

THE SOMALIA (SANCTIONS) (EU EXIT) REGULATIONS 2020

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 Sanctions Act**”) in relation to the Somalia (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 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 Sanctions 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 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 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. For the UK these UN obligations are currently implemented through EU legislation and related UK legislation. Going forward, the UK will meet this obligation by making regulations under the Sanctions Act.
4. The UN sanctions regime on Somalia was introduced in January 1992 by Resolution 733, which imposed an arms embargo on Somalia, in response to concerns at the continuing deterioration of the security situation in the country. In November 2008 the UN adopted Resolution 1844 which imposed an asset freeze, travel ban and a targeted arms embargo on those persons or entities designated by the Sanctions Committee (set up in January 1992 by Resolution 751) for the purposes of these measures under criteria in that Resolution (which include persons who engage in or provide support for acts that threaten the peace, stability and security of Somalia). The UN has adopted a number of Resolutions since then to update and expand the criteria for designation by the Committee. In February 2012 the UN adopted Resolution 2036 which introduced measures to prevent the export of charcoal from Somalia. In November 2019 the UN adopted Resolution 2498

which imposed measures to restrict IED-component material flows into Somalia to strengthen measures against Al-Shabaab.

5. The Sanctions Act enables regulations to be made under Section 1(1)(c) for ‘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 why carrying out each of the discretionary purposes of the Regulations meets 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 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 majority of the restrictions on trade with Somalia mentioned at paragraph 4. They also include the asset freeze on persons designated by the Security Council or the Sanctions Committee, persons acting on their behalf and at their direction and on other categories of person prescribed in the UN Security Council resolutions.
7. The main measures which can be 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), immigration sanctions (travel bans) and the targeted arms embargo 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 –
 - a) promoting the peace, stability and security of Somalia;
 - b) supporting the Federal Government of Somalia to promote peace, stability, security and the rule of law, including, in particular, supporting its efforts to reconstruct the country, to counter the threats posed by terrorism and from illegal armed groups, and to tackle the flow of illegal arms;
 - c) promoting the effective delivery of the mandates of the regional and international monitoring, peace-support or protection and training missions and mechanisms in Somalia including—
 - (i) the African Union Mission in Somalia(1) and the Civilian Casualty Tracking Analysis and Response Cell(2),

(1) The African Union Mission in Somalia (AMISOM) was authorised by paragraph 3 of resolution 1725 adopted by the Security Council on 6 December 2006 and its mandate was set out in paragraph 9 of resolution 1772 adopted by the Security Council on 20 August 2007. Its mandate was most recently renewed by paragraph 7 of resolution 2472 adopted by the Security Council on 31 May 2019.

(2) The Civilian Casualty Tracking Analysis and Response Cell (CCTARC) was established by AMISOM pursuant to commitments referenced in paragraph 17 of resolution 2036 adopted by the Security Council on 22 February 2012.

- (ii) the United Nations Assistance Mission in Somalia(3),
 - (iii) the United Nations Support Office in Somalia(4),
 - (iv) the European Union Training Mission in Somalia (5), and
 - (v) the Panel of Experts on Somalia(6);
- d) promoting respect for humanitarian assistance activities in Somalia;
- e) promoting compliance with the rules of international humanitarian law applicable to the armed conflicts in Somalia;
- f) promoting respect for human rights in Somalia, including, in particular, respect for—
- (i) the right to life of persons in Somalia;
 - (ii) the right of persons in Somalia not to be held in slavery or required to perform forced or compulsory labour;
 - (iii) the right of persons not to be subjected to cruel, inhuman or degrading treatment or punishment in Somalia;
 - (iv) the right to liberty and security of persons in Somalia, including freedom from arbitrary arrest, unlawful detention or enforced disappearance;
 - (v) the right to a fair trial of persons charged with criminal offences in Somalia;
 - (vi) the right of journalists, human right defenders, civil society activists and other persons in Somalia to freedom of expression and peaceful assembly;
 - (vii) the enjoyment of rights and freedoms in Somalia without discrimination, including on the basis of a person’s race, sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

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 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;

(3) The United Nations Assistance Mission in Somalia (UNSOM) was established by paragraph 1 of resolution 2102 adopted by the Security Council on 2 May 2013 and its mandate was updated in subsequent resolutions. Its current mandate was extended to 30 June 2020 by paragraph 1 of resolution 2516 adopted by the Security Council on 30 March 2020.

