

THE DEMOCRATIC REPUBLIC OF THE CONGO (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 Democratic Republic of the Congo (Sanctions) (EU Exit) Regulations 2019 (“**the Regulations**”). Section 2(4) of the Act 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;¹ 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 Sanctions 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. UN sanctions were first

imposed on the Democratic Republic of the Congo (“the DRC”) in 2003, as an arms embargo on non-government armed groups and on non-parties to the Global All-Inclusive Peace Agreement. They have been incrementally amended and expanded since then, reflecting changes in the political military situation in the DRC and increasingly as a response to particular aspects of the conduct of that conflict for example around child soldiers, atrocities and gender-based violence. Since December 2016, the EU has also made sanctions designations in addition to those individuals listed by the UN Sanctions Committee. The current EU sanctions regulations (consisting of travel bans and asset freezes) were most recently updated in 2018.

6. Bringing these existing EU sanctions into UK law is consistent with UK policy on the DRC. The Regulations are intended to substantially deliver 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;ⁱⁱ why there are good reasons to pursue that purpose; and why the imposition of sanctions is a reasonable course of action for that purpose.
7. 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 DRC; and also the financial sanctions and travel bans imposed on persons designated by the Security Council or the Sanctions Committee established under UNSCR 1533. 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

8. The Regulations impose sanctions on the DRC in relation to concerns about human rights violations of international humanitarian law and the obstruction of democracy and the rule of law. 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 is or has been involved in—
 - (i) the commission of a serious human rights violation or abuse, or violation of international humanitarian law, in the Democratic Republic of the Congo including, in particular, in relation to —
 - (aa) rape, mass rape and other forms of sexual and gender-based violence;
 - (bb) deliberate targeting of civilians, schools and hospitals;,,
 - (cc) recruitment or use of children as soldiers;
 - (dd) the suppression of freedom of expression and peaceful assembly

- (ii) obstructing or undermining respect for democracy, the rule of law and good governance in the Democratic Republic of the Congo;
- (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.

9. 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—

To promote—

- i. the resolution of the armed conflict in the Democratic Republic of the Congo;
- ii. respect for human rights, and compliance with international humanitarian law, as applicable to the armed conflict in the Democratic Republic of the Congo, including in particular in relation to—
 - 1. the right of persons not to be subjected to torture or cruel, inhuman or degrading treatment or punishment in the Democratic Republic of the Congo, including in the context of—
 - a. rape, mass rape and other forms of sexual and gender-based violence;
 - b. deliberate targeting of civilians, schools and hospitals;
 - c. recruitment or use of children as soldiers;
 - 2. the right of persons in the Democratic Republic of the Congo to the freedom of expression and peaceful assembly;
- iii. respect for democracy, the rule of law and good governance in the Democratic Republic of the Congo;

10. Carrying out these would fall within paragraph 2(e) in that the Regulations aim to promote the resolution of the armed conflict in the DRC, (2)(f)(ii), in that it would provide accountability for or be a deterrent to gross violations of human rights, or otherwise promote respect for human rights, 2(g) as these sanctions aim to promote compliance with international humanitarian law, and 2 (i) as these sanctions aim to promote respect for democracy, the rule of law and good governance in the DRC.

11. There are good reasons for pursuing these purposes, namely to address the ongoing human rights abuses and violations taking place in the DRC. A high proportion of human rights abuses in the DRC are committed by state actors. Sanctions are put in place in order to pressure state actors and other human rights violators into improving human rights in the DRC. The situation remains of serious concern to both the UK and the international community, as evidenced by the United Nations Joint Human Rights Office (UNJHRO) monthly reports, the most recent of which provided an overall assessment of the human rights violations and abuses during 2018

in the DRC.¹ These violations include: sexual and gender based violence, including the use of rape and mass rape as a weapon of war, arbitrary arrest and detention, extrajudicial killing as well as inhumane and degrading treatment. The UK shares concerns over these same issues.

