

## THE SOUTH SUDAN (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 South Sudan (Sanctions) (EU Exit) Regulations 2019 (“**the Regulations**”). Section 2(4) requires a report to be laid before Parliament which explains why the appropriate Minister making regulations under section 1 of the Act considers that carrying out each of the purposes of the regulations meet one or more of the conditions in paragraphs (a) to (i) of section 1(2) of the Act;<sup>i</sup> 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. The Act allows the UK to take a range of actions against those reasonably suspected of, for example, preventing or undermining the resolution of armed conflicts, committing gross human rights violations, and to promote compliance with international humanitarian law or respect for human rights.
4. The Act enables regulations to be made under Section 1(1)(a) for the purpose of compliance with a United Nations (UN) obligation. Acting under Chapter VII of the UN Charter, the UN Security Council (UNSC) may impose sanctions where it has determined the existence of a threat to international peace and security. The UN Security Council adopts the regime through a UN Security Council Resolution (UNSCR). UNSCRs set out the parameters of the sanctions to be imposed, including the types of sanctions measures, any exemptions, and listing criteria; designations are usually made on the face of a UNSCR or by a Sanctions Committee (a sub-committee of the Security Council) established under the relevant UNSCR. All UN member states are obliged as a matter of international law to implement UN sanctions. The UK and other EU Member States currently meet this obligation by transposing all UN sanctions into EU law. Going forward, the UK will meet this obligation by making regulations under the Act.
5. The EU can decide to introduce EU autonomous sanctions to supplement UN sanctions, take action where the UN has not, or to pursue a specific policy objective. In the case of South Sudan, the EU imposed restrictive measures on South Sudan in 2014 for the purpose of encouraging an inclusive and sustainable peace in South Sudan and to prevent the commission

of serious human rights violations. Alarmed by the severity of the conflicts the Council of the EU adopted restrictive measures (sanctions) to target persons complicit in or responsible for undermining the peace, stability and security of South Sudan. The purpose of the sanctions imposed by that regime was to support the implementation of ceasefire and peace agreements and to hold those who commit human rights violations to account. In view of the continuing conflicts, the UN Security Council adopted Resolution 2206 in 2015 which established the framework for targeted UN sanctions (financial and immigration sanctions) in South Sudan. In 2018, UNSC Resolution 2428 imposed a mandatory arms embargo on South Sudan. The UK played a major role in the development of the EU sanctions regime, and proposed a large number of the designations imposed under the regime. Bringing these existing EU sanctions into UK law is consistent with UK policy on South Sudan. The Regulations are intended to deliver substantially the same policy effects as the existing EU sanctions regime. The Act enables regulations to be made under section 1(1)(c) for the ‘discretionary’ purposes set out section 1(2) of the Act, including, amongst others, national security, maintaining international peace and security, supporting UK foreign policy objectives, and responding to or deterring gross violations of human rights. This report considers that carrying out each of the discretionary purposes of the Regulations meet one or more of the conditions in paragraphs (a) to (i) of section 1(2) of the Act;<sup>ii</sup> why there are good reasons to pursue that purpose; and why the imposition of sanctions is a reasonable course of action for that purpose.

6. In these Regulations, the measures the UK is obliged to implement as UN obligations include the restrictions on the trade in military goods and military technology; the restrictions on the provision of technical assistance, financial services and funds, and brokering services related to military goods and technology, and on enabling or facilitating the conduct of armed hostilities in South Sudan; and also the financial sanctions imposed on persons designated by the Security Council or the Sanctions Committee established under UNSC Resolution 2206. The measures which are implemented otherwise than for the purpose of compliance with UN obligations, and which are the subject of this report, are the financial sanctions (including asset freezes) and immigration sanctions (travel bans) on persons designated by a Minister under these Regulations.

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

7. The Regulations are intended to tackle the violence and instability in South Sudan. 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 that person is an involved person, and considers that the 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:
  - (a) is or has been involved in a relevant activity,
  - (b) is owned or controlled directly or indirectly (within the meaning of regulation 7) by a person who is or has been so involved,
  - (c) is acting on behalf of or at the direction of a person who is or has been so involved, or
  - (d) is a member of, or associated with, a person who is or has been so involved.

