

## **THE BURUNDI (SANCTIONS) (EU EXIT) REGULATIONS 2019**

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

#### **Introduction**

1. This is a report under section 2(4) of the Sanctions and Anti-Money Laundering Act 2018 (“**the Act**”) in relation to the Burundi (Sanctions) (EU Exit) Regulations 2019. Section 2(4) requires a report to be laid before Parliament which explains why the appropriate Minister making regulations under section 1 considers that the purpose of the regulations meet one or more of the conditions in paragraphs (a) to (i) of section 1(2) of the Act; why the Minister considers that there are good reasons to pursue that purpose; and why the Minister considers that the imposition of sanctions is a reasonable course of action for that purpose.
2. Sanctions will continue to contribute to the UK’s efforts to “defend the rules-based international order”. The UK will continue to be a global leader on sanctions, based on the smart, targeted use of sanctions, as part of wider political and diplomatic strategies. The UK will enhance its leadership role in developing robust evidence to support sanctions regimes and designations – for national and multilateral sanctions. At the international level, the UK will continue to seek multilateral cooperation on sanctions in response to shared threats, given that a collective approach to sanctions achieves the greatest impact.
3. EU sanctions were first imposed on Burundi in October 2015, following Pierre Nkurunziza’s disputed election to a third term as president, which broke a decade old agreement on a two term limit. Subsequent violence and human rights violations were severe and the EU reiterated that sanctions would target individuals whose actions had led to these violations or to acts of violent repression. The EU is clear that compliance with the Arusha Agreement for Peace and Reconciliation, and the Burundian Constitution must be adhered to, to find a lasting political solution in the interests of security and democracy. <sup>1</sup>
4. Bringing these existing EU sanctions into UK law is consistent with UK policy on Burundi. The Regulations are intended to deliver substantially the same policy effects as the existing EU sanctions regime. In the case of Burundi, the EU sanctions regime provides for travel bans and asset-freeze measures to be imposed on persons responsible for the above actions. The EU measures also target those who sought to undermine the rule of law, curtailing the primacy of civilian power and furthering impunity and instability in the country.

#### **Purposes and reasons for pursuing the purposes**

5. The Regulations impose sanctions in relation to concerns about human rights violations and the obstruction of democracy, rule of law and good governance in Burundi. In particular, they confer a power on the Secretary of State to designate persons where the Secretary of State has reasonable grounds to suspect that the person is an involved person, and considers that the

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<sup>1</sup><https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32015D1763>

designation of that person is appropriate, having regard to the purposes stated in regulation 4, and the likely significant effects of the designation on that person. In these Regulations an 'involved person' means a person who is or has been involved in-

- (i) The commission of a serious human rights violation or abuse in Burundi;
  - (ii) Obstructing the search for a peaceful solution to the political situation in Burundi
  - (iii) The repression of civil society and democratic opposition in Burundi;
  - (iv) Actions, policies or activities which undermine democracy, the rule of law or good governance in Burundi.
6. The purpose of the sanctions regime, as set out in regulation 4 of the Regulations, is to encourage the Government of Burundi to –
- (a) respect democratic principles and institutions, the rule of law and good governance in Burundi
  - (b) Participate in negotiations with its political opponents in good faith to bring about a peaceful solution to the political situation in Burundi;
  - (c) Refrain from policies or activities which repress civil society in Burundi;
  - (d) Comply with international human rights law and to respect human rights, including in particular, to respect-
    - (i) the right to life of persons in Burundi;
    - (ii) the right of persons not be subjected to torture or cruel, inhuman or degrading treatment or punishment in Burundi, including in the context of rape, other forms of sexual violence and gender based violence;
    - (iii) the right to liberty and security of persons in Burundi, including freedom from arbitrary arrest, detention or enforced disappearance;
    - (iv) the rights of journalists, human rights defenders and other persons in Burundi, to freedom of expression and peaceful assembly.
7. Carrying out these purposes meets one or more of the conditions set out in section 1(2) of the Act. In particular, carrying out these purposes would fall within sub paragraphs 4(a) in that it aims to promote respect for democracy, the rule of law and good governance, and 4(d)(i) and (ii) in that it would promote compliance with international human rights law and respect for human rights.
8. There are good reasons for pursuing these purposes, namely to address the ongoing human rights abuses and violations taking place in Burundi and to support a peaceful solution to the political situation in Burundi. The UN Human Rights Council reported in 2018 that there were still cases of summary execution, enforced disappearance, arbitrary arrest and detention. Torture and other cruel or inhuman treatment, sexual violence and violations of civil liberties still persist as they did in 2015. The perpetrators of the violations operate in a climate of impunity which is perpetuated by the absence of an independent judiciary.<sup>2</sup>

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<sup>2</sup> [https://www.ohchr.org/Documents/HRBodies/HRCouncil/ColBurundi/ReportHRC39/A\\_HRC\\_39\\_63\\_EN.pdf](https://www.ohchr.org/Documents/HRBodies/HRCouncil/ColBurundi/ReportHRC39/A_HRC_39_63_EN.pdf)

