed in Annex VI of the EC Regulation, the Treasury may give a direction that such person is designated for the purposes of these Regulations.

(2) The Treasury may vary or revoke any such direction at any time.

Publicising directions

5.—(1) Where the Treasury give a direction under regulation 4(1) they must—

(a) give written notice to the person identified in the direction; and

(b) publicise the direction generally.

(2) Where the Treasury vary or revoke a direction given under regulation 4(1) they must—

(a) give written notice of the variation or revocation to the person identified in the direction; and

(b) take such further steps as they consider appropriate to publicise the variation or revocation.

(a) As amended by S.I. 2006/3221.

(b) As amended by S.I. 2003/2066 and S.I. 2007/3253.

(c) See the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001, S.I. 2001/544 as amended, most recently by the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 2) Order 2007, S.I. 2007/3510.

PART 3

Prohibitions and licences

Freezing funds and economic resources of designated persons

6.—(1) A person (including the designated person) must not deal with funds or economic resources owned, held or controlled by a designated person unless authorised by a licence granted under regulation 10.

(2) In paragraph (1), “deal with” means—

(a) in respect of funds—

(i) use, alter, move, allow access to or transfer;

(ii) deal with in any other way that would result in any change in volume, amount, location, ownership, possession, character or destination;

(iii) make any other change that would enable use, including portfolio management; and

(b) in respect of economic resources, exchange or use in exchange for funds, goods or services.

(3) A person who contravenes the prohibition in paragraph (1) is guilty of an offence.

(4) In proceedings for an offence under this regulation, it is a defence for a person to show that they did not know, and had no reasonable cause to suspect, that the funds or economic resources were owned, held or controlled by a designated person.

Making funds and economic resources available to designated persons

7.—(1) A person must not make funds or economic resources available, directly or indirectly, to or for the benefit of a designated person unless authorised by a licence granted under regulation 10.

(2) A person who contravenes the prohibition in paragraph (1) is guilty of an offence.

(3) In proceedings for an offence under this regulation, it is a defence for a person to show that they did not know and had no reasonable cause to suspect funds or economic resources were being made available, directly or indirectly, to or for the benefit of a designated person.

Exceptions

8.—(1) It is not an offence under regulation 6 or 7 to credit a frozen account with—

(a) interest or other earnings on that account; or

(b) payments due under contracts, agreements or obligations that were concluded or arose before the first date on which the account became subject to the provisions of Regulation (EC) No. 1081/2000(a), Regulation (EC) No. 798/2004(b), Regulation (EC) No. 817/2006(c) or the EC Regulation.

(2) It is not an offence under regulation 7 for a relevant institution to credit a frozen account where it receives funds transferred to the account by a third party.

(3) For the avoidance of doubt, regulation 6 applies to any funds credited to a frozen account in accordance with this regulation.

(4) In this regulation—

(a) Council Regulation (EC) No. 1081/2000 of 22 May 2000 prohibiting the sale, supply and export to Burma/Myanmar of equipment which might be used for internal repression or terrorism, and freezing the funds of certain persons related to important governmental functions in that country (O.J. L 22, 24.5.2000, p.29).

(b) Council Regulation (EC) No. 798/2004 of 26 April 2004 renewing the restrictive measures in respect of Burma/Myanmar and repealing Regulation (EC) No. 1081/2000 (O.J. L 125, 28.4.2004, p.4).

(c) Council Regulation (EC) No. 817/2006 renewing the restrictive measures in respect of Burma/Myanmar and repealing Regulation (EC) No. 798/2004 (O.J. L 148, 2.6.2006, p.1).

“frozen account” means an account with a relevant institution which is held or controlled by a designated person;

“third party” means a person other than the account-holder or the relevant institution with which the account is maintained.

Circumvention

9. Any person who participates, knowingly and intentionally, in activities the object or effect of which is, directly or indirectly, to—

- (a) circumvent a prohibition in regulation 6(1) or 7(1), or
- (b) enable or facilitate the commission of an offence under regulation 6 or 7,

is guilty of an offence.