For the purposes of these Regulations, a “relevant activity” means—

- (i) the commission of a serious human rights violation or abuse in South Sudan;

- (ii) the commission of a violation of international humanitarian law in South Sudan;
  - (iii) a breach of the ARCSS or R-ARCSS;
  - (iv) an attack against, or obstruction of the activities of, diplomatic personnel in South Sudan or the regional or international monitoring and peace-support missions and mechanisms mentioned in paragraphs (i) to (iii) of regulation 4(2)(c) (namely, the Ceasefire Transitional Security Arrangements Monitoring and Verification Mechanism, the Revitalised Joint Monitoring and Evaluation Commission and the United Nations Mission in South Sudan);
  - (v) obstruction of the delivery or distribution of, or access to, humanitarian assistance in South Sudan;
  - (vi) the misappropriation of South Sudanese state funds, or taking action that may lead to such misappropriation;
  - (vii) the illicit exploitation of oil or any other natural resource in South Sudan;
  - (viii) any other action, policy or activity which threatens the peace, stability and security of South Sudan or undermines efforts to resolve the political crisis and armed conflicts in South Sudan.
8. The sanctions measures in these Regulations that those designated by the Secretary of State may be subject to consist of an asset freeze and travel ban. The discretionary purposes (i.e. other than compliance with UN obligations) of the regulations contained in this instrument that are made under section 1 of the Act have the following purposes—
- i. promoting the peace, stability and security of South Sudan,
  - ii. encouraging the resolution of the political crisis and armed conflicts in South Sudan, including the implementation of the ARCSS and R-ARCSS,
  - iii. promoting the effective delivery of the mandates of the regional or international monitoring and peace-support missions and mechanisms in South Sudan, including—
    - 1. the Ceasefire Transitional Security Arrangements Monitoring and Verification Mechanism<sup>(1)</sup>,
    - 2. the Revitalised Joint Monitoring and Evaluation Commission<sup>(2)</sup>, and

---

<sup>(1)</sup> The Ceasefire Transitional Security Arrangements Monitoring Mechanism (CTSAMM) was established under Chapter II (Permanent ceasefire and transitional security arrangements) of the Agreement on the Resolution of the Conflict in the Republic of South Sudan done at Addis Ababa on 17 August 2015; it was restructured and reconstituted as the Ceasefire Transitional Security Arrangements Monitoring and Verification Mechanism (CTSAMVM) under Chapter II of the Revitalised Agreement on the Resolution of the Conflict in the Republic of South Sudan done at Addis Ababa on 12 September 2018.

<sup>(2)</sup> The Joint Monitoring and Evaluation Commission (JMEC) was established under Chapter VII (Joint Monitoring and Evaluation Commission) of the Agreement on the Resolution of the Conflict in the Republic of South Sudan done at Addis Ababa on 17 August 2015, and reconstituted as the Revitalised Joint Monitoring and Evaluation Commission (RJMEC) under Chapter VII of the Revitalised Agreement on the Resolution of the Conflict in the Republic of South Sudan done at Addis Ababa on 12 September 2018.

3. the United Nations Mission in South Sudan<sup>(3)</sup>,
- iv. promoting respect for humanitarian assistance activities in South Sudan,
- v. promoting compliance with the rules of international humanitarian law applicable to the armed conflicts in South Sudan,
- vi. promoting respect for human rights in South Sudan, including in particular respect for—
  1. the right to life of persons in South Sudan;
  2. the right of persons in South Sudan not to be held in slavery or required to perform forced or compulsory labour;
  3. the right of persons not to be subjected to torture or cruel, inhuman or degrading treatment or punishment in South Sudan, including in the context of—
    - a. violence against persons on the basis of their ethnicity,
    - b. rape and other forms of sexual and gender-based violence, or
    - c. recruitment or use of children as soldiers;
  4. the right to liberty and security of persons in South Sudan, including freedom from arbitrary arrest, detention or enforced disappearance,
  5. the right to a fair trial of persons charged with criminal offences in South Sudan;
  6. the rights of journalists, human rights defenders, civil society activists and other persons in South Sudan to freedom of expression and peaceful assembly;
  7. the enjoyment of rights and freedoms in South Sudan without discrimination, including on the basis of a person's sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.
9. 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 (d),(e), (f)(ii) and (g) in that it would promote the resolution of armed conflicts or the protection of civilians in conflict zones, promote compliance with international humanitarian law and promote respect for human rights, as well as support the delivery of HMG's strategy in respect of South Sudan. Despite the signing of the Revitalised Agreement on the Resolution of the Conflict in South

---

<sup>(3)</sup> The United Nations Mission in South Sudan (UNMISS) was established under paragraph 1 of resolution 1996 (2011) adopted by the Security Council on 8 July 2011; its mandate was most recently extended by paragraph 5 of resolution 2406 (2018) adopted by the Security Council on 15 March 2018.

