



## United Nations Sanctions (Somalia) Regulations 2018

Patsy Reddy, Governor-General

### Order in Council

At Wellington this 14th day of May 2018

Present:

The Right Hon Jacinda Ardern presiding in Council

These regulations are made under section 2(1) of the United Nations Act 1946 on the advice and with the consent of the Executive Council.

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## Regulations

### 1 Title

These regulations are the United Nations Sanctions (Somalia) Regulations 2018.

### 2 Commencement

These regulations come into force on 14 June 2018.

### 3 Interpretation

In these regulations, unless the context otherwise requires,—

**African Union Strategic Concept** means the African Union Strategic Concept of 5 January 2012 and includes any subsequent African Union strategic concept fulfilling largely the same purpose

**agent of a designated person** means—

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

**AMISOM** means the African Union Mission in Somalia

**arms** includes—

- (a) any related materiel; and
- (b) any item specified in the annex to resolution 2111; and
- (c) spare parts for any arms or for any materiel or item specified in paragraph (a) or (b)

**certificate of clearance** means a certificate of clearance granted under the Customs and Excise Act 1996

**charterer**, in relation to a craft, includes a person acting as the agent of the charterer of the craft

**Committee** means the committee established under paragraph 11 of resolution 751

**craft** has the same meaning as in section 2(1) of the Customs and Excise Act 1996

**Customs** means the New Zealand Customs Service

**Customs officer** has the same meaning as in section 2(1) of the Customs and Excise Act 1996

**designated person** means an individual or entity designated by the Committee or Security Council as—

- (a) a person to whom or to which arms embargo measures set out in resolutions 1844, 2111, 2142, and 2182 apply; or
- (b) a person to whom or to which asset freeze measures set out in resolutions 1844 and 2182 apply; or
- (c) an individual to whom travel ban measures set out in resolution 1844 apply

**EUTM** means the European Union Training Mission

**Minister** means the Minister of Foreign Affairs

**New Zealand** includes Tokelau

**New Zealand chartered craft** means a craft that is not a New Zealand registered craft but is chartered to a New Zealand citizen or an entity incorporated or constituted under the law of New Zealand

**New Zealand craft** means a New Zealand registered craft or a New Zealand chartered craft

**New Zealand registered craft**—

- (a) means a craft registered in New Zealand; and
- (b) includes, whether or not it is actually registered,—
  - (i) an aircraft required to be registered in New Zealand under the Civil Aviation Act 1990; and

- (ii) a ship required or entitled to be registered in New Zealand under the Ship Registration Act 1992

**owner**, in relation to a craft, includes a person acting as the agent of the owner  
**property**—

- (a) means everything that is capable of being owned, whether it is—
  - (i) real or personal property:
  - (ii) tangible or intangible property:
  - (iii) inside or outside New Zealand; and
- (b) includes a legal or an equitable estate or interest in property

**resolution 751** means resolution 751 (1992) of the Security Council of the United Nations, adopted on 24 April 1992

**resolution 1844** means resolution 1844 (2008) of the Security Council of the United Nations, adopted on 20 November 2008

**resolution 2111** means resolution 2111 (2013) of the Security Council of the United Nations, adopted on 24 July 2013

**resolution 2142** means resolution 2142 (2014) of the Security Council of the United Nations, adopted on 5 March 2014

**resolution 2182** means resolution 2182 (2014) of the Security Council of the United Nations, adopted on 24 October 2014

**Secretary** means the Secretary of Foreign Affairs and Trade

**UNSOM** means the United Nations Assistance Mission in Somalia.

#### 4 **Transitional, savings, and related provisions**

The transitional, savings, and related provisions (if any) set out in Schedule 1 have effect according to their terms.

#### *Arms*

#### 5 **Exporting arms to designated person**

- (1) A person must not directly or indirectly export arms knowing that the arms are intended to be sold or transferred to a designated person or an agent of a designated person.
- (2) Subclause (1) is not limited by regulation 6.

#### 6 **Exporting arms to Somalia**

- (1) A person must not directly or indirectly export arms to Somalia knowing that the arms are intended to be exported to Somalia, or are intended for use in, or for the benefit of, Somalia.

