

## THE NICARAGUA (SANCTIONS) (EU EXIT) REGULATIONS 2020

### 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 Nicaragua (Sanctions) (EU Exit) Regulations 2020 (“**the Regulations**”). 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 purposes of the Regulations meet one or more of the conditions in paragraphs (a) to (i) of section 1(2) of the Act;<sup>1</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 suspected of gross human rights violations, or otherwise promote compliance with international humanitarian rights law or respect for human rights. After the Transition Period, the UK will meet this obligation by making Regulations under the Sanctions Act.
4. On 14 October 2019, the EU adopted a framework for targeted restrictive measures in view of the situation in Nicaragua. This framework provides for the possibility of imposing sanctions against persons and entities responsible for human rights violations and abuses, the repression of civil society and democratic opposition, or the undermining of democracy and the rule of law. On 4 May 2020, the EU announced its first listings; travel bans and asset freezes targeted at six individuals responsible for serious human rights violations in Nicaragua. EU sanctions are a response to the ongoing climate of repression, the shrinking space for freedom of expression, restrictions on the right to peaceful assembly, and reports of harassment and arbitrary detentions. The EU has pledged to use all instruments at its disposal to support justice and democracy in Nicaragua, and to react to the ongoing deterioration of human rights and the rule of law. Sanctions seek to both hold those who undermine democracy and the rule of law to account, and encourage the Nicaraguan Government to end the repression against its citizens.
5. The UK welcomed both the establishment of the EU sanctions regime, and the designations imposed under it. Bringing these existing EU sanctions into UK law is consistent with UK policy on Nicaragua. The Nicaragua (Sanctions) (EU Exit) Regulations 2020 (“**the Regulations**”) are intended to substantially deliver the same policy effects as the existing EU sanctions regime.

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

6. The Regulations impose sanctions on Nicaragua in relation to human rights abuses and violations. In particular, they confer a power on the Secretary of State to designate persons who have been involved in the commission of serious human rights violations or abuses in Nicaragua, the repression of civil society or democratic opposition in Nicaragua or policies or activities which undermine democracy or the rule of law in Nicaragua. The sanctions measures in these Regulations consist of an asset freeze and travel ban.
7. The purposes of the sanctions regime, as set out in regulation 4 of the Regulations, are to encourage the Government of Nicaragua to—
  - a) respect the democratic principles and institutions, the separation of powers and the rule of law in Nicaragua;;
  - b) refrain from actions, policies and activities which repress civil society in Nicaragua;
  - c) comply with international human rights law and to respect human rights, including in particular to—
    - i) respect the right to life of persons in Nicaragua;
    - ii) respect the right of persons not to be subjected to torture or cruel, inhuman or degrading treatment or punishment in Nicaragua, including inhuman and degrading conditions in prisons;
    - iii) respect the right to liberty and security, including refraining from the arbitrary arrest and detention of persons in Nicaragua;
    - iv) afford persons in Nicaragua charged with criminal offences the right to a fair trial;
    - v) afford journalists, human rights defenders and other persons in Nicaragua the right to freedom of expression, association and peaceful assembly;
    - vi) secure the human rights of persons in Nicaragua 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.
8. 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 paragraph (f), in that it would promote compliance with international human rights law respect for human rights and paragraph (i) in that it would promote respect for democracy, the rules of law and good governance.
9. There are good reasons for pursuing these purposes, namely to address the ongoing human rights abuses and violations taking place in Nicaragua, in contravention of Nicaragua's international human rights obligations. The situation remains of serious concern to both the UK and the international community, as evidenced by UN High Commissioner for Human Rights, Michelle Bachelet's numerous statements. This includes her address to the Human Rights Council on 10 September 2019, where she expressed concern over human rights violations in Nicaragua and called for the authorities to ensure victims' right to justice and reparations. The OAS High-Level Commission on Nicaragua's report of 19 November 2019 highlights the Government's actions to curtail the rights of its citizens, including the exercise of harassment and intimidation, and the imposition of restrictions on political and civil rights. We have noted the severe deterioration of Nicaraguan institutions in several governance and transparency indexes. For example, Nicaragua fell 53 places in the June 2019 Global Peace Index report, the index's worst decline.