(4) The United Nations Support Office in Somalia (UNSOS) was established by paragraph 1 of resolution 2245 adopted by the Security Council on 9 November 2015 and the scope of the support provided by UNSOS was most recently amended in resolution 2472 adopted by the Security Council on 31 May 2019.

(5) The European Union Training Mission in Somalia (EUTM Somalia) was established by Council Decision 2010/197/CFSP of 15 February 2010 on a European Union military mission to contribute to the training of Somalia security forces. The mandate of the mission was extended until 31 December 2020 by Article 1 of Council Decision (CFSP) 2018/1787.

(6) The Panel of Experts on Somalia was established by paragraph 11 of resolution 2444 adopted by the Security Council on 14 November 2018. Its mandate was extended to 15 December 2020 by paragraph 29 of resolution 2498 adopted by the Security Council on 15 November 2019.

- (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; and
 - (2)(g) promote compliance with international humanitarian law.
 - 2(i) promote respect for democracy, the rule of law and good governance.
10. There are good reasons for pursuing these purposes. The UK's long-term vision is for Somalia, including Somaliland, to be increasingly secure, stable and prosperous. An unstable Somalia poses a threat to regional stability and provides a foothold for terrorist and criminal groups. The sanctions regime on Somalia forms an important part of broader efforts by the UK and our international partners to build this long-term security and stability in the region, including by limiting destabilising illegal flows of arms. 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 child recruitment into armed gangs, as well as supporting efforts by the international community to promote respect for human rights within Somalia.

Why sanctions are a reasonable course of action

11. 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 supporting long-term improvements in Somalia's security and stability, in particular by limiting destabilising flows of arms, and tackling the resources (including money and weaponry) of terrorist groups such as Al-Shabaab.
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. International sanctions relating to Somalia are a central part of international efforts to help build long-term security and stability in the country. Somalia remains highly fragile, and Al Shabaab (and other illegal armed groups such as Daesh) continue to pose a fundamental threat to both national and regional stability. Under the UN sanctions regime, the partial arms embargo prevents these groups from accessing any kind of military equipment, while at the same time supporting efforts by international peace support missions such as the African Union Mission in Somalia (AMISOM) to tackle Al Shabaab and build the capacity of the Somali armed forces. The regime further assists international efforts to build security and stability in Somalia by imposing a ban on the import of Somali charcoal, as a key source of financial revenue for Al Shabaab and regulating the import of material used to build improvised explosive devices.
14. These Regulations provide that persons designated by the Secretary of State may be subject to financial, trade 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. The trade measures include prohibitions certain activities relating to the trade in military goods and technology involving or benefiting a designated person (directly or indirectly). These restrictions can only be imposed upon specified individuals and entities who meet the criteria set out in the Regulations. The intention is to apply pressure in order to enable the

Somalian Government to focus on stabilisation and reconciliation processes, and to send a strong message of disapproval to those who continue to commit violations. 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, and allow funds to be released where appropriate, for example in relation to basic needs and legal expenses.

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 with regard to Somalia. We will continue to carry out a wide range of other activity in Somalia, in the region and with international partners, both bilaterally and multilaterally. The policy intention is to keep the sanctions on Somalia in place until there has been evidence of concrete improvement in the areas of concern outlined in the purposes of these Regulations. The FCO will continue to coordinate with international partners, to push for the rigorous implementation of existing sanctions, and to coordinate on the future of the sanctions regime.
16. 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

17. The discretionary purposes of these Regulations are to promote peace and stability in Somalia; supporting the Federal Government of Somalia to promote peace, stability, security and the rule of law, including, in particular, supporting its efforts to reconstruct the country, to counter the threats posed by terrorism and from illegal armed groups, and to tackle the flow of illegal arms; promote the effective delivery of the mandates of regional or international monitoring and peace-support missions and mechanisms in Somalia; promote respect for humanitarian assistance activities in Somalia; promote compliance with the rules of international humanitarian law applicable to armed conflicts in Somalia; and promote respect for human rights in Somalia. 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 financial sanctions (including asset freezes), a targeted arms embargo 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, 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.”*