

# **THE MISAPPROPRIATION (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 Misappropriation (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 Sanctions Act<sup>i</sup>; 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. There are three separate existing EU sanctions regimes concerning restrictive measures in respect of Tunisia, Egypt and Ukraine targeting the misappropriation of State funds. The Regulations represent a move from geographically-defined misappropriations sanctions regimes to a single thematic regime enabling designations to be made in respect of misappropriation of State funds from any country outside the UK. The restrictive measures contained in the Regulations can be applied against individuals who are involved in the misappropriation of State funds from a country outside the UK, or those associated with such a person.
4. Establishing this regime in UK law is consistent with UK policy on the misappropriation of State funds. The Regulations are an important tool to deter those who would look to misappropriate State funds. As set out in the UK’s Anti-Corruption Strategy 2017-2022, corruption (including misappropriation) threatens our national security and prosperity, both at home and overseas. Unchecked, it can erode public confidence in the domestic and international institutions that we all depend upon. The Regulations are intended to deliver similar policy effects as the existing EU misappropriation sanctions regimes.

### **Purposes and reasons for pursuing the purposes**

5. The Regulations allow the UK to impose sanctions against persons suspected of involvement in misappropriating State funds from a country outside the UK. The sanctions measures in these Regulations consist of an asset freeze and travel ban.
6. The purpose of the sanctions regime, as set out in regulation 4 of the Regulations, is—

- a) To deter, and provide accountability for, the misappropriation of State funds from a country outside the United Kingdom.
7. Carrying out this purpose meets one or more of the conditions set out in section 1(2) of the Act. In particular, carrying out this purpose would fall within sub-paragraph (d) furthering a foreign policy objective of the government of the United Kingdom and (i) promoting respect for democracy, the rules of law and good governance.
8. There are good reasons for pursuing this purpose, in that it will ensure misappropriated State assets cannot be moved to and spent in the UK and publicly demonstrates our commitment to deterring, and providing accountability, for the misappropriation of State funds. It means that we will have a powerful tool available to utilise in situations where assets have been misappropriated, and the existence of the regime is an important signal which will deter such activity. It would ensure the people of countries affected are not deprived of the benefits of state funds which support sustainable development of economies and society (especially the most vulnerable) and undermines democracy. This can have a significant impact on their society, good governance and economic growth.

#### **Why sanctions are a reasonable course of action**

9. The imposition of financial sanctions (including asset freezes) and immigration sanctions (travel bans) of the kind imposed by the Regulations is a reasonable course of action for the purpose of deterring, and providing accountability for, the misappropriation of State funds from a country outside the UK.
10. 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.
11. The significant impact that corruption, in particular the misappropriation of significant amounts of state funds, can have on national and international prosperity, security and governance means that putting sanctions in place is a reasonable measure to take. The UK has long been a world leader in policy and operational efforts to prevent and recover the theft of assets critical to development. As set out in the UK's Anti-Corruption Strategy, worldwide the cost of corruption (including misappropriation) is estimated to be more than 2% of global GDP (\$1.5 trillion to \$2 trillion). As part of international efforts to address this global issue, the UK hosted the London Anti-Corruption Summit in 2016, at which 600 specific commitments were made by more than 40 countries and six major international organisations. Following this, in 2017, the United States of America and the United Kingdom co-hosted a Global Forum on Asset Recovery, focused on assisting Nigeria, Sri Lanka, Tunisia and Ukraine in their efforts to recover stolen state assets. UK investment in key international organisations dedicated to asset recovery, including the International Centre for Asset Recover (ICAR) and the World Bank-UN Development Office on Drugs and Crime Stolen Asset Recovery Initiative (StAR) continue, alongside domestic investment in a specialist National Crime Agency Unit that investigates corruption cases with a UK connection that affect developing countries.
12. There are two principal kinds of prohibition in the Regulations: those relating to financial sanctions and those relating to immigration sanctions. These restrictions consist of an asset freeze (ensuring

a designated person's funds and economic resources are not dealt with, and ensuring that funds and economic resources are not 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 persons who meet the criteria set out in the Regulations, namely that there are reasonable grounds to suspect that the person is, or has been, involved in the misappropriation of State funds from a country outside the United Kingdom (or is a person associated with someone so involved) and that their designation is appropriate having regard to the purposes of the regime and the likely significant effects of the designation on that person. This is in order to ensure that the sanctions are clearly targeted at those who are involved in the misappropriation of State funds and therefore fulfil the stated purpose of the sanctions. The Regulations allow for exceptions to the travel ban 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.

13. Sanctions are not an end in themselves. They are one element of the wider UK Anti-Corruption Strategy to achieve the UK's foreign policy goals to combat corruption (including misappropriation). Sanctions are one method by which the UK can address and disincentivise the challenges from corruption (including misappropriation).
14. The policy intention is to retain the power to impose sanctions relating to misappropriation of State funds from a country outside the UK. The UK Government will continue to coordinate with international partners to ensure effective international action to combat corruption (including misappropriation).
15. 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**

16. The purposes of these Regulations are to deter, and provide accountability for, the misappropriation of State funds from a country outside the United Kingdom. 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, on behalf of the Secretary of State for Foreign, Commonwealth and Development Affairs**

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<sup>i</sup> Section 1(2) states:

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*“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.”*