



United Nations Sanctions (Libya) Regulations 2011

Anand Satyanand, Governor-General

Order in Council

At Wellington this 28th day of March 2011

Present:

His Excellency the Governor-General in Council

Pursuant to section 2 of the United Nations Act 1946, His Excellency the Governor-General, acting—

- (a) on the advice and with the consent of the Executive Council; and
- (b) for the purpose of giving effect to resolutions 1970 (2011) and 1973 (2011) of the Security Council of the United Nations, adopted pursuant to the United Nations Charter on 26 February 2011 and 17 March 2011, calling upon the Government of New Zealand and all other member States of the United Nations to apply in respect of Libya the measures set out in those resolutions,—

makes the following regulations.

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Regulations

1 Title

These regulations are the United Nations Sanctions (Libya) Regulations 2011.

2 Commencement

These regulations come into force on 1 April 2011.

3 Interpretation

In these regulations, unless the context otherwise requires,—

agent of a specified person means—

- (a) any person who acts on behalf of, or at the direction of,—
 - (i) a specified person; or
 - (ii) another person who, directly or indirectly, acts on behalf of the specified person; or
- (b) any entity owned or controlled by a specified person or a person to whom paragraph (a) applies

arms includes—

- (a) related materiel of all types (including weapons, ammunition, military vehicles and equipment, and paramilitary equipment); and
- (b) spare parts for any arms, or for any goods specified in paragraph (a)

charterer, in relation to a ship or aircraft, includes any person acting as the agent of the charterer

Committee means the Committee established by paragraph 24 of resolution 1970

Customs or **the Customs** and **Customs officer** have the same meanings as in section 2(1) of the Customs and Excise Act 1996

Libya means the Libyan Arab Jamahiriya

Minister means the Minister of Foreign Affairs

New Zealand includes Tokelau

New Zealand aircraft means a New Zealand registered aircraft or a New Zealand chartered aircraft

New Zealand chartered aircraft means any aircraft that is not a New Zealand registered aircraft but is, for the time being, chartered to a New Zealand citizen, or to any entity incorporated or constituted under the law of New Zealand

New Zealand chartered ship means a ship that is not a New Zealand registered ship but is, for the time being, chartered to a New Zealand citizen, or to any entity incorporated or constituted under the law of New Zealand

New Zealand registered aircraft means any aircraft registered or required to be registered in New Zealand under the Civil Aviation Act 1990

New Zealand registered ship means a ship registered in New Zealand, or recognised by the law of New Zealand as a ship belonging to New Zealand

New Zealand ship means a New Zealand registered ship or a New Zealand chartered ship

owner, in relation to a ship or an aircraft, includes any person acting as the agent of the owner

resolution 1970 means resolution 1970 (2011) of the Security Council of the United Nations

resolution 1973 means resolution 1973 (2011) of the Security Council of the United Nations

specified individual means an individual listed in Annex I of resolution 1970 or Annex I of resolution 1973 or designated by the Committee under paragraph 15 of resolution 1970

specified person means an individual or entity listed in Annex II of resolution 1970 or in Annex II of resolution 1973 or designated by the Committee under paragraph 17 of resolution 1970.

Exportation and importation of arms

4 Exportation of arms to Libya prohibited

- (1) No person may directly or indirectly export arms from New Zealand to Libya.
- (2) Subclause (1) does not apply to particular goods or to goods of a particular class if the Minister has consented to that exportation of those goods.

- (3) Subclause (1) does not apply to—
- (a) supplies, approved in advance by the Committee, of non-lethal military equipment intended solely for humanitarian or protective use; or
 - (b) protective clothing (including flak jackets and military helmets) temporarily exported to Libya by United Nations personnel, representatives of the media, and humanitarian and development workers and associated personnel for their personal use only; or
 - (c) other sales or supply of arms and related materiel, approved in advance by the Committee.

Compare: SR 2004/466 r 4

5 Importation of arms from Libya prohibited

No person may directly or indirectly import arms into New Zealand from Libya.

