

THE DEMOCRATIC PEOPLE'S REPUBLIC OF KOREA (SANCTIONS) (EU EXIT) REGULATIONS 2019

REPORT UNDER SECTION 2(4) OF THE SANCTIONS AND ANTI-MONEY LAUNDERING ACT 2018

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 People’s Republic of Korea (Sanctions) (EU Exit) Regulations 2019 (“**the Regulations**”). Section 2(4) 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 discretionary 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. No s.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). 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 UN sanctions regime against the DPRK was introduced in 2006 by Resolution 1718 in response to the DPRK’s first nuclear test. The 1718 Sanctions Committee on DPRK was established at the same time, with the addition later of a UN Panel of Experts to monitor and analyse the implementation of these sanctions. Further UNSCRs extended the sanctions on DPRK, which now include a general arms embargo, travel ban and asset freeze on individuals and entities designated

by the 1718 DPRK Sanctions Committee as well as an embargo on all items relevant to the DPRK's nuclear, ballistic missiles and other weapons of mass destruction programmes; financial sanctions; sectoral trade sanctions and sanctions relating to aircraft and vessels..

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. The EU established a sanctions regime on DPRK on 27 May 2016 (EU Council Decision 2016/849), on the grounds that the DPRK's actions earlier in 2016 were considered to constitute a grave threat to international peace and security in the region and beyond. Additional persons are designated by the EU as subject to travel bans and asset freezes under this sanctions regime. The Democratic People's Republic of Korea (Sanctions) (EU Exit) Regulations 2019 are intended to substantially deliver the same policy effects as the existing EU sanctions regime.
7. The Sanctions 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.
8. The majority of the measures implemented in these Regulations are measures the UK is obliged to implement as UN obligations. These include the majority of the extensive restrictions on trade with the DPRK mentioned at paragraph 5, transport sanctions relating to aircraft and ships and most of the sanctions relating to financial markets, financial services and investment. They also include the asset freeze on persons designated by the Security Council or the Sanctions Committee established under resolution 1718, persons acting on their behalf and at their direction and on other categories of person prescribed in the UN Security Council resolutions.
9. The main 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 (otherwise than in compliance with the UK's UN obligations). Some limited elements of the transport, trade and financial sectoral sanctions also go beyond what is required by the UN regime, for example the prohibitions in relation to computer and related services, and services incidental to mining and manufacturing and prohibitions in relation to the sale and purchase of bonds.

Purposes and reasons for pursuing the purposes

10. The Regulations impose sanctions on the DPRK in relation to the non-proliferation of weapons of mass destruction. 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 b) 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:
 - (a) is or has been involved in the facilitation of any of the DPRK's military programmes,

- (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.

11. For these purposes a person is “involved in the facilitation of any of the DPRK’s military programmes” if the person—

- (a) is responsible for, engages in, provides support for, or promotes, any of the DPRK’s banned programmes,
- (b) provides financial services⁽¹⁾, or makes available funds or economic resources⁽²⁾, that could contribute to any of the DPRK’s banned programmes,
- (c) is involved in the supply to or from the DPRK of arms or of material related to arms, or in providing financial services relating to such supply,
- (d) is involved in the supply to the DPRK of items, materials, equipment, goods or technology which could contribute to any of the DPRK’s banned programmes, or in providing financial services relating to such supply, or
- (e) is involved in assisting the contravention or circumvention of any relevant DPRK-related provisions.

12. A “relevant DPRK-related provision” means the financial, trade, and transport sanctions in the Regulations, the equivalent provisions in the law of other countries and any provision of the relevant UN Security Council resolutions. The sanctions measures in these Regulations that those designated by the Secretary of State may be subject to consist of an asset freeze, travel ban and other financial and transport-related sanctions. 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 -

- a. restricting the ability of the DPRK to carry on banned programmes;
- b. promoting the abandonment by the DPRK of banned programmes and the decommissioning of the DPRK’s banned weapons; and
- c. otherwise promoting peace, security and stability on the Korean peninsula

13. 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 paragraph 1(2)(c) as promoting peace, security and stability on the Korean peninsula is in the interest of international peace and security, (2)(d) as they further a foreign policy objective of the government of the United Kingdom to bring about complete, verifiable and irreversible denuclearisation on the Korean peninsula and paragraph (2)(h) in that it would contribute to multilateral efforts to prevent the spread and use of weapons and materials of mass destruction.

