

THE MALI (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 Mali (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 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 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 the regime 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 Security Council) 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.
4. The UN sanctions regime in relation to Mali was introduced in September 2017 by Resolution 2374 with the purpose of progressing implementation of the 2015 Agreement on Peace and Reconciliation in Mali (‘the Agreement’). A travel ban and an asset freeze can be imposed on persons designated as responsible for or complicit in, or having engaged in, directly or indirectly, actions or policies that threaten the peace, security or stability of Mali.

5. The Sanctions Act enables regulations to be made under section 1(1)(c) for ‘discretionary’ purposes that are within 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 why carrying out each of the discretionary purposes of the Regulations meet one or more conditions in paragraphs (a) to (i) of section 1(2) of the Act, why there are good reasons to pursue these purposes; and why the imposition of sanctions is a reasonable course of action for these purposes.
6. Measures provided for in these Regulations will have the effect of implementing the UK’s UN obligations. These include the asset freeze on persons designated by the Security Council or the Sanctions Committee established under Resolution 2374, persons acting on their behalf and at their direction and on other categories of person prescribed in the UN Security Council resolution.
7. The main measures which can be 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) and immigration sanctions (travel bans) on persons designated by a Minister under these Regulations (otherwise than in compliance with the UK’s UN obligations).

Purposes and reasons for pursuing the purposes

8. The discretionary purposes (i.e. purposes other than compliance with UN obligations), as set out in regulation 4 of the Regulations, that are made under section 1 of the Act, have the following purposes, namely promoting:
 - i. the peace, stability and security of Mali,
 - ii. the implementation of the Agreement on Peace and Reconciliation in Mali,
 - iii. respect for—
 1. local, regional and state institutions in Mali,
 2. the Malian defence and security forces, and
 3. the governance or implementation mechanisms referred to in, or established in accordance with, the Agreement on Peace and Reconciliation in Mali,
 - iv. the effective delivery of the mandates of the international security, peace-support and capacity-building missions and mechanisms in Mali, including—
 1. the United Nations Multidimensional Integrated Stabilization Mission in Mali (MINUSMA);
 2. the Panel of Experts established in accordance with paragraph 11 of resolution 2374;
 3. the G5 Sahel Joint Force;
 4. the European Union Training Mission Mali (EUTM Mali);
 5. the European Union CSDP mission in Mali (EUCAP Sahel Mali);
 6. French forces,
 - v. respect for humanitarian assistance activity in Mali,
 - vi. compliance with the rules of international humanitarian law applicable to the armed conflicts in Mali, and
 - vii. respect for human rights in Mali, including, in particular, respect for—

1. the right to life of persons in Mali;
2. the right of persons in Mali 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 Mali;
4. the right to liberty and security of persons in Mali, including freedom from arbitrary arrest or detention, or enforced disappearance;
5. the right to a fair trial of persons charged with criminal offences in Mali;
6. the right of journalists, human right defenders, civil society activists and other persons in Mali to freedom of expression and peaceful assembly;
7. the enjoyment of rights and freedoms in Mali 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,

otherwise than by compliance with the relevant UN obligations.

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 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)(e) promote the resolution of armed conflicts or 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.

10. There are good reasons for pursuing these purposes. A robust posture on sanctions is consistent with the UK's wider policy on Mali and forms a key tool in improving the speed, efficiency and delivery of measures set out in the 2015 Agreement by maintaining pressure on relevant parties. An effective use of the sanctions regime not only identifies, and curtails the activities of those who impeding peace process implementation, but also acts as a deterrent for a range of actors with the means and motive to undermine peace, stability and security in Mali. The UK also continues to push for the rigorous enforcement of existing sanctions to ensure that those who have been found culpable do not operate with impunity and are encouraged to act in the spirit of the 2015 Agreement. Sanctions also support efforts to hold perpetrators to account for human rights abuses against vulnerable groups including killings, torture and other cruel, inhuman or degrading treatment, sexual violence, and the recruitment and use of children in armed conflict, as well as supporting efforts by the international community to promote respect for human rights within Mali, which is a key UK policy objective.

Why sanctions are a reasonable course of action

11. The imposition of financial sanctions (including asset freezes) and immigration sanctions (travel bans) of the kind imposed by these Regulations (other than those required for compliance with the UK's UN obligations) is a reasonable course of action for the purpose of supporting the implementation of the 2015 Agreement on Peace and Reconciliation in Mali ("**the Agreement**").

12. Sanctions can be used to change behaviour; constrain damaging action; or send a signal of condemnation. HMG 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.
13. The efforts by the international community to encourage the implementation of the Agreement means that putting sanctions in place is a reasonable measure to take. The full, effective, and inclusive implementation of the Agreement is integral to the return of peace and security to Mali. Sanctions provide the UK with the necessary tools to be able to target the individuals and entities that obstruct its implementation.
14. 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 a travel ban. These restrictions can only be imposed upon specified individuals and entities who meet the criteria set out in the Regulations. The Regulations allow for derogations to 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.
15. These sanctions are not an end in themselves, and taken in isolation are not expected to fundamentally improve the situation on the ground. However, they are one element of a broader strategy to achieve the UK's foreign policy goals in Mali, which spans diplomacy, development, and defence interventions to promote long-term peace and address the drivers of conflict.
16. The policy intention is to keep the sanctions relating to Malian individuals and entities under review, and any decision taken with regard to the lifting of the regime by the UK Government will be based on the Government's analysis of the situation in Mali, including progress on implementation of the 2015 Agreement on Peace and Reconciliation in Mali. 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. 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, 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

18. The discretionary purposes of these Regulations are to promote the peace, stability and security of Mali; promote the implementation of the Agreement on Peace and Reconciliation in Mali; promote respect for local, regional and state institutions in Mali, the Malian defence and security forces, and the governance or implementation mechanisms referred to in, or established in accordance with, the Agreement on Peace and Reconciliation in Mali; promote the effective delivery of the mandates of the international security, peace-support and capacity-building missions in Mali; promote respect for humanitarian assistance activity in Mali; promote compliance with the rules of international humanitarian law applicable to the armed conflicts in Mali; and promote respect for human rights in Mali. For the reasons set out in this report, carrying out those purposes meets 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 financial sanctions (including asset freezes) and immigration sanctions (travel bans) of the kind 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.

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.”*