Licences

10.—(1) The Treasury may grant a licence to disapply the prohibition in regulation 6(1) or 7(1) in relation to the acts specified in the licence.

(2) A licence may be—

- (a) general or granted to a particular person or to a category of persons;
- (b) subject to conditions;
- (c) of indefinite duration or subject to an expiry date.

(3) The Treasury may vary or revoke a licence at any time.

(4) The Treasury, where they grant, vary or revoke a licence, must—

- (a) in the case of a licence granted to a particular person, give written notice of the licence, variation or revocation to that person; and
- (b) in the case of a general licence or a licence granted to a category of persons, take such steps as the Treasury consider appropriate to publicise the licence, variation or revocation

(5) Any person who, for the purpose of obtaining a licence, knowingly or recklessly makes any statement or furnishes any document or information which is false in a material particular is guilty of an offence.

(6) Any person who has done any act under the authority of a licence and who fails to comply with any conditions attaching to that licence is guilty of an offence.

PART 4

Designated enterprises

Designated enterprises

11. For the purposes of these Regulations a person is a designated enterprise if—

- (a) listed in Annex V or Annex VII of the EC Regulation; or
- (b) identified in a direction given by the Treasury under regulation 12(1).

Treasury’s power to designate enterprises

12.—(1) Where the Treasury have reasonable grounds for suspecting that a person is a person listed in Annex V or Annex VII of the EC Regulation, the Treasury may give a direction that such person is designated for the purposes of these Regulations.

(2) The Treasury may vary or revoke any such direction at any time.

(3) The provisions of regulation 5 apply to any direction given by the Treasury under paragraph (1) as they apply to a direction given under regulation 4(1).

PART 5

Prohibitions concerning designated enterprises

Prohibition against financing designated enterprises

13.—(1) A person must not finance a designated enterprise.

(2) In this regulation, “finance” means—

- (a) grant any loan or credit to a designated enterprise;
- (b) acquire bonds, certificates of deposit, warrants or debentures issued by a designated enterprise being a person listed in Annex VII of the EC Regulation or a person whom the Treasury have reasonable grounds for suspecting of being such a person; or
- (c) acquire or increase a participation or shareholding, including shares and securities of a participating nature, in a designated enterprise.

(3) A person who contravenes the prohibition in paragraph (1) is guilty of an offence.

(4) In proceedings for an offence under this regulation, it is a defence for a person to show that they did not know and had no reasonable cause to suspect that the body being financed was a designated enterprise.

Prohibition against creating a joint venture

14.—(1) A person must not create a joint venture with—

- (a) a designated enterprise;
- (b) a subsidiary enterprise of a designated enterprise; or
- (c) a person under the control of a designated enterprise.

(2) A person who contravenes the prohibition in paragraph (1) is guilty of an offence.

(3) In proceedings for an offence under this regulation, it is a defence for a person to show that they did not know and had no reasonable cause to suspect that the joint venture was being created with a body falling within sub-paragraph (a), (b) or (c) of paragraph (1).

Exceptions

15.—(1) Subject to paragraph (2), a person is not guilty of an offence under regulation 13 if the financing of the designated enterprise takes place pursuant to an obligation, contract or agreement which arose or was concluded before the date on which the enterprise was first designated as indicated in Annex V or Annex VII of the EC Regulation.

(2) Paragraph (1) does not apply where the financing of a designated enterprise consists of—

- (a) an increase in a participation or shareholding in the enterprise unless the person informs the Treasury of their intention to undertake such an increase before it takes place; or
- (b) the acquisition of a participation or shareholding in a designated enterprise.

Trade contracts

16. The prohibition in regulation 13(1) does not apply to—

- (a) the execution of trade contracts for the supply of goods or services on usual commercial payment conditions; and
- (b) any supplementary agreements connected with the execution of such contracts.