- (2) Subclause (1) does not apply to the following:
- (a) arms (other than any arms that are specified in the annex to resolution 2111) that are intended solely for the development of the security forces of the Federal Government of Somalia to provide security for the Somali people:
  - (b) supplies of arms that are specified in the annex to resolution 2111 to the Federal Government of Somalia by New Zealand or an international, regional, or sub-regional organisation with the approval in advance of the Committee:
  - (c) arms that are intended solely for support of or use by UNSOM, AMISOM (or AMISOM's strategic partners acting solely under the African Union Strategic Concept and in concert with AMISOM), or EUTM:
  - (d) arms that are intended solely for use by a member State or an international, regional, or sub-regional organisation to take measures to suppress acts of piracy and armed robbery at sea off the coast of Somalia, if those measures are—
    - (i) taken at the request of the Federal Government of Somalia (notified to the Secretary-General of the United Nations); and
    - (ii) in accordance with international law:
  - (e) supplies of arms to Somali security sector institutions by New Zealand or an international, regional, or sub-regional organisation, if—
    - (i) the intention to export the arms for that purpose is notified to the Committee; and
    - (ii) the Committee has not, within 5 working days after receiving the notification, made a negative decision on the exportation:
  - (f) protective clothing (including flak jackets and military helmets) temporarily exported to Somalia by the following persons for their own personal use in that country:
    - (i) UNSOM:
    - (ii) representatives of the media, humanitarian and development workers, and associated personnel:
  - (g) non-lethal military equipment exported by New Zealand or an international, regional, or sub-regional organisation, if—
    - (i) that equipment is intended solely for self-protection or humanitarian aid; and
    - (ii) the intention to export the equipment for that purpose has been notified to the Committee 5 working days in advance.

**7 Loading arms onto craft**

The master or pilot-in-command of a craft must not allow arms to be loaded onto the craft knowing that the arms are—

- (a) intended to be sold or transferred to a designated person or an agent of a designated person; or
- (b) intended to be exported to Somalia, or are intended for use in, or for the benefit of, Somalia in contravention of regulation 6.

**8 Customs may refuse certificate of clearance**

Customs may refuse to grant a certificate of clearance for a craft that a Customs officer has reasonable cause to suspect is loaded with arms that are—

- (a) intended to be sold or transferred to a designated person or an agent of a designated person; or
- (b) intended to be exported to Somalia, or are intended for use in, or for the benefit of, Somalia in contravention of regulation 6.

**9 Application of Customs and Excise Act 1996**

(1) The provisions of the Customs and Excise Act 1996 (except section 209) apply in relation to the following arms as if they were goods the exportation of which is prohibited under section 56(1) of that Act:

- (a) arms that are intended to be sold or transferred to a designated person or an agent of a designated person;
- (b) arms that are intended to be exported to Somalia, or are intended for use in, or for the benefit of, Somalia in contravention of regulation 6.

(2) The Comptroller of Customs must give any of those arms to which the Crown has title as forfeited goods to a person authorised in writing by the Secretary of Foreign Affairs to receive the arms (instead of disposing of the arms under section 237(2) of the Customs and Excise Act 1996).

**10 Dealing with arms**

(1) A person must not sell, transfer, or otherwise deal with any arms knowing that they are—

- (a) intended to be sold or transferred to a designated person or an agent of a designated person; or
- (b) intended to be exported to Somalia, or are intended for use in, or for the benefit of, Somalia in contravention of regulation 6.

(2) Subclause (1) applies to—

- (a) a person in New Zealand; and
- (b) a New Zealand citizen in any place outside New Zealand.

**11 Carrying arms on New Zealand craft**

- (1) A person must not use a New Zealand craft to carry arms knowing that—
  - (a) the craft is carrying arms; and
  - (b) the carriage is, or forms part of, the carriage of the arms—
    - (i) from any place to Somalia in contravention of regulation 6; or
    - (ii) to any place where a designated person is located.
- (2) Subclause (1) applies,—
  - (a) in the case of a New Zealand registered craft, to—
    - (i) the owner of the craft; and
    - (ii) the master or pilot-in-command of the craft;
  - (b) in the case of a New Zealand chartered craft, to—
    - (i) the charterer of the craft; and
    - (ii) the master or pilot-in-command of the craft, if the master or pilot is a New Zealand citizen.

**12 Providing assistance or training**

- (1) A person must not provide any assistance or training relating to military activities or to the supply, sale, transfer, manufacture, or use of arms knowing that the assistance or training is provided to—
  - (a) a designated person or an agent of a designated person; or
  - (b) any person in Somalia.
- (2) Subclause (1) applies to—
  - (a) a person in New Zealand; and
  - (b) a New Zealand citizen in any place outside New Zealand.
- (3) Subclause (1)(b) does not apply if the training or assistance is provided in circumstances that correspond with the exceptions described in regulation 6(2)(a), (c), and (e) to the prohibition on the exportation of arms described in regulation 6(1).