Sudan (R-ARCSS) on 12<sup>th</sup> September 2018, ceasefire violations and breaches of international humanitarian law continue, as does violence, including directed at civilians. These include horrific incidents of sexual violence, humanitarian obstruction and endemic corruption among South Sudan's elites. The UK continues to lead international efforts, both through the Troika<sup>4</sup> and international organisations, to hold human rights violators and abusers and spoilers to the peace deal to account and to encourage positive behaviour change. We do this by putting pressure on the persons in South Sudan, including by imposing sanctions on those who seek to undermine the peace, security and stability of South Sudan.

10. There are good reasons for pursuing these purposes, namely to support the resolution of the political crisis and the end of the armed conflicts in South Sudan, including through the implementation of ARCSS and R-ARCSS and all parties to the conflicts acting according to agreed ceasefires. The conflicts in South Sudan have cost over 400,000 lives and displaced over a third of the country's population. A peace agreement that is successfully implemented is in the best interests of the people of South Sudan, the region and international community.
11. The human rights situation in South Sudan is of serious concern to the UK, the international community and multiple humanitarian organisations. Multiple reports from the UN Mission in South Sudan (UNMISS) and the Office of the High Commission for Human Rights (OHCHR) evidence the scale and brutality of the atrocities.<sup>5</sup> These include: unlawful killing; forced recruitment, including of children; widespread sexual and gender-based violence, including rape; violence, including torture and unlawful killing, against persons on the basis of their ethnicity; abduction and forced disappearance; lack of respect for the right to freedom of assembly, opinion and expression. The UK shares concerns over these same issues.
12. There are times when international organisations, which include UNMISS and CTSAMVM (Ceasefire Transitional Security Arrangements Monitoring and Verification Mechanism), have been prevented from carrying out their mandate by both the Government of South Sudan and opposition groups. The Government of South Sudan obstruct such organisations from carrying out their mandate via extortionate taxes or relentless bureaucracy. International organisations have faced threats and experienced violence from parties to the conflicts.
13. Local and international humanitarian agencies who provide aid are continuously under threat and attack. Humanitarian agencies are also subject to severely high taxes and additional bureaucratic checks by the Government of South Sudan. Such measures have impeded these agencies from carrying out their work and delivering aid. Humanitarian agencies are also obstructed from carrying out their work through the threat and use of violent attack from opposition groups as well as the Government of South Sudan. South Sudan has repeatedly been ranked the most dangerous location in the world for aid workers.
14. Corruption is endemic in South Sudan, fuelling and enabling the conflicts. Political elites, including members of the Government, misappropriate state assets and illicitly exploit natural resources such as oil and teak for their own personal gain, depriving the people of South Sudan of the revenue from these resources. These elites use their personal profits to fund patronage networks and militias to compete violently for positions of power. Chapter Four of the R-ARCSS Peace Agreement promotes transparency and accountability of resource management.

---

<sup>4</sup> The Troika in the context of Sudan and South Sudan refers to the UK, the USA and Norway.

<sup>5</sup> <https://unmiss.unmissions.org/human-rights-reports> UN Mission in South Sudan

Tackling corruption will shift incentives away from violence and conflict towards peacebuilding and stability.