Circumvention

17. Any person who participates, knowingly and intentionally, in activities the object or effect of which is, directly or indirectly, to—

- (a) circumvent the prohibition in regulation 13(1) or 14(1); or
- (b) enable or facilitate the commission of an offence under regulation 13 or 14;

is guilty of an offence.

PART 6

Miscellaneous

Information gathering provisions

18. The Schedule (which contains further provisions about information gathering) has effect.

Officers of a body corporate etc.

19.—(1) If an offence under these Regulations committed by a body corporate is shown—

- (a) to have been committed with the consent or connivance of an officer of the body corporate; or
- (b) to be attributable to any neglect on the officer's part;

the officer as well as the body corporate is guilty of the offence.

(2) Paragraph (1) also applies to an institution which is not a body corporate, with the substitution for the reference to an officer of the body of a reference—

- (a) in the case of a partnership, to a partner;
- (b) in the case of an unincorporated body other than a partnership—
 - (i) where the body's affairs are managed by its members, to a member of the body;
 - (ii) in any other case, to a member of the governing body.

Penalties

20.—(1) A person guilty of an offence under regulation 6, 7, 9, 10, 13, 14 or 17 or paragraph 4(b), (c) or (d) of the Schedule is liable—

- (a) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both;
- (b) on summary conviction—
 - (i) in England, Wales and Northern Ireland, to imprisonment for a term not exceeding three months or to a fine not exceeding the statutory maximum or to both; and
 - (ii) in Scotland, to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum or to both.

(2) A person guilty of an offence under paragraph 2(4) or 4(a) of the Schedule is liable on summary conviction to imprisonment for a term not exceeding three months or to a fine not exceeding level 5 on the standard scale or to both.

Proceedings

21.—(1) Proceedings against any person for an offence may be taken before the appropriate court in the United Kingdom having jurisdiction in the place where that person is for the time being.

- (2) In England and Wales, summary proceedings for an offence may be tried by a magistrates' court if any information is laid—
- (a) before the end of 12 months from the date on which evidence sufficient in the opinion of the prosecutor to justify the proceedings came to the prosecutor's knowledge, but
 - (b) not later than three years from the commission of the offence.
- (3) In Scotland—
- (a) summary proceedings for an offence may be commenced—
 - (i) before the end of 12 months from the date on which evidence sufficient in the Lord Advocate's opinion to justify the proceedings came to the Lord Advocate's knowledge; but
 - (ii) not later than three years from the commission of the offence; and
 - (b) section 136(3) of the Criminal Procedure (Scotland) Act 1995^(a) (time limit for certain offences) applies for the purpose of this paragraph as it applies for the purpose of that section.
- (4) In Northern Ireland, summary proceedings for an offence may be instituted—
- (a) before the end of 12 months from the date on which evidence sufficient in the opinion of the prosecutor to justify the proceedings came to the prosecutor's knowledge; but
 - (b) not later than three years from the commission of the offence.
- (5) For the purpose of this regulation—
- (a) a certificate signed by or on behalf of the prosecutor or the Lord Advocate as to the date on which such evidence as is referred to in paragraphs (2) to (4) came to the prosecutor's or the Lord Advocate's knowledge is conclusive evidence of that fact, and
 - (b) a certificate purporting to be so signed is presumed to be so signed unless the contrary is proved.
- (6) In Scotland, where a constable reasonably believes that a person has committed or is committing an offence, the constable may arrest that person without a warrant.
- (7) No proceedings for an offence, other than for a summary offence, may be instituted in England, Wales or Northern Ireland except with the consent of the Attorney General or, as the case may be, the Attorney General for Northern Ireland.
- (8) Whether or not such consent has been given, paragraph (7) does not prevent—
- (a) the arrest of any person in respect of an offence, or
 - (b) the remand in custody or on bail of any person charged with an offence.
- (9) In this regulation, "offence" means an offence under these Regulations.

Notices

22.—(1) This regulation has effect in relation to any notice to be given to a person by the Treasury under regulation 5(1)(a) or (2)(a) or 10(4)(a).

