

THE SUDAN (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 Sudan (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;ⁱ 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 enables regulations to be made under section 1(1)(a) for the purposes 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 UNSC adopts the regime through UN Security Council Resolutions (UNSCRs). 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 UNSC) established under the relevant UNSCR. All UN member states are obliged as a matter of international law to implement UN sanctions. For the UK, these UN 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.
4. The EU can decide to introduce EU autonomous sanctions to supplement UN sanctions or take action where the UN has not in order to pursue a specific policy objective. The UN sanctions regime in relation to Sudan was introduced in 2004 by resolution 1556 (2004) which imposed an arms embargo preventing the sale or supply of arms and related materials to all non-governmental entities and individuals, including the Janjaweed, operating in the states of North Darfur, South Darfur, and West Darfur and preventing the provision to those entities and individuals of related technical assistance and training. In 2005 by resolution 1591 (2005) the UN arms embargo was expanded to include all the parties to the N’djamaena Ceasefire Agreement (including the Government of Sudan) and any other belligerents in the states of North Darfur, South Darfur and West Darfur. By the same resolution the UN also introduced

an asset freeze and a travel ban. In 2012, by way of resolution 2035 (2012), the UN arms embargo was expanded to cover all the territory of Darfur, and the asset freeze was expanded to cover entities in addition to individuals. The EU first adopted sanctions in respect to Sudan by way of a Council Decision in 1994. In 2004 the EU Council adopted a regulation in relation to certain aspects of the arms embargo and in 2005, it adopted a regulation to impose certain specific restrictive measures directed against certain persons impeding the peace process and breaking international law in the conflict in the Darfur region in Sudan. The latest (consolidating) EU Council regulation (Council Regulation (EU) No. 747/2014) in respect of sanctions in Sudan was adopted in July 2014. The EU arms embargo relates to all of Sudan.

5. Bringing the existing EU sanctions into UK law is consistent with UK policy on Sudan. The Regulations are intended to deliver substantially the same policy effects as the existing EU sanctions regime. The Sanctions Act enables regulations to be made under section 1(1)(c) for the ‘discretionary’ purposes that are within section 1(2) of the Act. The purposes at section 1(2) of the Act include, 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 Sanctions Act, why there are good reasons to pursue those purposes; and why the imposition of sanctions is a reasonable course of action for those purposes.
6. Measures provided for in these Regulations will have the effect of implementing the UK’s UN obligations. These include restrictions on trade as required by the UN arms embargo outlined in paragraph 4 above, and also the financial sanctions and travel bans imposed on persons designated by the UNSC or the Sanctions Committee established under UNSCR 1591. The measures which are implemented otherwise than for the purpose of compliance with UN obligations, which are the subject of this report, are the financial sanctions (including asset-freeze) and sanctions (travel bans) on persons designated by a Minister under these Regulations, and trade sanctions that apply the arms embargo to the territory of Sudan outside the territory of Darfur.

Purposes and reasons for pursuing the purposes

7. The discretionary purposes (i.e. purposes other than compliance with UN obligations) of the sanctions regime, as set out in regulation 4 of the Regulations, that are made under section 1 of the Sanctions Act, are:
 - (a) promoting the peace, stability and security of Sudan,
 - (b) encouraging the resolution of the armed conflicts in Sudan and the stabilisation of Sudan, including by way of—
 - i. comprehensive and inclusive peace negotiations and agreements, and
 - ii. the implementation of the Constitutional Document of 17th August 2019¹,
 - (c) promoting respect for democracy, the rule of law and good governance in Sudan,

¹ The Constitutional Document (also referred to as the Constitutional Charter for the 2019 Transitional Period) was signed by representatives of the Transitional Military Council and the Forces for Freedom and Change in Khartoum on 17th August 2019. The UN Security Council “welcom[ed] the signing of the Constitutional Document on 17 August 2019...” in the preamble to resolution 2524 (2020) adopted by the Security Council on 3 June 2020.

- (d) promoting the effective delivery of the mandates of the regional or international monitoring and peace-support missions and mechanisms whose activities contribute to the peace, stability and security of Sudan, including—
 - i. the United Nations Integrated Transition Assistance Mission in Sudan²,
 - ii. the United Nations-African Union Hybrid Operation in Darfur³,
 - iii. the United Nations Interim Security Force for Abyei⁴,
- (e) promoting respect for humanitarian assistance activity in Sudan,
- (f) promoting compliance with the rules of international humanitarian law applicable to the armed conflicts in Sudan, and
- (g) promoting respect for, and accountability in relation to violations or abuses of, human rights in Sudan, including, in particular, respect for—
 - i. the right to life of persons in Sudan;
 - ii. the right of persons in Sudan not to be held in slavery or required to perform forced or compulsory labour;
 - iii. the right of persons not to be subjected to torture or cruel, inhuman or degrading treatment or punishment in Sudan;
 - iv. the right to liberty and security of persons in Sudan, including freedom from arbitrary arrest, detention or enforced disappearance;
 - v. the right to a fair trial of persons charged with criminal offences in Sudan;
 - vi. the rights of journalists, human rights defenders, civil society activists and other persons in Sudan to freedom of expression and peaceful assembly;
 - vii. the enjoyment of rights and freedoms in 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,

8. 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 to:

- (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)(e) promote the resolution of armed conflicts of the protection of civilians in conflict zones;
- (2)(f) provide accountability for or be a deterrent to gross violations of human rights, or otherwise promote compliance with international human rights law, or respect for human rights;
- (2)(g) promote compliance with international humanitarian law; and
- (2)(i) promote respect for democracy, the rule of law and good governance.