10. The Ortega regime has systematically repressed peaceful protests since the start of the crisis in April 2018. The security forces and pro-government armed groups continue to use disproportionate, and at times lethal, force to repress political opponents, demonstrators, journalists, civil society organisations and members of the Catholic Church. Political prisoners are being held, there are persistent rumours of further clandestine facilities, and mass graves have been reported. Police and paramilitaries deny access to areas where these are allegedly situated. We remain deeply concerned by reports from released prisoners, claiming that they were subject to torture and other human rights violations whilst incarcerated.
11. A 7 June 2019 amnesty law exonerates perpetrators of human rights violations committed during anti-government protests, including the individual responsible for shooting dead a Brazilian student in July 2018. Victims have no recourse to justice. Furthermore, the “non-recurrence” clause within the legislation threatens to further suppress expressions of opposition from released political prisoners. The Government is failing to fulfil its obligation to work toward the re-establishment of democracy in Nicaragua. In April 2019, the Ortega regime unilaterally withdrew from political dialogue with the opposition Civic Alliance, despite having agreed a ‘road map’ to resolving the crisis just one month earlier.

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

12. The imposition of financial sanctions (including asset freezes) and immigration sanctions (travel bans) of the kind imposed by these Regulations is a reasonable course of action for the purpose of encouraging the Government of Nicaragua to respect democratic principles and institutions, the separation of powers and the rule of law in Nicaragua; refrain from actions, policies and activities which repress civil society in Nicaragua; and comply with international human rights law and to respect human rights.
13. 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.
14. The gravity of the human rights situation in Nicaragua means that putting sanctions in place is a reasonable measure to take. For example, the Government’s release of at least 8 political prisoners on 13 February 2020, as well as number of other releases last year, were at least in part because of sustained international pressure, including sanctions. The same can be said of the regime’s decision to release printing materials to La Prensa newspaper on 7 February 2020, having withheld them since October 2018.
15. There are two principal kinds of prohibition in the Regulations: those relating to financial sanctions and those relating to 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, namely that there are reasonable grounds to suspect that the person is, or has been, involved in the commission of a serious human rights violation or abuse in Nicaragua, the repression of civil society or democratic opposition in Nicaragua, or other actions, policies or activities which undermine democracy or the rule of law in Nicaragua, and that their designation is appropriate having regard to the purposes of the regime and the likely significant effects of the designation on that person. This is in order to ensure that the sanctions

are clearly targeted at those who abuse human rights, and therefore fulfil the stated purpose of the sanctions. 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 mitigate any possible negative or counter-productive impacts.

16. 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 Nicaragua. Direct lobbying alone has not proved sufficient. The UK is therefore combining sanctions with bilateral lobbying, and lobbying through international frameworks.
17. The policy intention is to keep the sanctions on Nicaragua in place until the UK Government is assured that the human rights situation in Nicaragua has markedly improved, or has demonstrated steady and consistent improvement over a sustained period. 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. Our position is that only the full implementation of the lapsed March 2019 agreement between the Ortega administration and the opposition, a credible and inclusive dialogue, as well as political and electoral reforms according to international standards, can halt the ongoing crisis and lead to a peaceful and democratic resolution. The UK will continue to coordinate with international partners, including on the future of the sanctions regime.
18. 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**

19. The purposes of these Regulations are to encourage the Government of Nicaragua to respect democratic principles and institutions, the separation of powers and the rule of law in Nicaragua; refrain from actions, policies and activities which repress civil society in Nicaragua; and comply with international human rights law and to respect human rights. For the reasons set out in this report, carrying out those purposes meets one 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.

**Lord Ahmad**

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

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<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.”*