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

15. The imposition of prohibitions and requirements of the kind imposed by these Regulations is a reasonable course of action for the purposes set out in the Regulations, including encouraging the resolution of the political crisis and armed conflicts in South Sudan, and respect for human rights.
16. Sanctions can be used to change behaviour; constrain damaging action; or send a signal of condemnation. The UK believes sanctions can be an effective and reasonable foreign policy tool if they are one part of a broader foreign policy strategy for a country or thematic issue, and are appropriate to the purposes they are intending to achieve.
17. Sanctions are a reasonable measure to take as they directly support the implementation of revitalised peace deal signed on 12 September 2018 (R-ARCSS) by demonstrating that spoilers to the resolution of the political crisis will be held accountable. Although overall violence has reduced since 2017, ceasefire violations and breaches of international humanitarian law continue, as does violence which undermines the credibility of the agreement, including horrific incidents of sexual violence and humanitarian obstruction. A culture of impunity is rife in South Sudan, which a recent UNMISS / OHCHR report identified as enabling further cycles of violations and abuses.<sup>6</sup> The region has the greatest ability to incentivise the South Sudanese elites, including through their assets and property held in the region. However so far, regional actors have been reluctant to implement accountability measures and take action against spoilers to the peace agreement. Having consistently failed to take the firm action needed the UK and others have acted with sanctions as one of the only mechanisms for accountability. As such, sanctions are a crucial lever for the UK Government to encourage positive behaviour change among South Sudanese elites. Sanctions support the peace agreement by signalling that there will be consequences for spoilers.
18. The signing of the R-ARCSS was largely due to sustained international pressure on the issue. Sanctions were one of the mechanisms through which the UK put pressure on all sides of the conflicts to seek a resolution to the political crisis. Sanctions have since been shown to influence the way that South Sudan's political elite calibrate their approach to the peace deal.
19. The Regulations provide that designated persons may be subject to financial and immigration sanctions. 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, as stated at paragraph 7 of this report. This is in order to ensure that the sanctions are clearly targeted at those who undermine the search for and implementation of a sustainable peace in South Sudan, and therefore fulfil the stated purpose of the sanctions. The intention is to apply pressure in order that such persons change their behaviour, and to send a strong message of disapproval towards those who are spoilers to the resolution of the political crisis and armed conflicts in

South Sudan. Current evidence suggests that both/all sides of the conflicts in South Sudan threaten the peace, security and stability in South Sudan and are complicit in atrocities. Applying these restrictions to both officials and others is intended to both directly and indirectly bring about behaviour change in South Sudan. The Regulations allow for derogations to the travel ban (subject to directions) 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 mitigate any possible negative or counter-productive impacts.

20. These sanctions are not an end in themselves. They are one element of a broader strategy to achieve the UK's foreign policy goals in South Sudan. Direct lobbying alone has not proved sufficient. The UK is therefore combining sanctions with bilateral lobbying, lobbying through international frameworks, supporting UN resolutions, supporting the proposal and implementation of UN sanctions and supporting UNMISS.
21. The policy intention is to keep the sanctions on South Sudan 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, for instance in relation to violence, the undermining of the peace, stability and security of South Sudan or persons acting as spoilers to the peace agreements (ARCSS and R-ARCSS), including to ceasefire agreements. The UK will continue to coordinate with international partners, including on the future of the sanctions regime.
22. 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 that 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 also considered a reasonable course of action for the purposes of the Regulations.

### **Conclusions**

23. The purposes of these Regulations include encouraging the resolution of the political crisis and armed conflicts in South Sudan. 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 the kinds of prohibitions and requirements imposed by these Regulations for those purposes is a reasonable course of action for those purposes.

**The Rt Hon Mark Field MP**

**Minister of State for Asia and the Pacific, Foreign and Commonwealth Office, on behalf of the  
Secretary of State for Foreign and Commonwealth Affairs**

---

<sup>i</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 -*
  - (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.”*

<sup>ii</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 –*

- j) further the prevention of terrorism, in the United Kingdom or elsewhere,*
- k) be in the interests of national security,*
- l) be in the interests of international peace and security,*
- m) further a foreign policy objective of the government of the United Kingdom,*
- n) promote the resolution of armed conflicts or the protection of civilians in conflict zones,*
- o) provide accountability for or be a deterrent to gross violations of human rights, or otherwise promote -*
  - (iii) compliance with international human rights law, or*
  - (iv) respect for human rights,*
- p) promote compliance with international humanitarian law,*
- q) contribute to multilateral efforts to prevent the spread and use of weapons and materials of mass destruction, or*
- r) promote respect for democracy, the rules of law and good governance.”*