(2) Any such notice may be given—

- (a) by posting it to the person's last known address; or
- (b) where the person is a body corporate which has its registered or principal office in the United Kingdom, by posting it to that office.

(3) Where the Treasury do not have an address in the United Kingdom for a person, they must make arrangements for the notice to be given to the person at the first available opportunity.

(a) 1995 c.46.

The Crown

23.—(1) These Regulations bind the Crown, subject to the following provisions of this regulation.

(2) No contravention by the Crown of a provision of these Regulations makes the Crown criminally liable; but the High Court or in Scotland the Court of Session may, on the application of a person appearing to the Court to have an interest, declare unlawful any act or omission of the Crown which constitutes such a contravention.

(3) Nothing in this regulation affects Her Majesty in her private capacity; and this is to be construed as if section 38(3) of the Crown Proceedings Act 1947(a) (meaning of Her Majesty in her private capacity) were contained in these Regulations.

Revocation

24. These Regulations revoke the Burma (Financial Sanctions) Regulations 2005(b), the Burma (Freezing of Funds) (Amendment) Regulations 2003(c) and the Burma (Freezing of Funds) Regulations 2000(d).

Dave Watts

Tony Cunningham

17th June 2009

Two of the Lords Commissioners of Her Majesty's Treasury

SCHEDULE

Regulation 18

Information gathering provisions

1. The Treasury must take such steps as they consider appropriate to cooperate with any domestic and international investigation relating to the funds, economic resources or financial transactions of a designated person or a designated enterprise.

2.—(1) A relevant institution must as soon as practicable inform the Treasury if it knows or suspects that a relevant person—

- (a) is a designated person or a designated enterprise; or
- (b) has committed an offence under regulation 6, 7, 9, 10, 13, 14 or 17.

(2) A relevant institution, where it informs the Treasury under sub-paragraph (1), must state—

- (a) the information or other matter on which the knowledge or suspicion is based;
- (b) any information it holds about the relevant person by which the person can be identified; and
- (c) where the relevant person is a designated person, the nature and amount or quantity of any funds or economic resources held by the relevant institution for that person since the person first became listed in Annex II to Regulation (EC) No. 1081/2000, Annex III to Regulation (EC) No. 798/2004, Annex III to Regulation (EC) No. 817/2006 or Annex VI to the EC Regulation.

(3) A relevant institution must inform the Treasury without delay if it credits a frozen account in accordance with regulation 8(2).

(4) A relevant institution which fails to comply with a requirement in sub-paragraph (1), (2) or (3) is guilty of an offence.

(5) In this paragraph, “relevant person” means—

(a) 1947 c.44.
(b) S.I. 2005/1526.
(c) S.I.2003/1810.
(d) S.I. 2000/1472.

- (a) a customer of the institution;
- (b) a person who has been a customer of the institution at any time on or after 24th May 2000^(a); or
- (c) a person with whom the institution has had dealings in the course of its business on or after that date.

3.—(1) The Treasury may request any person to give to them any information or to produce to them any document in that person's possession or control which they may require for the purpose of—

- (a) monitoring compliance with or detecting evasion of these Regulations;
- (b) obtaining evidence of the commission of an offence under these Regulations;
- (c) establishing—
 - (i) the nature and amount or quantity of any funds or economic resources owned, held or controlled by a designated person; or
 - (ii) the nature of any financial transactions entered into by a designated person or designated enterprise.

(2) This includes power to—

- (a) take copies of or extracts from any document so produced;
- (b) request any person producing a document to give an explanation of it; and
- (c) where that person is a body corporate, request any person who is a present or past officer, or employee, of the body corporate to give such an explanation.

(3) Any person to whom a request is made must comply with it within such time and in such manner as may be specified in the request.

(4) Nothing in this paragraph shall be taken to require any person who has acted as counsel or solicitor for any person to give or produce any privileged information or document in his or her possession in that capacity.

4. A person who—

- (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 made under paragraph 3;
- (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 the provisions of this Schedule, destroys, mutilates, defaces, conceals or removes any document; or
- (d) otherwise wilfully obstructs the Treasury in the exercise of their powers under this Schedule;

is guilty of an offence.