*Charcoal***13 Importing charcoal from Somalia**

A person must not directly or indirectly import charcoal into New Zealand knowing that the charcoal is from Somalia (whether or not the charcoal originated in Somalia).

**14 Carrying charcoal from Somalia on New Zealand craft**

- (1) A person must not use a New Zealand craft to carry charcoal knowing that—
  - (a) the craft is carrying charcoal; and

- (b) the carriage is, or forms part of, the carriage of the charcoal to any place from Somalia.
- (2) Subclause (1) applies,—
  - (a) in the case of a New Zealand registered craft, to—
    - (i) the owner of the craft; and
    - (ii) the master or pilot-in-command of the craft:
  - (b) in the case of a New Zealand chartered craft, to—
    - (i) the charterer of the craft; and
    - (ii) the master or pilot-in-command of the craft, if the master or pilot is a New Zealand citizen.

### **15 Application of Customs and Excise Act 1996**

The provisions of the Customs and Excise Act 1996 (except section 209) apply in relation to charcoal that is imported into New Zealand from Somalia as if the charcoal were goods the importation of which is prohibited under section 54(1) of that Act.

### **16 Dealing with charcoal from Somalia**

- (1) A person must not sell, transfer, or otherwise deal with any charcoal knowing that the charcoal is intended to be supplied, sold, or transferred, directly or indirectly, to any place from Somalia.
- (2) Subclause (1) applies to—
  - (a) a person in New Zealand; and
  - (b) a New Zealand citizen in any place outside New Zealand.

#### *Property of designated persons*

### **17 Dealing with property of designated persons**

- (1) A person must not transfer, sell, assign, dispose of, pay for, or otherwise deal with any property located in New Zealand knowing that the property is owned or controlled, directly or indirectly, by a designated person or an agent of a designated person.
- (2) Subclause (1) does not apply if—
  - (a) the dealing is for the purpose of, or in connection with, the enforcement or intended enforcement of these regulations; or
  - (b) the Minister has consented to the dealing in accordance with regulation 19.

### **18 Sending property to designated persons**

- (1) A person must not send, transfer, or deliver any property, or cause any property to be sent, transferred, or delivered, whether directly or indirectly, knowing that

the property is to be sent, transferred, or delivered to, or for the benefit of, a designated person.

- (2) Subclause (1) applies to—
  - (a) a person in New Zealand; and
  - (b) a New Zealand citizen in any place outside New Zealand.
- (3) Subclause (1) does not apply if the Minister has consented to the sending, transfer, or delivery of the property in accordance with regulation 19.

### **19 Minister may consent to prohibited activity**

- (1) If the Minister consents to an activity under this regulation, the prohibitions in regulations 17(1) and 18(1) do not apply to the activity.
- (2) In deciding whether to consent to an activity under this regulation, the Minister must have regard to paragraphs 4 and 5 of resolution 1844 and paragraph 41 of resolution 2182.
- (3) The Minister may consent to an activity prohibited by regulation 17(1) or 18(1) if the Minister is satisfied that the activity is necessary for—
  - (a) the United Nations or related, or United Nations-approved, organisations to deliver urgently needed humanitarian assistance in Somalia; or
  - (b) a designated person to meet basic expenses, and notice of the Minister's intention to consent has been given to the Committee and the Committee has not, within 3 working days after receiving the Minister's notification, made a negative decision in respect of the activity; or
  - (c) a designated person to meet extraordinary expenses, and notice of the Minister's intention to consent has been given to the Committee and the Committee has approved the activity; or
  - (d) a designated person to satisfy a judicial, administrative, or arbitral lien or judgment that took effect before 20 November 2008, other than a lien or judgment for the benefit of a designated person, and notice of the Minister's intention to consent has been given to the Committee.
- (4) The Minister may consent to the following being added to an account to which the prohibitions in regulations 17(1) and 18(1) apply:
  - (a) interest or other earnings due on the account;
  - (b) payments due under any contract, agreement, or obligation of a designated person that arose before the date of the person's designation.
- (5) The prohibitions in regulations 17(1) and 18(1) apply to interest and other earnings and payments added to an account under subclause (4).

*Entry and transit of designated individuals***20 Designated individuals entering or transiting through New Zealand**

- (1) An individual who is a designated person must not enter New Zealand or transit through New Zealand.
- (2) Subclause (1) does not apply to a person who is a New Zealand citizen.
- (3) Subclause (1) does not apply if—
  - (a) the Committee has determined that the entry or transit is justified on the grounds of humanitarian need, including religious obligation; or
  - (b) the entry or transit is necessary to give effect to a judicial process; or
  - (c) the Committee has determined that the entry or transit would further the objectives of peace and national reconciliation in Somalia and stability in the region.
- (4) A visa may be granted under the Immigration Act 2009 to a designated person only on the advice of the Secretary of Foreign Affairs and Trade that the visa is consistent with subclauses (2) and (3).
- (5) This regulation operates in addition to the requirements of the Immigration Act 2009 and of any regulations made under that Act.