6 Customs and Excise Act 1996 to apply to prohibited exports and imports

- (1) All provisions of the Customs and Excise Act 1996 and of any regulations made under that Act with respect to prohibited exports (except section 209) apply with respect to goods whose exportation is prohibited by regulation 4 in all respects as if the exportation of the goods were prohibited under section 56 of that Act.
- (2) All provisions of the Customs and Excise Act 1996 and of any regulations made under that Act with respect to prohibited imports (except section 209) apply with respect to goods whose importation is prohibited by regulation 5 in all respects as if the importation of the goods were prohibited under section 54 of that Act.

Compare: SR 2004/466 r 5

7 Detention of prohibited exports or prohibited imports

A Customs officer may detain any goods he or she suspects on reasonable grounds to be—

- (a) goods whose exportation is prohibited by regulation 4; or

(b) goods whose importation is prohibited by regulation 5.

Compare: SR 2004/466 r 6

8 Prohibited exports not to be loaded onto ships or aircraft

The master of a ship or the pilot in command of an aircraft must not permit to be laden in the ship or aircraft any goods whose exportation is prohibited by regulation 4, knowing that the goods are intended to be exported in contravention of that regulation.

Compare: SR 2004/466 r 7

9 Power to withhold clearance of ship or aircraft

The Customs may withhold the clearance of any ship or aircraft so long as there are on board the ship or aircraft any goods any Customs officer knows to be goods whose exportation is prohibited by regulation 4 or whose importation is prohibited by regulation 5.

Compare: SR 2004/466 r 8

Dealings with arms

10 Transactions in relation to prohibited arms

(1) No person in New Zealand, and no New Zealand citizen in any place outside New Zealand, may enter into, or be concerned in, any sale, transfer, carriage, or delivery of, or other dealing with, any arms knowing that those arms—

(a) are intended to be imported into Libya; or

(b) are to be supplied or delivered to, or to the order of, any person in Libya; or

(c) are intended to be exported from Libya.

(2) Subclause (1)(a) or (b) does not apply to particular goods or to goods of a particular class if—

(a) the Minister has consented to that sale, transfer, carriage, or delivery of, or other dealing with, those goods; or

(b) regulation 4(3) applies to the goods.

Compare: SR 2004/466 r 9

*Controls on carriage of arms and aviation***11 Carriage of arms to or from Libya prohibited**

- (1) No New Zealand ship or New Zealand aircraft may be used for the carriage of arms if the carriage is, or forms part of, the carriage of those arms—
 - (a) from any place to Libya; or
 - (b) from Libya to any place outside Libya (whether or not the arms originate in Libya).
- (2) Subclause (1), so far as it relates to the carriage of arms to Libya, does not apply if—
 - (a) the Minister has consented to the exportation of those arms under regulation 4(2) or 10(2); or
 - (b) regulation 4(3) applies to the arms.
- (3) Subclause (1) does not limit any of regulations 4 to 10.

Compare: SR 2004/466 r 10

12 Persons liable for contraventions of regulation 11

- (1) If any New Zealand ship or New Zealand aircraft is used in contravention of regulation 11, each of the following persons is guilty of an offence against these regulations:
 - (a) in the case of a New Zealand registered ship or New Zealand registered aircraft, the owner and the master of the ship or, as the case requires, the owner and the pilot in command of the aircraft;
 - (b) in the case of a New Zealand chartered ship or New Zealand chartered aircraft, the charterer of the ship or aircraft and, if the master of the ship or pilot in command of the aircraft is a New Zealand citizen, the master or pilot in command.
- (2) However, it is a defence to any such offence if the person concerned proves that he or she did not know and had no reason to suppose—
 - (a) that the goods carried on the ship or aircraft were or included arms; or
 - (b) that the carriage of the arms was, or formed part of, the carriage of goods from any place to or from Libya.