12. In the DRC, more than 10 million people remain displaced by violent conflict. Violence is perpetrated by a range of rebel groups, local armed self-defence groups, and government security forces. Competition and conflict relating to land, and to the resources found on that land, fester as a result of inadequate dispute resolution mechanisms. The Government's response is often heavy handed, leading to further violence and human rights violations. The government's failure to commit and deliver on crucial processes like security sector reform and disarmament, demobilisation and reintegration further reduce any possibility of resolving the conflict in the immediate future. Armed groups, in return, continue to exploit resources for their own benefit and commit serious human rights abuses towards the population as a means of consolidating power.
13. Freedom of assembly, opinion and expression in the DRC are restricted. Internet communications are often shut down by the government during periods of potential civil unrest, most recently following the 2018 elections. Activists, journalists and members of political parties frequently suffer intimidation and arbitrary arrests. Restrictions on democratic space is a major problem, with political rallies commonly being disrupted or repressed by security forces, often through the use of excessive force. The issue of politically motivated, arbitrary arrests remains a concern. Corruption, lack of transparency and poor governance has been the normal operating mode of the government. A weak judicial system allows a culture of impunity and protection for those defying the rule of law to continue.

Why sanctions are a reasonable course of action

14. The imposition of prohibitions and requirements of the kind imposed by these Regulations is a reasonable course of action for the purpose of promoting the resolution of the armed conflict in the DRC as well as respect for human rights and compliance with international humanitarian law, respect for democracy, the rule of law and good governance in the DRC.
15. 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.
16. Sanctions are a reasonable measure in the DRC due to the serious, ongoing, human rights violations and abuses in the country including extrajudicial killings, torture, rape, mass-rape, and the recruitment of child soldiers. Impunity for those committing human rights abuses and violations remain rife. Sanctions are part of the UK government's strategy to promote respect for human rights in the DRC by targeting individuals who are responsible for violent acts and to hold them accountable. It is also a means of putting pressure on the DRC government to take action and implement steps to improve the human rights situation.

¹ BUREAU CONJOINT DES NATIONS UNIES AUX DROITS DE L'HOMME EN RDC (BCNUDH) MONUSCO – HCDH: Analysis of the human rights situation in December 2018.
https://monusco.unmissions.org/sites/default/files/unjhro_-_analysis_of_the_human_rights_situation_in_drc_jan_19_fr_0.pdf

17. The Regulations provide that persons designated by the Secretary of State may be subject to financial and immigration sanctions. These 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 9 of this report. This is in order to ensure that the sanctions are clearly targeted at those who commit human rights violations or undermine the resolution of the conflict in the DRC or the promotion of good governance and the rule law, and therefore fulfil the stated purpose of the sanctions. The intention is to apply pressure in order that those responsible change their behaviour, and to send a strong message of disapproval of human rights abuses. 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.
18. 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 the DRC – most notably good governance and respect for human rights. Following the appointment of a new president in the DRC in January 2019, we will be closely monitoring the situation for signs of improvement, to inform possible future decisions about the lifting of sanctions. Direct lobbying alone has not proved sufficient. The UK is therefore combining sanctions with bilateral lobbying, lobbying through international frameworks including the International Contact Group for the Great Lakes region, supporting UN initiatives, including the Human Rights Council and Universal Periodic Review of DRC, UN Security Council resolutions and the mandate of the UN peacekeeping mission in DRC (MONUSCO). The British Embassy in Kinshasa also works through programme funding to document and tackle human rights abuses.
19. The policy intention is to keep the sanctions in relation to the DRC in place until the UK Government is assured that the human rights situation in the DRC has improved and that there has been progress to resolution of armed conflict which may be marked by steady and consistent improvement over a sustained period of time. This is likely to necessitate evidence of concrete steps to improve the areas of concern outlined in the purposes of these Regulations. Examples include the introduction/amendment of laws that progress the rule of law in DRC, release of political prisoners, and indications that the security services respond more proportionately to cases of civil unrest. The UK will continue to coordinate with international partners, including on the future of the sanctions regime.
20. 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

21. The discretionary purposes of these Regulations are to promote the resolution of the armed conflict in the DRC, respect for human rights, compliance with international humanitarian law and respect for democracy, the rule of law and good governance in the DRC. 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.

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**

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 of 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.”*

ⁱⁱ 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 of 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.”*