## **Why sanctions are a reasonable course of action**

9. The imposition of prohibitions and requirements of the kind imposed by these Regulations is a reasonable course of action for the purpose of encouraging the Government of Burundi to change its behaviour by respecting human rights, democratic principles and the rule of law and to participate in negotiations with its political opponents in good faith to bring about a peaceful solution to the political situation in Burundi. Sanctions can be used to change behaviour; constrain damaging action; or send a signal of condemnation. The UK Government believes sanctions are an effective and reasonable foreign policy tool if they are part of a broader foreign policy strategy for a country or thematic issue, and are appropriate to the purposes they are intending to achieve.
10. The gravity of the ongoing human rights and political situation in Burundi means that putting targeted sanctions in place is a reasonable measure to take. The UN Commission of Inquiry on Burundi has a mandate to conduct a thorough investigation of human rights violations and abuses committed in Burundi since April 2015. In its most recent report, published in September 2018, it found that serious human rights violations persisted. This includes summary execution, enforced disappearance, arbitrary arrest and detention, torture and other cruel, inhuman or degrading treatment, sexual violence, and violations of civil liberties such as the freedoms of expression, association, assembly and movement. It found that the victims of these violations are opponents of the Government and/or of the ruling party; supporters of armed opposition groups; Burundians trying to flee the country and therefore suspected of joining such groups; or journalists or members of civil society organizations. The National Intelligence Service and the police are most frequently responsible for these violations. However, the ruling party's youth league, the Imbonerakure, have an increasing role in the Government of Burundi's security apparatus and in the persecution of political opponents and civil society representatives. The human rights organisation Ligue Iteka has registered 1,884 people killed, 892 tortured and 10,776 persons arbitrarily arrested since the outbreak of the political crisis in April 2015. A report by International Crisis Group in June 2019 also highlighted the unwillingness of the Government of Burundi to engage in inclusive dialogue to resolve the political crisis, for example, refusing to attend an EAC Summit on 30 November 2018 at which the inter-Burundi dialogue was to be discussed.
11. Imposing sanctions sends a powerful message intended to drive behavioural change by the Government of Burundi and others who may be involved in political or human rights abuses. It also provides accountability for persons who have been involved and acts as a deterrence.
12. There are two principal kinds of sanction in the Regulations: financial and immigration. These restrictions consist of an asset freeze (including a restriction on providing funds and economic resources) and a travel ban. These restrictions can only be imposed upon specified individuals and entities who meet the criteria set out in the Regulations; namely that there are reasonable grounds to suspect that the person is, or has been, involved in activities that are deemed to be undermining democracy or obstructing the search for a political solution to the crisis in Burundi. These activities include acts of violence, repression or incitement to violence and acts which constitute serious human rights violations. Their designation must be appropriate for the purposes of the regime in order to ensure that the sanctions are clearly targeted and fulfil the stated purpose of the sanctions.

13. The Regulations allow for exceptions to the travel ban and also provides for the financial sanctions to be subject to certain exceptions and a licensing framework. The exceptions and licensing provisions support the reasonableness of imposing these sanctions measures on designated persons, as they can be used, where appropriate, to mitigate unintended or counter-productive impacts.
14. These sanctions are not an end in themselves. They are one element of a broader strategy of pressure and engagement to achieve the UK's foreign policy goals. The policy intention is to keep the sanctions on Burundi in place until the UK Government is assured that there has been sufficient positive behaviour change over a sustained period of time. This position may be reached by evidence of some concrete steps having been taken that shows an improvement in the areas of concern outlined in the purposes of these Regulations. The UK will continue to coordinate with international partners, including on the future of the sanctions regime.
15. The Regulations also impose supplemental prohibitions and requirements, in particular those relating to the disclosure of confidential information, the reporting of information by relevant firms, and the holding of records. These kinds of prohibitions and requirements ensure that certain information is appropriately held by those involved with the operation of the sanctions regime and certain information is provided to authorities, and ensure that certain sensitive information is treated securely. These kinds of prohibitions and requirements enable the government to properly operate and enforce the sanctions regime, and therefore their imposition is considered a reasonable course of action for the purpose of the Regulations.

### **Conclusions**

16. The purpose of these Regulations is to encourage the Government of Burundi to respect democratic principles and institutions, the rule of law good governance, and human rights, and to negotiate with its political opponents and refrain from oppressive actions and policies. For the reasons set out in this report, carrying out those purposes meets one or more of the conditions in section 1(2) of the Act. As set out in this report, there are good reasons for pursuing those purposes, and the imposition of immigration and financial sanctions imposed by these Regulations is a reasonable course of action for those purposes.

**The Rt Hon Sir Alan Duncan MP KCMG**

**Minister of State for Europe and the Americas, Foreign and Commonwealth Office, on  
behalf of the Secretary of State for Foreign and Commonwealth Affairs**

<sup>1</sup> Section 1(2) states:

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

- a) further the prevention of terrorism, in the United Kingdom or elsewhere,
- b) be in the interests of national security,
- c) be in the interests of international peace and security,
- d) further a foreign policy objective of the government of the United Kingdom,
- e) promote the resolution of armed conflicts or the protection of civilians in conflict zones,
- f) provide accountability for or be a deterrent to gross violations of human rights, or otherwise promote  
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  - (i) compliance with international human rights law, or
  - (ii) respect for human rights,
- g) promote compliance with international humanitarian law,
- h) contribute to multilateral efforts to prevent the spread and use of weapons and materials of mass destruction, or
- i) promote respect for democracy, the rules of law and good governance.”