Compare: SR 2004/466 r 11

13 Ban on flights into Libya

- (1) Without the consent of the Minister, no New Zealand aircraft may fly into or over Libya.
- (2) If any New Zealand aircraft is used in contravention of subclause (1), each of the following persons is guilty of an offence against these regulations:
 - (a) in the case of a New Zealand registered aircraft, the owner and the pilot in command of the aircraft;
 - (b) in the case of a New Zealand chartered aircraft, the charterer of the aircraft and, if the pilot in command of the aircraft is a New Zealand citizen, the pilot in command.

14 Aircraft carrying mercenaries or arms to or from Libya not to fly into or from New Zealand

- (1) This regulation applies to any aircraft that carries—
 - (a) armed mercenary personnel or arms that are to be flown to Libya; or
 - (b) arms from Libya (whether or not the arms originate in Libya).
- (2) Except with the consent of the Minister, no person who has reasonable grounds to believe that this regulation applies to an aircraft may permit or authorise the aircraft—
 - (a) to take off from New Zealand; or
 - (b) to land in New Zealand; or
 - (c) to fly over New Zealand or any part of New Zealand.
- (3) Subclause (2), so far as it relates to the carriage of arms to Libya, does not apply if—
 - (a) the Minister has consented to the exportation of those arms under regulation 4(2) or 10(2); or
 - (b) regulation 4(3) applies to the arms.
- (4) Subclause (2)(b) does not apply to an emergency landing.

15 Libyan aircraft not to fly into or from New Zealand

- (1) This regulation applies to an aircraft that is owned or operated—
 - (a) by any Libyan citizen; or
 - (b) by any entity incorporated or constituted under the law of Libya.

- (2) Except with the consent of the Minister, no person may permit or authorise an aircraft to which this regulation applies—
 - (a) to take off from New Zealand; or
 - (b) to land in New Zealand; or
 - (c) to fly over New Zealand or any part of New Zealand.
- (3) Subclause (2)(b) does not apply to an emergency landing.

*Provision of technical training or assistance
relating to arms*

16 Provision to Libya of technical training or assistance relating to arms prohibited

- (1) No person in New Zealand, and no New Zealand citizen in any place outside New Zealand, may provide to, or at the request of, any person in Libya any technical training or assistance related to—
 - (a) military activities; or
 - (b) the provision, manufacture, maintenance, or use of any arms.
- (2) Subclause (1) does not apply to any training or assistance—
 - (a) to which the Minister has consented; or
 - (b) that does not relate to arms other than goods to which regulation 4(3) applies.

Compare: SR 2004/466 r 12

Entry and transit of specified individuals

17 Specified individuals to enter New Zealand only if consistent with determinations of Security Council

- (1) No specified individual may enter New Zealand, or transit through New Zealand, if the entry or transit would be contrary to a determination of the Security Council made under Article 41 of the Charter of the United Nations.
- (2) Subclause (1) does not apply to a specified individual who is a New Zealand citizen.
- (3) Subclause (1) does not apply so as to prevent an individual from entering or transiting through New Zealand if—
 - (a) the Committee has determined that the entry or transit is justified; or

- (b) the entry or transit is necessary to give effect to a judicial process.
- (4) A specified individual may be granted a visa under the Immigration Act 2009 only on the advice of the Secretary of Foreign Affairs and Trade that the visa is consistent with subclauses (1) to (3).
- (5) This regulation operates in addition to the requirements of the Immigration Act 2009 and of any regulations made under that Act.

Compare: SR 2004/466 r 13D

*Duty to exercise vigilance
when doing certain business*

18 Duty where business could contribute to violence and use of force against civilians

A person in New Zealand, a New Zealand citizen in any place outside New Zealand, and an entity incorporated or constituted under New Zealand law, or otherwise subject to New Zealand's jurisdiction, must exercise vigilance when doing business if that person, citizen, or entity—

- (a) is doing the business with—
 - (i) a person in Libya; or
 - (ii) an entity incorporated or constituted under Libyan law or otherwise subject to Libya's jurisdiction; or
 - (iii) any person or entity acting on behalf of, or at the direction of, or owned or controlled by, an entity specified in subparagraph (ii); and
- (b) believes on reasonable grounds, and on the basis of information available to that person, citizen, or entity, that the business could contribute to violence and use of force against civilians.

