

THE LIBYA (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 Sanctions Act**”) in relation to the Libya (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 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 Sanctions Act¹, 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 Sanctions 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 Sanctions Act enables Regulations to be made under section 1(1)(a) for the purpose of compliance with a United Nations (UN) obligation. No section 2(4) report is required in relation to such a purpose. 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 sanctions regimes through a UN Security Council Resolution (UNSCR). The UNSCRs set out the parameters for 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 UNSC) established under the relevant UNSCR. All UN member states are obligated as a matter of international law to implement UN sanctions. For the UK these obligations are currently implemented through EU legislation and related UK legislation. After the Transition Period, the UK will meet this obligation by making regulations under the Sanctions Act.
5. The UN sanctions regime in relation to Libya was introduced in February 2011 in response to the violation of human rights in Libya, which included the repression of peaceful demonstrators and deaths of civilians. The sanctions included the imposition of an arms embargo, travel ban and asset freeze on the family of Muammar Al-Qadhafi and certain government officials. They also imposed asset freezes on some government-controlled entities. The sanctions were imposed via UNSCR

1970 (2011)¹. The EU implemented these UN sanctions with Council Decision 2011/137/CFSP and Council Regulation (EU) 204/2011. UNSCR 2441 (2018)² in November 2018 imposed further measures explicitly to apply to persons planning, directly or committing acts involving sexual and gender-based violence.

6. 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 Libya, due to the seriousness of the situation, the EU introduced additional restrictive measures in 2011, listing additional persons as the subjects of targeted travel bans and asset freezes, most recently updated by Council Regulation (EU) 2016/44. In its 17 July 2017 conclusions on Libya, the Council expressed its readiness to repeal the restrictive measures if the conditions for their application are no longer met, as well as introduce new measures against individuals who threaten the peace, security or stability of the country, impede the completion of Libya's political transition and are responsible for serious human rights abuses.
7. Both UN and EU sanctions in relation to Libya have developed as the political situation in the country has changed. The UN has imposed transport and trade sanctions related to the illicit export of Libyan oil; and the EU has imposed further trade restrictions related to goods that could be used for human trafficking and migrant smuggling.
8. Bringing this existing EU sanctions regime into UK law is consistent with UK policy on Libya. The Regulations are intended to deliver substantially the same policy effects as the existing UN and EU sanctions regimes.
9. In these Regulations, the measures the UK is obliged to implement as UN obligations include: financial sanctions (including asset freezes) on persons designated by the UNSC or the Sanctions Committee established under, or in accordance with, UNSCR 1970 (2011); restrictions relating to the trade in military goods and military technology, the provision of technical assistance, financial services and funds, and brokering services related to military goods and military technology, and on enabling or facilitating the conduct of armed hostilities in Libya; measures related to the illicit export of Libyan oil; and flight restrictions on aircraft suspected of carrying military goods or armed mercenary personnel to Libya.
10. The measures which are implemented other than for the purpose of compliance with UN obligations, and which are the subject of this report, are the financial sanctions (including asset freezes) on persons designated by a Minister under these Regulations (where such a designation is not required in order to meet a UN obligation), immigration sanctions (travel bans) and additional trade restrictions including those related to internal repression goods and internal repression technology, goods that could be used for human trafficking and migrant smuggling.

Purposes and reasons for pursuing the purposes

11. The discretionary purposes (i.e. other than compliance with UN obligations) are set out in regulation 4 of the Regulations, that are made under section 1 of the Sanctions Act, have the following purposes—
 - a) promoting respect for human rights in Libya,

¹ UNSCR 1970 (2011) [https://www.undocs.org/S/RES/1970%20\(2011\)](https://www.undocs.org/S/RES/1970%20(2011))

² UNSCR 2441 (2018) https://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/2441%2018%29

- b) promoting the peace, stability and security of Libya,
- c) promoting the successful completion of Libya's transition in a democratic, independent and united country, and
- d) preventing migrant smuggling and human trafficking taking place from Libya.