² The United Nations Integrated Transition Assistance Mission in Sudan (UNITAMS) was established pursuant to resolution 2524 (2020) adopted by the Security Council on 3 June 2020.

³ The African Union-United Nations Hybrid Operation in Darfur (UNAMID) was established pursuant to resolution 1769 (2007) adopted by the Security Council on 31 July 2007.

⁴ The United Nations Interim Security Force for Abyei (UNISFA) was established pursuant to resolution 1990(2011) adopted by the Security Council on 27 June 2011. The mandate was expanded by resolution 2024(2011) adopted on 14 December 2011 to include monitoring along the entire border between North and South Sudan and most recently extended by resolution 2519(2020) adopted on 14 May 2020.

9. There are good reasons for pursuing these purposes. The UK's policy on Sudan is to promote peace, stability and security in Sudan, including through encouraging the resolution of the conflicts that have impacted the people of Sudan for decades during which there have been historic allegation of human rights violations including allegations of crimes against humanity, and through the promotion of respect for democracy, the rule of law and good governance. The security situation in conflict areas within Sudan remains fragile. Although there has been an overall reduction in conflict and agreement to a democratic transition which envisages securing a lasting peace agreement, the security situation for Internally Displaced Persons, refugees and civilians continues to be of concern. In addition, the United Nations continue to report wide spread human rights abuses and violations across Darfur. Peace talks between the Government of Sudan and armed opposition groups are ongoing, with the hope of a permanent settlement. The root causes of conflict and instability have not, however, been addressed comprehensively, and any peace agreement will need to be adopted by all parties and implemented in full over time. Within this wider policy, sanctions are a tool to constrain the activities of those who impede efforts to bring peace to the conflict areas and wider stability and respect for democracy in Sudan, and to hold those who seek to undermine peace and stability in Sudan to account.

Why sanctions are a reasonable course of action

10. The imposition of prohibitions and requirements of the kind imposed by these Regulations is a reasonable course of action for the purpose of promoting peace and stability in Sudan, the resolution of armed conflicts, as well as respect for human rights, protection of civilians and compliance with international humanitarian law, respect for democracy, the rule of law and good governance in Sudan.
11. 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.
12. Due to the gravity of the situation in Sudan, putting sanctions in place is a reasonable measure to take. Armed opposition groups and the Government of Sudan have not yet achieved a lasting peace agreement, which will need to be accepted by all parties and implemented in full if the root causes of conflict are to be addressed and stability and democracy embedded. Incidents of inter communal violence continue to occur, there is a history of and human rights violations and abuses which remain a concern.
13. These Regulations provide that persons designated by the Secretary of State may be subject to financial and immigration sanctions. These restrictions include 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 travel ban. These restrictions can only be imposed upon specified persons who meet the criteria set out in the Regulations. The intention is to apply pressure upon certain individuals whose activities have impeded the stabilisation and peace processes in Sudan, including by violating or abusing human rights, violating international humanitarian law, or undermining respect for democracy, the rule of law and good governance, and to prevent further such behaviour in these matters. The Regulations allow for derogations from the travel ban (subject to directions) and also 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.

14. The Regulations also contain restrictions on the trade in military goods and military technology, on the provision of technical assistance, financial services, funds and brokering services relating to military goods or military technology, and on enabling or facilitating the conduct of armed hostilities in Sudan. The intention of these sanctions is directly to prevent the influx of goods used for conflict or human rights abuses or violations. The trade measures in the Regulations provide for the trade sanctions to be subject to a licensing framework that will be overseen by the Department for International Trade. The power to grant licences under this regime supports the reasonableness of imposing these sanctions measures, as it will mitigate any unintended negative consequences.
15. 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 Sudan, which includes a significant focus on supporting the process of transition to democracy agreed in 2019, as well as efforts to support a programme of reforms and peace process by the civilian-led government. The UK is therefore combining the retention of sanctions with bilateral lobbying, lobbying through international frameworks, supporting UN resolutions, supporting UN missions to Sudan, as well as broader efforts to ensure that the 2019 revolution in Sudan delivers peace and stability for all Sudanese.
16. The policy intention is to keep the sanctions on Sudan in place until the UK Government is assured that the processes to end conflict in Sudan have been implemented, that the need for such measures to influence behaviours has ended, and that accountability mechanisms have been adopted by Sudan. This would be evidenced, in part, by a comprehensive peace settlement, the implementation of the agreement to a democratic transition and by concrete steps being taken to show 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.
17. 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 it is provided to authorities, and 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

18. The discretionary purposes of these Regulations are: promoting the peace, stability and security of Sudan; encouraging the resolution of the armed conflicts in Sudan and the stabilisation of Sudan; promoting respect for democracy, the rule of law and good governance in Sudan; promoting the effective delivery of the mandates of the regional or international monitoring and peace-support missions and mechanisms whose activities contribute to the peace, stability and security of Sudan; promoting respect for humanitarian assistance activity in Sudan; promoting compliance with the rules of international humanitarian law applicable to the armed conflicts in Sudan and promoting respect for, and accountability in relation to violations or abuses of,

human rights in Sudan. 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 of Wimbledon

**Minister of State for South Asia and the Commonwealth, Foreign and Commonwealth Office,
on behalf of the Secretary of State for Foreign and Commonwealth 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 rules of law and good governance.”*