Compare: SR 2010/264 r 21(1)

*Assets, money, or securities of specified persons***19 Prohibition on dealings in assets, money, or securities of specified persons**

- (1) No person may knowingly transfer, pay for, sell, assign, dispose of, or otherwise deal with any asset, money, or security located in New Zealand that is owned or controlled, directly or indirectly, —
 - (a) by a specified person; or
 - (b) by an agent of a specified person.
- (2) Subclause (1) does not apply if the Minister has consented to the transfer, sale, assignment, disposal of, payment for, or other dealing with, the asset, money, or security.

Compare: SR 2004/466 r 13A(1)

20 Prohibition on sending funds to specified persons

- (1) No person in New Zealand, and no New Zealand citizen in any place outside New Zealand, may knowingly send, transfer, or deliver, or knowingly cause to be sent, transferred, or delivered, whether directly or indirectly, any asset, money, or security—
 - (a) to a specified person; or
 - (b) for the benefit of a specified person.
- (2) Subclause (1) does not apply if the Minister has consented to the sending, transfer, or delivery of the asset, money, or security.

Compare: SR 2004/466 r 13B

*Miscellaneous provisions***21 Offences**

Every person commits an offence against these regulations, and is liable accordingly under section 3 of the United Nations Act 1946, who acts in contravention of or fails to comply in any respect with any of the provisions of these regulations.

Compare: SR 2004/466 r 14

22 Attorney-General's consent and certificate in certain cases

If an offence against these regulations is alleged to have been committed outside New Zealand, a prosecution for the offence may not be commenced without—

- (a) the Attorney-General's consent; and
- (b) the Attorney-General's certificate that it is expedient that the proceedings be commenced.

Compare: SR 2004/466 r 15

23 Customs and Excise Act 1996 not affected

These regulations do not affect the operation of the Customs and Excise Act 1996.

Compare: SR 2004/466 r 16

Rebecca Kitteridge,
Clerk of the Executive Council.

Explanatory note

This note is not part of the regulations, but is intended to indicate their general effect.

These regulations, which come into force on 1 April 2011, give effect to resolutions 1970 (2011) and 1973 (2011) of the Security Council of the United Nations adopted on 26 February 2011 and 17 March 2011 calling for the imposition of sanctions in respect of Libya.

The regulations—

- prohibit the exportation of arms from New Zealand to Libya (subject to limited exceptions) and the importation into New Zealand of arms from Libya;
- prohibit persons in New Zealand and New Zealand citizens outside New Zealand from selling or otherwise dealing in arms intended to be imported into, or exported from, Libya;
- prohibit the use of New Zealand ships or aircraft, or of ships or aircraft chartered by New Zealand citizens, for the carriage of arms to or from Libya;
- prohibit New Zealand aircraft from flying into or over Libya;

- deny Libyan aircraft, and any other aircraft carrying armed mercenaries or arms intended for Libya, the right to land, take off, or fly over New Zealand:
- prohibit persons in New Zealand and New Zealand citizens outside New Zealand from providing arms training to persons in Libya:
- prevent senior members of the Libyan government named in the resolutions, or who may later be designated by a special sanctions committee established by resolution 1970, from entering or transiting through New Zealand:
- require New Zealand firms to exercise vigilance when doing business with Libyan firms in cases where transactions could contribute to violence and use of force against civilians:
- freeze the assets of senior members of the Libyan government named in the resolutions or who may later be designated by the sanctions committee, to the extent that such assets are located in New Zealand.

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These regulations are administered by the Ministry of Foreign Affairs and Trade.
