

Reprint
as at 1 October 2018



**United Nations Sanctions (Democratic Republic of the
Congo) Regulations 2004**
(SR 2004/465)

Silvia Cartwright, Governor-General

Order in Council

At Wellington this 20th day of December 2004

Present:

Her Excellency the Governor-General in Council

Pursuant to section 2 of the United Nations Act 1946, Her 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 1493 (2003) and 1552 (2004) of the Security Council of the United Nations adopted pursuant to the United Nations Charter on 28 July 2003 and on 27 July 2004 respectively, calling upon the Government of New Zealand and all other member States of the United Nations to apply in respect of the Democratic Republic of the Congo the measures set out, or referred to, in those resolutions,—

makes the following regulations.

Note

Changes authorised by subpart 2 of Part 2 of the Legislation Act 2012 have been made in this official reprint.
Note 4 at the end of this reprint provides a list of the amendments incorporated.

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

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Regulations

1 Title

These regulations are the United Nations Sanctions (Democratic Republic of the Congo) Regulations 2004.

2 Commencement

These regulations come into force on 14 January 2005.

3 Interpretation

In these regulations, unless the context otherwise requires,—

arms includes—

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

committee means the committee established under paragraph 8 of resolution 1533 of the Security Council of the United Nations

Customs or the Customs has the same meaning as Customs in section 5(1) of the Customs and Excise Act 2018

Customs officer has the same meaning as in section 5(1) of the Customs and Excise Act 2018

designated person means a person designated under paragraph 13 of resolution 1596 or paragraph 2 of resolution 1649 or paragraph 13 of resolution 1807 of the Security Council of the United Nations

DRC means the Democratic Republic of the Congo

Minister means the Minister of Foreign Affairs and Trade

MONUC means the United Nations mission in the DRC

New Zealand includes Tokelau

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

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

resolution means resolution 1493 (2003) of the Security Council of the United Nations, as renewed until 31 July 2005 by paragraph 2 of resolution 1552 (2004) of that Council.

Regulation 3 **committee**: inserted, on 20 November 2008, by regulation 4 of the United Nations Sanctions (Democratic Republic of the Congo) Amendment Regulations 2008 (SR 2008/391).

Regulation 3 **Customs or the Customs**: inserted, on 1 October 2018, by section 443(4) of the Customs and Excise Act 2018 (2018 No 4).

Regulation 3 **Customs or the Customs** and **Customs officer**: revoked, on 1 October 2018, by section 443(4) of the Customs and Excise Act 2018 (2018 No 4).

Regulation 3 **Customs officer**: inserted, on 1 October 2018, by section 443(4) of the Customs and Excise Act 2018 (2018 No 4).

Regulation 3 **designated person**: inserted, on 20 November 2008, by regulation 4 of the United Nations Sanctions (Democratic Republic of the Congo) Amendment Regulations 2008 (SR 2008/391).

Regulation 3 **MONUC**: inserted, on 20 November 2008, by regulation 4 of the United Nations Sanctions (Democratic Republic of the Congo) Amendment Regulations 2008 (SR 2008/391).

Exportation of arms

4 Exportation of arms to DRC prohibited

- (1) No person may directly or indirectly export arms from New Zealand to the DRC.
- (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) arms, related materiel, and technical assistance intended solely for the support of, or use by,—
 - (i) MONUC; or
 - (ii) the interim multinational force deployed in Bunia; or
 - (iii) the integrated Congolese army and police forces; or
 - (iv) the Government of the DRC; or
 - (b) non-lethal military equipment and related technical assistance—
 - (i) that is intended solely for self-protection or humanitarian aid; and
 - (ii) the supply of which has been approved in advance by the committee; or
 - (c) protective clothing (including flak jackets and military helmets) temporarily exported to the DRC by the following persons for their personal use in that country:
 - (i) United Nations personnel;
 - (ii) representatives of the media, humanitarian and development workers, and associated personnel.

Compare: SR 2001/26 r 4

Regulation 4(3): added, on 20 November 2008, by regulation 5 of the United Nations Sanctions (Democratic Republic of the Congo) Amendment Regulations 2008 (SR 2008/391).

5 Customs and Excise Act 2018 to apply to prohibited exports

All provisions of the Customs and Excise Act 2018 with respect to prohibited exports (except sections 388 and 389) apply to goods whose exportation is prohibited by regulation 4 as if the exportation of the goods were prohibited under section 96 of that Act.

Regulation 5: replaced, on 1 October 2018, by section 443(4) of the Customs and Excise Act 2018 (2018 No 4).

6 Detention of prohibited exports

A Customs officer may detain any goods he or she suspects on reasonable grounds to be goods whose exportation is prohibited by regulation 4.

Compare: SR 2001/26 r 6

7 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 2001/26 r 7

8 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.