12. Carrying out these purposes meets one or more of the conditions set out in section 1(2) of the Sanctions Act. In particular, carrying out these purposes would fall within the purpose of paragraphs:

- (2)(c) be in the interests of international peace and security;
- (2)(d) further a foreign policy objective of the government of the United Kingdom;
- (2)(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;
- (2)(g) promote compliance with international humanitarian law;
- (2)(i) promote respect for democracy, the rule of law and good governance.

13. There are good reasons for pursuing these purposes, namely to address: the ongoing political instability in Libya; continuing human rights violations and abuses; the repressive policies and activities implemented by former-Qadhafi era officials (and others) seeking to destabilise or create a political vacuum in Libya; and the ongoing migrant smuggling and human trafficking operations taking place from Libya.

14. The situation in Libya remains of serious concern to both the UK and the international community. In the report of 5 September 2018 by the UN Panel of Experts on Libya³, which was established pursuant to UNSCR 1973 (2011)⁴, two key issues were identified:

- i. armed groups pose a direct threat to the political transition in Libya. They use violence to exert control over state institutions that could result in a return to more wide-scale armed confrontations (as was the case in September 2018). They are also responsible for serious human rights abuses. These include unlawful detentions that are politically, economically or religiously motivated, torture, and indiscriminate shelling of residential districts. These acts are deepening grievances among the Libyan population and threatening long-term peace and stability in Libya; and
- ii. trafficking in persons and smuggling of migrants is benefitting armed groups. It also fuels instability and undermines the formal economy. The panel was also concerned about the systematic violation of migrants' human rights due to weak law enforcement and large security vacuums. In this regard, they welcomed the decision of the UN Libya Sanctions Committee to sanction six smugglers of migrants as this represented a key step forward.

Why sanctions are a reasonable course of action

³ UN Report of the Panel of Experts on Libya, 5 September 2018 <https://www.undocs.org/S/2018/812>, and correction to Annex 6 of 5 September 2018 Report <https://www.undocs.org/en/S/2018/812/corr.1>

⁴ UNSCR 1973 (2011) [https://www.undocs.org/S/RES/1973%20\(2011\)](https://www.undocs.org/S/RES/1973%20(2011))

15. The imposition of prohibitions and requirements of the kind imposed by these Regulations is a reasonable course of action for the purposes of promoting respect for human rights in Libya, promoting the peace, stability and security of Libya, promoting the successful completion of Libya's transition to a democratic, independent and united country, and preventing migrant smuggling and human trafficking taking place from Libya.
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. The gravity of the situation in Libya means that putting sanctions in place is a reasonable measure to take. Armed groups continue to control state institutions, act with impunity and commit serious human rights violations. In September 2018, clashes in Tripoli between opposing factions and militias claimed the lives of at least 120 civilians, with many hundreds more injured. Since April 2019, there has been an increase in violence in Libya, with civilian casualties. The weak law enforcement regime and security vacuum continues to enable systematic human rights abuse in prisons and detention centres, and the trafficking of persons is prevalent, with substantial benefit to the armed groups.
18. Libyan State and financial institutions are increasingly being targeted by armed groups as a means of strengthening their position in Libya and the pursuit of profit. On 14 June 2018, a coalition of armed groups, headed by Ibrahim Jadhraan, formerly in charge of the Petroleum Facilities Guard in the central region, led an attack to take control of oil terminals under the control of the National Oil Corporation. According to the UN Panel of Expert's report, the National Oil Corporation estimated the daily losses due to the suspension of oil exports subsequent to the attack to be about \$33 million. The overall losses due to blockades and successive attacks against oil terminals and facilities since 2013 were estimated to be about \$56 billion. The UK – along with French, Italian and US partners – subsequently worked to designate Jadhraan at the UN level. These acts, along with the continuing threats to Libyan state and financial institutions, fuel instability and undermine the formal economy, and further threaten long-term peace and stability in Libya.
19. Sanctions disrupt the free movement and financial flows of criminals and their smuggling networks, and send a clear message to those directly responsible for these acts that violence and human rights violations will not be tolerated. They also support the UN political roadmap by demonstrating that “spoilers” to the resolution of the political crisis will be held accountable. This includes former-Qadhafi era officials who continue to speak out against the UN political process, engage in political activism on pro-Qadhafi platforms and lobby regional actors. As such, sanctions are a crucial lever for the UK to encourage constructive engagement from these actors with the UN-led process. Sanctions support ongoing attempts to achieve an inclusive political settlement by signalling that there will be consequences for “spoilers”.
20. The sanctions imposed under these Regulations limit the ability of individuals and armed groups in Libya to undermine the Libyan Political Agreement and Government of National Accord. In doing so, they support the foreign policy objective of securing a political settlement in Libya which will result in a functional transparent government which represents and serves the whole of Libya.

