



United Nations Sanctions (Libya) 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 (Libya) Regulations 2018.

2 Commencement

These regulations come into force on 14 June 2018.

3 Interpretation

In these regulations, unless the context otherwise requires,—

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)

arms includes—

- (a) any related materiel; and

(b) spare parts for any arms or for any materiel referred to in paragraph (a)
bunkering service, in relation to a ship, includes—

- (a) the provision of fuel to the ship; and
- (b) the provision of supplies to the ship; and
- (c) any other servicing of the ship

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 24 of resolution 1970

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

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

Customs and Excise Act 1996 includes any regulations made under that Act with respect to prohibited imports or exports

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 specified by resolution 1970, or designated or determined by the Security Council or the Committee in accordance with that resolution or resolution 1973, 2009, 2174, or 2213 as—

- (a) a person to whom or to which asset freeze measures set out in any of those resolutions apply; or
- (b) an individual to whom travel ban measures set out in any of those resolutions apply

designated ship means a ship designated by the Committee under paragraph 11 of resolution 2146, as extended by resolution 2362

Libyan Government representative means a person purporting to represent the Government of Libya

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

petroleum includes crude oil and refined petroleum products

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 1970 means resolution 1970 (2011) of the Security Council of the United Nations, adopted on 26 February 2011

resolution 1973 means resolution 1973 (2011) of the Security Council of the United Nations, adopted on 17 March 2011

resolution 2009 means resolution 2009 (2011) of the Security Council of the United Nations, adopted on 16 September 2011

resolution 2146 means resolution 2146 (2014) of the Security Council of the United Nations, adopted on 19 March 2014

resolution 2174 means resolution 2174 (2014) of the Security Council of the United Nations, adopted on 27 August 2014

resolution 2213 means resolution 2213 (2015) of the Security Council of the United Nations, adopted on 27 March 2015

resolution 2362 means resolution 2362 (2017) of the Security Council of the United Nations, adopted on 29 June 2017

ship has the same meaning as in section 2(1) of the Ship Registration Act 1992

specified financial body means the Libyan Investment Authority or the Libyan Africa Investment Portfolio.

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 Libya**

- (1) A person must not directly or indirectly export arms to Libya knowing that the arms are intended to be exported to Libya, or are intended for use in, or for the benefit of, Libya.
- (2) Subclause (1) does not apply to the exportation of—
 - (a) arms or related materiel intended solely for security or disarmament assistance to the Libyan authorities and approved in advance by the Committee; or
 - (b) non-lethal military equipment intended solely for humanitarian or protective use; or
 - (c) protective clothing (including flak jackets and military helmets) temporarily exported to Libya by United Nations personnel, representatives of the media, humanitarian and development workers, and associated personnel for their personal use only; or
 - (d) small arms, light weapons, and related materiel temporarily exported to Libya for the sole use of United Nations personnel, representatives of the media, humanitarian and development workers, and associated personnel (if the exportation has been notified to the Committee in advance and the Committee has not, within 5 working days after receiving the notification, made a negative decision in respect of the exportation); or
 - (e) arms that are approved in advance by the Committee.

6 Importing arms from Libya

A person must not directly or indirectly import arms into New Zealand from Libya knowing that the arms are from Libya (whether or not the arms originated in Libya).

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 intended to be exported to Libya, or are intended for use in, or for the benefit of, Libya.

8 Customs may refuse certificate of clearance

Customs may refuse to grant a certificate of clearance in respect of a craft that a Customs officer has reasonable cause to suspect is loaded with arms that are intended to be exported to Libya, or are intended for use in, or for the benefit of, Libya.

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—

- (a) arms that are intended to be exported to Libya, or are intended for use in, or the for the benefit of, Libya, as if they were goods the exportation of which is prohibited under section 56(1) of that Act:
 - (b) arms that are imported from Libya as if they were goods the importation of which is prohibited under section 54(1) of that Act.
- (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 intended to be supplied, sold, or transferred, directly or indirectly,—
 - (a) to Libya, or are for use in, or for the benefit of, Libya; or
 - (b) to any place from Libya.
- (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 those arms—
 - (i) from any place to Libya; or
 - (ii) to any place from Libya.
- (2) Subclause (1) applies to,—
 - (a) in the case of a New Zealand registered craft,—
 - (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,—
 - (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 provision, maintenance, or use of any arms knowing that the assistance or training is provided to a person in Libya.