Compare: SR 2001/26 r 8

Dealings with arms

9 Transactions with persons in DRC in relation to arms prohibited

(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 of the goods specified in regulation 4, knowing that those goods—

- (a) are intended to be imported by a person within the DRC; or
- (b) are to be supplied or delivered to, or to the order of, a person within the DRC.

(2) Subclause (1) does not apply to particular goods or to goods of a particular class if the Minister has consented to that sale, transfer, carriage, or delivery of, or other dealing with, those goods, or to goods to which regulation 4(3) applies.

Compare: SR 2001/26 r 9

Regulation 9(2): amended, on 20 November 2008, by regulation 6 of the United Nations Sanctions (Democratic Republic of the Congo) Amendment Regulations 2008 (SR 2008/391).

Carriage of arms

10 Carriage of arms to DRC prohibited

(1) No ship or aircraft may be used for the carriage of any of the goods specified in regulation 4 if the carriage is, or forms part of, the carriage of those goods from any place to the DRC.

- (2) Subclause (1) does not apply if the Minister has consented to that carriage of goods under regulation 4(2) or 9(2), or if regulation 4(3) applies to the goods.
- (3) In subclause (1), **ship or aircraft** means—
- (a) any New Zealand ship or New Zealand aircraft (as those terms are defined in regulation 3); or
 - (b) any other ship or aircraft that is, for the time being, chartered to any New Zealand citizen, or to any body incorporated or constituted under the law of New Zealand.
- (4) Subclause (1) does not limit any of regulations 4 to 9.

Compare: SR 2001/26 r 10

Regulation 10(2): amended, on 20 November 2008, by regulation 7 of the United Nations Sanctions (Democratic Republic of the Congo) Amendment Regulations 2008 (SR 2008/391).

11 Liability of owner, charterer, master, or pilot in command

- (1) If any ship or aircraft is used in contravention of regulation 10, each of the following persons is guilty of an offence against these regulations:
- (a) in the case of a New Zealand ship or New Zealand aircraft (as those terms are defined in regulation 3), 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 any other ship or 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 the DRC.
- (3) In this regulation, **owner** and **charterer**, in relation to a ship, include any person acting as the agent of the owner or, as the case requires, the agent of the charterer.

Compare: SR 2001/26 r 11

Provision of assistance, advice, or training relating to military activities

12 Provision to DRC of assistance, advice, or training relating to military activities 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 within the DRC, any financial or other assistance, financial resources, financial services, advice, or training related to military activities.

- (2) The financial or other assistance, financial resources, financial services, advice, or training referred to in subclause (1) includes, without limitation, any financial or other assistance, financial resources, financial services, technical advice, or training relating to the provision, manufacture, maintenance, or use of arms.
- (3) Subclause (1) does not apply if the Minister has consented to the provision of the financial or other assistance, financial resources, financial services, technical advice, or training, or if regulation 4(3) applies to the provision of the assistance, resources, services, advice, or training.
- (4) For the purposes of this regulation, **financial services** includes investment, brokering, and related services.

Compare: SR 2001/26 r 12

Regulation 12(1): amended, on 20 November 2008, by regulation 8(1) of the United Nations Sanctions (Democratic Republic of the Congo) Amendment Regulations 2008 (SR 2008/391).

Regulation 12(2): substituted, on 20 November 2008, by regulation 8(2) of the United Nations Sanctions (Democratic Republic of the Congo) Amendment Regulations 2008 (SR 2008/391).

Regulation 12(3): substituted, on 20 November 2008, by regulation 8(2) of the United Nations Sanctions (Democratic Republic of the Congo) Amendment Regulations 2008 (SR 2008/391).

Regulation 12(4): added, on 20 November 2008, by regulation 8(2) of the United Nations Sanctions (Democratic Republic of the Congo) Amendment Regulations 2008 (SR 2008/391).

*Prohibition on dealings in assets, money, or securities of, or derived from
property of, designated persons*

Heading: inserted, on 20 November 2008, by regulation 9 of the United Nations Sanctions (Democratic Republic of the Congo) Amendment Regulations 2008 (SR 2008/391).

**12A Prohibition on dealings in assets, money, or securities of, or derived from
property of, designated persons**

- (1) No person may knowingly transfer, pay for, sell, assign, dispose of, or otherwise deal with any asset, money, or security—
 - (a) that is owned or controlled, directly or indirectly, by a designated person or a person or entity acting on behalf, or at the direction, of a designated person; and
 - (b) that is located in New Zealand.
- (2) Subclause (1) does not apply if the Minister has consented to that transfer, sale, assignment, or disposal of, payment for, or other dealing with the asset, money, or security.
- (3) It is a defence to a prosecution under this regulation in respect of any asset, money, or security derived or generated from any asset, money, or security of the kind specified in subclause (1)(a) (a **restricted item**) if the defendant proves that he or she received the asset, money, or security in good faith, at a time when he or she did not know it was a restricted item or derived or generated from a restricted item.