21. These Regulations provide that persons designated by the Secretary of State for the purposes of this regime may be subject to financial and immigration sanctions. These sanctions consist of an asset freeze prohibiting a designated person's funds and economic resources from being dealt with, and prohibiting funds and economic resources from being made available to or for the benefit of a designated person (directly or indirectly) and a travel ban. These sanctions can only be imposed upon specified individuals and entities who meet the criteria set out in the Regulations. This is in order to ensure that the sanctions are clearly targeted and are appropriate to the stated purposes of the sanctions regime. The intention is to apply pressure in order that key actors in Libya change their behaviour. The Regulations allow for derogations to the travel ban, and provide 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, and allow funds to be released where appropriate, for example in relation to basic needs and legal expenses.
22. The Regulations contain restrictions on the trade of restricted goods and technology. Elements of these restrictions go beyond what is required by the UK's UN obligations but are in line with EU sanctions. These include restrictions on trade related to items that could be used for internal repression, and goods that could be used for human trafficking and migrant smuggling. The effect of these sanctions therefore is to constrain potential human rights violations and abuses, violence and civil unrest, therefore fulfilling the stated purposes of this sanctions regime. They do this by preventing the flow of goods that could be used to commit acts of violence and other human rights violations or abuses. The trade measures in the Regulations are targeted at specific types of items and provide for both exceptions and a licensing framework. The exceptions and licensing provisions support the reasonableness of imposing these sanctions measures, as it will mitigate any unintended negative or counter-productive impacts.
23. 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 Libya. This includes counter-terrorism activity, tackling illegal migration, and the pursuit of a political settlement as the best enabler for sustainable progress against these objectives. The UK is therefore combining sanctions with bilateral and multilateral action and lobbying to support the UN-led political process.
24. The policy intention is to keep the sanctions in place until the UK is assured that there has been demonstrable and sustained change of behaviour from those who have been involved in human rights violations and that the political transition has successfully been completed. This could be demonstrated by evidence of concrete steps that show an improvement in the areas of concern outlined in the purposes of these Regulations, via the UN Panel of Experts on Libya reporting that they no longer believe the situation in Libya constitutes a threat to international peace and security or when the UN Security Council decides that frozen funds can be made available to and for the benefit of the people of Libya. The UK Government will continue to coordinate with international partners, including on the future of the sanctions regime.
25. 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, that certain information is provided to authorities, and ensure that certain sensitive information is treated securely. These kinds of prohibitions and requirements enable the UK to properly operate and

enforce the sanctions regime, and therefore the imposition of these prohibitions and requirements is also considered a reasonable course of action for the purposes of the Regulations.

Conclusions

26. The discretionary purposes of these Regulations are to promote respect for human rights in Libya; promote the peace, stability, and security of Libya; promote the successful completion of Libya's transition to a democratic, independent and united country; and prevent migrant smuggling and human trafficking taking place from Libya. For the reasons set out in this report, carrying out those discretionary purposes meets one or more of the conditions in section 1(2) of the Sanctions 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 (other than those required for compliance with the UK's UN obligations) is a reasonable course of action for those purposes.

Nigel Adams MP

Minister of State for Asia, on behalf of the Secretary of State for Foreign, Commonwealth and Development Affairs

ⁱ 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 rule of law and good governance."*