- (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 assistance or training is provided in circumstances that correspond with the exceptions described in regulation 5(2) to the prohibition on the exportation of arms described in regulation 5(1).
- (4) In this regulation, **assistance** includes technical assistance, any kind of financial assistance, and advice and assistance relating to the repair, servicing, or refurbishment of arms.

Petroleum

13 Designated ship entering New Zealand port

- (1) A person must not permit or authorise a designated ship to enter any New Zealand port if the person has reasonable grounds to believe that the ship is a designated ship.
- (2) Subclause (1) does not apply—
 - (a) to a New Zealand flagged ship; or
 - (b) in the case of an emergency; or
 - (c) if entry into the port is necessary in order for the ship to be inspected.

14 Loading, transportation, and discharge of petroleum

- (1) A person must not allow petroleum to be loaded onto or transported by a designated ship knowing that—
 - (a) the ship is a designated ship; and
 - (b) the petroleum being loaded or transported (as the case requires) is intended for transport to any place from Libya.
- (2) A person must not allow petroleum to be discharged from a designated ship in New Zealand knowing that—
 - (a) the ship is a designated ship; and
 - (b) the petroleum being discharged is from Libya.
- (3) Subclauses (1) and (2) do not apply if the person was directed by a Libyan Government representative to load or transport (as the case requires) the petroleum on the ship.

15 Application of Customs and Excise Act 1996

- (1) The provisions of the Customs and Excise Act 1996 (except section 209) apply in relation to petroleum on a designated ship that is intended for transport to any place from Libya as if the petroleum were goods the importation or exportation of which is prohibited under section 54(1) or 56(1) of that Act.

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

16 Financial transactions relating to petroleum

- (1) A person must not engage in any financial transaction relating to petroleum being transported or to be transported on a designated ship to any place from Libya knowing that—
- (a) the ship is a designated ship; and
 - (b) the ship is transporting or is to transport petroleum; and
 - (c) the transportation is, or forms part of, the transportation of that petroleum to any place from Libya.
- (2) Subclause (1) applies to—
- (a) a person in New Zealand; and
 - (b) a New Zealand citizen in any place outside New Zealand.

17 Bunkering services

- (1) A person must not provide or assist in the provision of bunkering services to a designated ship knowing that the ship is a designated ship.
- (2) Subclause (1) does not apply to bunkering services that—
- (a) are necessary—
 - (i) for humanitarian purposes; or
 - (ii) in order to enable the ship to return to Libya; and
 - (b) have been notified to the Committee.

Aircraft carrying prohibited items

18 Aircraft carrying prohibited items

- (1) A person must not permit or authorise an aircraft to do any of the following, knowing that the aircraft has on board any item the exportation or importation of which is prohibited by these regulations:
- (a) take off from New Zealand; or
 - (b) land in New Zealand; or
 - (c) fly over New Zealand.
- (2) This regulation does not apply to the carrying of arms in an aircraft if those arms are of the kind described in regulation 5(2).
- (3) Subclause (1)(b) does not apply to an emergency landing.

Property of designated persons

19 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) a designated person; or
 - (b) an agent 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)—
 - (a) applies to the property of a specified financial body only in accordance with regulation 21; and
 - (b) does not apply if the Minister has consented to the dealing in accordance with regulation 22.

20 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—
 - (a) to a designated person; or
 - (b) 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)—
 - (a) applies to the property of a specified financial body only in accordance with regulation 21; and
 - (b) does not apply if the Minister has consented to the sending, transfer, or delivery of the property in accordance with regulation 22.

21 Specified financial bodies

- (1) The prohibitions in regulations 19(1) and 20(1)—
 - (a) do not apply to property acquired by a specified financial body after 16 September 2011 and held by the body outside Libya; but
 - (b) continue to apply to other property of a specified financial body, unless the Minister has consented to the activity relating to that other property.