Regulation 12A: inserted, on 20 November 2008, by regulation 9 of the United Nations Sanctions (Democratic Republic of the Congo) Amendment Regulations 2008 (SR 2008/391).

12B Prohibition on sending funds, etc, to designated 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 designated person or a person or entity acting on behalf, or at the direction, of a designated person; or
 - (b) for the benefit of a designated person or a person or entity acting on behalf, or at the direction, of a designated person.
- (2) Subclause (1) does not apply if the Minister has consented to that sending, transfer, or delivery of the asset, money, or security.

Regulation 12B: inserted, on 20 November 2008, by regulation 9 of the United Nations Sanctions (Democratic Republic of the Congo) Amendment Regulations 2008 (SR 2008/391).

12C Exceptions to regulations 12A and 12B

- (1) Nothing in regulation 12A(1) or 12B(1) applies to any dealing authorised by a consent under subclause (2).
- (2) The Minister may consent to any dealing with any asset, money, or security if the Minister is satisfied that the dealing—
 - (a) is necessary for basic expenses within the meaning of paragraph 12(a) of resolution 1807 of the Security Council of the United Nations and is authorised under that paragraph; or
 - (b) is necessary for extraordinary expenses within the meaning of paragraph 12(b) of that resolution and is authorised under that paragraph; or
 - (c) is authorised under paragraph 12(c) of that resolution (which relates to assets, money, or securities subject to judicial, administrative, or arbitral liens or judgments).

Regulation 12C: inserted, on 20 November 2008, by regulation 9 of the United Nations Sanctions (Democratic Republic of the Congo) Amendment Regulations 2008 (SR 2008/391).

Entry and transit of designated persons

Heading: inserted, on 20 November 2008, by regulation 9 of the United Nations Sanctions (Democratic Republic of the Congo) Amendment Regulations 2008 (SR 2008/391).

12D Designated person to enter New Zealand only if consistent with determinations of Security Council

- (1) No person who is a designated person 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 so as to prevent a designated person from entering or transiting through New Zealand if—

- (a) the committee has determined that the travel is justified on the grounds of humanitarian need, including religious obligations; or
 - (b) the committee has concluded that the travel would otherwise further the objectives of the Security Council's resolutions.
- (3) Subclause (1) does not apply to a designated person who is a New Zealand citizen.
- (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 subclause (1).
- (5) This regulation operates in addition to the requirements of the Immigration Act 2009 and any regulations made under that Act.

Regulation 12D: inserted, on 20 November 2008, by regulation 9 of the United Nations Sanctions (Democratic Republic of the Congo) Amendment Regulations 2008 (SR 2008/391).

Regulation 12D(4): substituted, at 2 am on 29 November 2010, by section 406(2) of the Immigration Act 2009 (2009 No 51).

Regulation 12D(5): substituted, at 2 am on 29 November 2010, by section 406(2) of the Immigration Act 2009 (2009 No 51).

Minister's consent

13 Preconditions to consent

Before consenting to an activity under regulation 4(2), 9(2), or 12(3), the Minister must be satisfied that the activity—

- (a) is not inconsistent with the measures set out in paragraph 20 of the resolution; or
- (b) is, under paragraph 21 of the resolution, an activity to which those measures do not apply.

Miscellaneous provisions

14 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 2001/26 r 18

15 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 with—

- (a) the Attorney-General's consent; and

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

Compare: SR 2001/26 r 19

16 Customs and Excise Act 2018 not affected

These regulations do not affect the operation of the Customs and Excise Act 2018.

Regulation 16: replaced, on 1 October 2018, by section 443(4) of the Customs and Excise Act 2018 (2018 No 4).

Diane Morcom,
Clerk of the Executive Council.

Issued under the authority of the Legislation Act 2012.
Date of notification in *Gazette*: 23 December 2004.

Reprints notes

1 *General*

This is a reprint of the United Nations Sanctions (Democratic Republic of the Congo) Regulations 2004 that incorporates all the amendments to those regulations as at the date of the last amendment to them.

2 *Legal status*

Reprints are presumed to correctly state, as at the date of the reprint, the law enacted by the principal enactment and by any amendments to that enactment. Section 18 of the Legislation Act 2012 provides that this reprint, published in electronic form, has the status of an official version under section 17 of that Act. A printed version of the reprint produced directly from this official electronic version also has official status.

3 *Editorial and format changes*

Editorial and format changes to reprints are made using the powers under sections 24 to 26 of the Legislation Act 2012. See also <http://www.pco.parliament.govt.nz/editorial-conventions/>.

4 *Amendments incorporated in this reprint*

Customs and Excise Act 2018 (2018 No 4): section 443(4)

Immigration Act 2009 (2009 No 51): section 406(2)

United Nations Sanctions (Democratic Republic of the Congo) Amendment Regulations 2008 (SR 2008/391)