(1) “Financial services” is defined in section 61 of the Act.

(2) “Funds” and “economic resources” are defined in section 60 of the Act.

14. There are good reasons for pursuing these purposes, namely to disrupt the DPRK's efforts to develop banned weapons; (nuclear, biological and chemical weapons, ballistic missiles and other weapons of mass destruction). The goal is for the DPRK to commit to complete, verifiable and irreversible denuclearisation. The UK's policy on the DPRK consists of a dual track approach of pressure and engagement, with robust sanctions forming an important part of the pressure track. HMG's objective is to continue to support the international pressure campaign and to push for the rigorous implementation of existing sanctions until the DPRK takes concrete steps towards complete, verifiable and irreversible denuclearisation. Sanctions also restrict the ability of the DPRK to sustain their nuclear and missile programmes and helps prevent the spread of weapons and materials of mass destruction to other actors.

Why sanctions are a reasonable course of action

15. The imposition of prohibitions and requirements 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 influencing a change in behaviour from the regime in the DPRK.

16. 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.

17. The efforts by the international community to put pressure on the DPRK to abandon its banned programmes means that putting sanctions in place is a reasonable measure to take, as part of this pressure. For example, the international pressure campaign, including sanctions, has played a key role in bringing about recent developments on the Korean Peninsula including the three Inter-Korean summits in 2018 and announcement, in April 2018, by the DPRK that it would end its tests of nuclear weapons and intercontinental ballistic missiles, and shut down its nuclear test site.

18. These Regulations provide that persons designated by the Secretary of State may be subject to financial and immigration sanctions. These restrictions consist of an asset freeze (including a restriction on providing funds and economic resources) and 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 4 of this report. The intention is to apply pressure in order that the DPRK changes its behaviour, and to send a strong message of disapproval against the proliferation of weapons of mass destruction, as the DPRK regime has prioritised the pursuit of its banned programmes over the welfare of its people with the consequence that many continue to live in poverty and suffer from malnutrition. 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.

19. Trade, financial sectoral and transport sanctions. Elements of these sanctions go beyond what is required by the UN regime. In the trade sphere, these include the prohibitions in relation to computer and related services and services incidental to mining and manufacturing. There are prohibitions on dealing with gold, precious metals and diamond with the Government of the DPRK, which add to UN prohibitions on transfers of cash and gold. Likewise among the financial markets and investment sanctions there are prohibitions in relation to the sale and purchase of bonds,

prohibitions on reinsurance and some restrictions on investment and the provision of financial services which add to the UN financial sectoral sanctions. The transport sanctions include some minor element which could be seen as going beyond what is strictly required by the UN regime. Again, the exceptions and licensing provisions relating to these sanctions support the reasonableness of these sanctions.

20. These sanctions are not an end in themselves. They are one element of a broader strategy to achieve the UK's foreign policy goals with regard to the DPRK. Direct lobbying alone has not proved sufficient. The UK is therefore combining sanctions with bilateral lobbying, lobbying through international frameworks, supporting UN resolutions and supporting the work of the UN Panel of Experts, which assists the UN's 1718 Sanctions Committee (DPRK).
21. The policy intention is to keep the sanctions on the DPRK in place until HMG is assured that complete, verifiable and irreversible denuclearisation of the DPRK has taken place, or there has been evidence of concrete steps having been taken that shows an improvement in the areas of concern outlined in the purposes of these Regulations. The FCO will continue to coordinate with international partners, including supporting the international pressure campaign and to push for the rigorous implementation of existing sanctions until the DPRK takes concrete actions towards complete, verifiable and irreversible denuclearisation. The UK Government will continue to coordinate with international partners, including on the future of the sanctions regime.
22. 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 kind 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

23. The discretionary purposes of these Regulations are to restrict the ability of the DPRK to carry on banned programmes; promote the abandonment by the DPRK of banned programmes and the decommissioning of the DPRK's banned weapons; and otherwise promote peace, security and stability on the Korean peninsula. 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 the Regulations for those purposes is a reasonable course of action for those purposes.

The Rt Hon Sir Alan Duncan MP KCMG

**Minister of State for Europe and the Americas, 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.”*

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 or 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.”*