*Miscellaneous provisions***21 Offences**

For the purposes of section 3(1) of the United Nations Act 1946, a person who contravenes or fails to comply with any provision of these regulations commits an offence against these regulations.

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

A prosecution for an offence against these regulations that is alleged to have been committed outside New Zealand may not be commenced without—

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

**23 Revocations**

The following regulations are revoked:

- (a) United Nations Sanctions (Somalia) Regulations 1992 (SR 1992/42);
- (b) United Nations Sanctions (Somalia) Amendment Regulations 2008 (SR 2008/397);
- (c) United Nations Sanctions (Somalia) Amendment Regulations 2009 (SR 2009/74).

## **Schedule 1**

### **Transitional, savings, and related provisions**

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#### **Part 1**

##### **Provisions relating to these regulations as made**

There are no transitional, savings, or related provisions relating to these regulations as made.

Michael Webster,  
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 14 June 2018, replace the United Nations Sanctions (Somalia) Regulations 1992. They give effect to the following resolutions of the Security Council of the United Nations, adopted pursuant to the United Nations Charter:

- resolution 733 (1992), adopted on 23 January 1992:
- resolution 1356 (2001), adopted on 19 June 2001:
- resolution 1425 (2002), adopted on 22 July 2002:
- resolution 1725 (2006), adopted on 6 December 2006:
- resolution 1744 (2007), adopted on 20 February 2007:
- resolution 1772 (2007), adopted on 20 August 2007:
- resolution 1844 (2008), adopted on 20 November 2008:
- resolution 2036 (2012), adopted on 22 February 2012:
- resolution 2111 (2013), adopted on 24 July 2013:
- resolution 2142 (2014), adopted on 5 March 2014:
- resolution 2182 (2014), adopted on 24 October 2014:
- resolution 2184 (2014), adopted on 12 November 2014:
- resolution 2244 (2015), adopted on 23 October 2015:
- resolution 2317 (2016), adopted on 10 November 2016:
- resolution 2385 (2017), adopted on 14 November 2017.

These regulations give effect to the prohibitions established and amended by those resolutions, including arms embargoes and asset freezes. The sanctions implemented

by these regulations relate to export of arms, import of charcoal, property of designated persons, and entry and transit of designated persons in New Zealand.

*Regulation 1* names these regulations as the United Nations Sanctions (Somalia) Regulations 2018.

*Regulation 2* provides that these regulations commence on 14 June 2018.

*Regulation 3* contains necessary definitions, including definitions of arms, designated person, and property.

*Regulation 4* gives effect to *Schedule 1* (transitional, savings, and related provisions). *Schedule 1* does not contain any provisions at present.

The arms embargo provisions (*regulations 5 to 12*) prohibit—

- the exportation of arms to Somalia, subject to specified exceptions:
- the exportation of arms to persons designated by the relevant Committee of the United Nations Security Council, or to agents of those designated persons:
- persons in New Zealand, and New Zealand citizens outside New Zealand, from selling, transferring, or otherwise dealing with arms that are covered by the prohibitions on the exportation of arms:
- New Zealand craft from carrying arms that are covered by the prohibitions on the exportation of arms:
- the provision of military training or assistance to any person in Somalia or to any designated person (or agent of a designated person).

The charcoal embargo provisions (*regulations 13 to 16*) prohibit—

- the importation of charcoal from Somalia:
- the use of a New Zealand craft to carry charcoal from Somalia:
- any dealing with charcoal that is being supplied, sold, or transferred to any place from Somalia.

The property provisions (*regulations 17 to 19*) prohibit—

- any dealing with property located in New Zealand that is owned or controlled by a designated person or their agent, subject to stated exceptions (including the consent of the Minister of Foreign Affairs):
- the sending, transfer, or delivery of any property to or for the benefit of a designated person, subject to stated exceptions (including the Minister's consent).

*Regulation 20* prohibits designated individuals from entering or transiting through New Zealand, subject to stated exceptions.

*Regulation 21* provides that a contravention of or failure to comply with a provision of these regulations is an offence.

*Regulation 22* provides that the consent and certificate of the Attorney-General are required before a person can be prosecuted for an offence committed outside New Zealand.

*Regulation 23* revokes the regulations that these regulations replace.

Issued under the authority of the Legislation Act 2012.

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