- (2) The Minister may consent to an activity for the purposes of subclause (1)(b) if the Minister—
- (a) is satisfied that the activity is necessary for any of the following purposes:
 - (i) meeting humanitarian needs;
 - (ii) providing fuel, electricity, and water solely for civilian users;
 - (iii) resuming Libyan production and sale of hydrocarbons;
 - (iv) establishing, operating, or strengthening civilian government institutions and public infrastructure;
 - (v) facilitating the resumption of banking sector operations, including operations that support or facilitate international trade with Libya; and
 - (b) has notified the Committee in advance of his or her intention to consent to the activity; and
 - (c) has consulted in advance with the Government of Libya and given it a copy of the notification made under paragraph (b) (and the Government of Libya has not, within 5 working days after receiving the copy notification, made a negative decision in relation to the proposed consent).

22 Minister may consent to prohibited activity

- (1) If the Minister consents to an activity under this regulation, regulations 19(3)(b) and 20(3)(b) do not apply to the activity.
- (2) In deciding whether to consent to an activity under subclause (1), the Minister must have regard to paragraphs 19, 20 and 21 of resolution 1970.
- (3) The Minister may consent to an activity under subclause (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 Libya; 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 19(1) and 20(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 their designation.
- (5) The prohibitions in regulations 19(1) and 20(1) apply to interest and other earnings and payments added to an account under subclause (4).

Entry and transit of designated individuals

23 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 an individual 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 Libya and stability in the region.
- (4) A visa may be granted under the Immigration Act 2009 to a designated individual 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

24 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.

25 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.

26 Revocation

The United Nations Sanctions (Libya) Regulations 2011 (SR 2011/77) are revoked.

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 (Libya) Regulations 2011. They give effect to the following resolutions of the Security Council of the United Nations, adopted pursuant to the United Nations Charter:

- resolution 1970 (2011), adopted on 26 February 2011:
- resolution 1973 (2011), adopted on 17 March 2011:
- resolution 2009 (2011), adopted on 16 September 2011:
- resolution 2095 (2013), adopted on 14 March 2013:
- resolution 2146 (2014), adopted on 19 March 2014:
- resolution 2174 (2014), adopted on 27 August 2014:
- resolution 2213 (2015), adopted on 27 March 2015:
- resolution 2278 (2016), adopted on 31 March 2016:
- resolution 2292 (2016), adopted on 14 June 2016:
- resolution 2362 (2017), adopted on 29 June 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 and import of arms, transport of petroleum from Libya, transport of other prohibited items, property of designated persons, and entry and transit of designated persons in New Zealand.

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

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

Regulation 3 contains necessary definitions, including definitions of arms, designated person, designated ship, 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 Libya or for use in or for the benefit of Libya (subject to stated exceptions) and the importation of arms from Libya:
- the loading onto craft of arms intended to be exported to Libya or for use in or for the benefit of Libya:
- persons in New Zealand, and New Zealand citizens outside New Zealand, from selling, transferring, or otherwise dealing with arms that are covered by the exportation prohibition:
- New Zealand craft from carrying arms that are covered by the exportation prohibition:
- the provision of military assistance or training to any person in Libya, subject to stated exceptions.

The petroleum embargo provisions (*regulations 13 to 17*) prohibit—

- the entry of designated ships into New Zealand ports:
- transporting petroleum by a designated ship to any place from Libya, loading petroleum onto a designated ship for that purpose, and discharging from a designated ship in New Zealand petroleum transported from Libya:
- financial transactions relating to petroleum being transported by a designated ship to any place from Libya:
- bunkering services for a designated ship, subject to stated exceptions.

Regulation 18 prohibits an aircraft carrying any item the exportation or importation of which is prohibited by the principal regulations from taking off from, landing in, or flying over New Zealand.

The property provisions (*regulations 19 to 22*)—

- prohibit any dealing with property located in New Zealand that is owned or controlled by a designated person or their agent, subject to specified exceptions (including the consent of the Minister of Foreign Affairs):
- prohibit the sending, transfer, or delivery of any property to or for the benefit of a designated person, subject to specified exceptions (including the Minister's consent):
- regulate the application of those prohibitions to the property of a specified financial body according to when the body acquired the property:

- provide how the Minister may give consent that overrides those prohibitions.

Regulation 23 prohibits designated individuals from entering or transiting through New Zealand, subject to stated exceptions.

Regulation 24 provides that a contravention of or failure to comply with a provision of these regulations is an offence.

Regulation 25 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 26 revokes the regulations that these regulations replace.

Issued under the authority of the Legislation Act 2012.

Date of notification in *Gazette*: 17 May 2018.

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