5. Where a person is convicted of an offence under paragraph 4(a) the court may make an order requiring that person, within such period as may be specified in the order, to give the requested information or to produce the requested document.

6.—(1) The Treasury may disclose any information given or document produced under these Regulations (including any copy or extract made of any such document)—

- (a) to a police officer;
- (b) to any person holding or acting in any office under or in the service of—
 - (i) the Crown in respect of the Government of the United Kingdom;

(a) This is the date on which Council Regulation (EC) No. 1081/2000 came into force.

- (ii) the Government of the Isle of Man;
- (iii) the States of Guernsey or Alderney or the Chief Pleas of Sark;
- (iv) the State of Jersey;
- (v) any British overseas territory;
- (c) for the purpose of giving assistance or cooperation, pursuant to the EC Regulation, to any person in the service of the Council of the European Union, the European Commission or the government of any country;
- (d) to the Financial Services Authority;
- (e) with a view to instituting, or otherwise for the purposes of, any proceedings—
 - (i) in the United Kingdom, for an offence under these Regulations; or
 - (ii) in any of the Channel Islands, the Isle of Man or any British overseas territory, for an offence under a similar provision in any such jurisdiction; or
- (f) with the consent of a person who, in his or her own right (and not merely in the capacity of servant or agent), is entitled to the information or to the possession of the document, to any third party.

7. An action done under this Schedule is not to be treated as a breach of any restriction imposed by statute or otherwise.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations enforce provisions of Council Regulation (EC) No. 194/2008 of 25th February 2008 (O.J. L 66, 10.3.2008, p.1) (“the EC Regulation”) which relate to restrictive measures imposed against persons listed by the Council as responsible in Burma/Myanmar for the lack of progress towards democratisation and continuing violations of human rights law.

The measures include the freezing of funds and economic resources of such persons and ensuring that any funds and economic resources are not made available to them or for their benefit. The measures also include restrictions on financing of certain enterprises.

The persons against whom the asset freeze measures are to apply are listed in Annex VI to the EC Regulation and the enterprises against whom the restrictions on financing are to apply are listed in Annexes V and VII. The Annexes are updated from time to time in accordance with Council Common Position 2007/750/CFSP of 19th November 2007 (O.J. L 308, 26.11.2007, p.1).

Part 2 defines designated persons (regulation 3) and provides for the Treasury to make directions designating a person (regulation 4).

Part 3 gives effect to Article 11(1) of the EC Regulation by prohibiting any dealing with funds and economic resources of designated persons (regulation 6) and to Article 11(2) of the EC Regulation by prohibiting the making of funds or economic resources available, directly or indirectly, to designated persons (regulation 7). Breach of either prohibition is a criminal offence, as is the circumvention of a prohibition (regulation 9).

Regulation 10 provides a licensing procedure, for the purposes of Article 13 of the EC Regulation, to enable, for humanitarian purposes, certain acts to be exempted from the prohibitions in regulations 6 and 7.

Part 4 defines designated enterprises as persons listed in Annex V or VII of the EC Regulation and provides for the Treasury to make directions identifying an enterprise as such.

Part 5 gives effect to Article 15(2) of the EC Regulation by prohibiting the financing of designated enterprises and makes it a criminal offence to contravene or circumvent the prohibition.

Part 6 includes provisions relating to penalties and proceedings.

The Schedule makes provisions about information gathering.

A list of designated persons and a list of designated enterprises are available on the Internet at: www.hm-treasury.gov.uk/fin_sanctions_index.htm.

An impact assessment on the effect that this instrument will have on the costs of business may be obtained from the Asset Freezing Unit, HM Treasury, 1 Horse Guards Road, London SW1A 2HQ and is also available on HM Treasury's website (www.hm-treasury.gov.uk). A copy of the impact assessment is annexed to the Explanatory Memorandum which is available on the OPSI website (www.opsi.gov.uk).