

Reprint
as at 1 October 2018



United Nations Sanctions (Sudan) Regulations 2004 (SR 2004/466)

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 resolution 1556 (2004) of the Security Council of the United Nations, adopted pursuant to the United Nations Charter on 30 July 2004, calling upon the Government of New Zealand and all other member States of the United Nations to apply in respect of Sudan the measures set out in that resolution,—

makes the following regulations.

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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 (Sudan) Regulations 2004.

2 Commencement

These regulations come into force on 10 December 2004.

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 by paragraph 3 of resolution 1591 (2005) 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 persons or entities designated by the Committee in accordance with paragraph 3(c) of resolution 1591 (2005) of the Security Council of the United Nations

Minister means the Minister of Foreign Affairs and Trade

New Zealand includes Tokelau

New Zealand aircraft means any 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 1556 (2004) of the Security Council of the United Nations.

Sudan means the Republic of the Sudan.

Regulation 3 **Committee**: inserted, on 20 November 2008, by regulation 4 of the United Nations Sanctions (Sudan) Amendment Regulations 2008 (SR 2008/398).

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 (Sudan) Amendment Regulations 2008 (SR 2008/398).

Exportation of arms

4 Exportation of arms to Sudan prohibited

- (1) No person may directly or indirectly export arms from New Zealand to Sudan.
- (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 and related technical training and assistance provided to monitoring, verification, or peace support operations, including such operations led by regional organisations, that are authorised by the United Nations or are operating with the consent of the relevant parties; or
 - (b) non-lethal military equipment intended solely for humanitarian, human rights monitoring, or protective use, and related technical training and assistance; or
 - (c) protective clothing (including flak jackets and military helmets) for the personal use of United Nations personnel, human rights monitors, representatives of the media, and 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 (Sudan) Amendment Regulations 2008 (SR 2008/398).

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 Sudan 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 into Sudan; or
 - (b) are to be supplied or delivered to, or to the order of, any person in Sudan.
- (2) Subclause (1) 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 2001/26 r 9

Regulation 9(2): substituted, on 20 November 2008, by regulation 6 of the United Nations Sanctions (Sudan) Amendment Regulations 2008 (SR 2008/398).

Carriage of arms

10 Carriage of arms to Sudan 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 Sudan.
- (2) Subclause (1) does not apply if—
 - (a) the Minister has consented to that carriage of goods under regulation 4(2) or regulation 9(2); or
 - (b) regulation 4(3) applies to the goods.
- (3) In subclause (1), **ship or aircraft** means—
 - (a) any New Zealand ship or New Zealand aircraft;
 - (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): substituted, on 20 November 2008, by regulation 7 of the United Nations Sanctions (Sudan) Amendment Regulations 2008 (SR 2008/398).

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, 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 Sudan.
- (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 technical training or assistance relating to arms***12 Provision to Sudan 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 Sudan any technical training or assistance relating to the provision, manufacture, maintenance, or use of any arms.
- (2) Subclause (1) does not apply if—
- (a) the Minister has consented to that provision of the training or assistance; or
 - (b) regulation 4(3) applies to the training or assistance.

Compare: SR 2001/26 r 12

Regulation 12(2): substituted, on 20 November 2008, by regulation 8 of the United Nations Sanctions (Sudan) Amendment Regulations 2008 (SR 2008/398).

*Minister's consent***13 Preconditions to Minister's consent**

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

- (a) is not inconsistent with the measures set out in paragraphs 7 and 8 of the resolution; or

- (b) is, under paragraph 9 of the resolution, an activity to which those measures do not apply.

Funds, etc, of or for designated persons, etc

Heading: inserted, on 20 November 2008, by regulation 9 of the United Nations Sanctions (Sudan) Amendment Regulations 2008 (SR 2008/398).

13A 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 at or after 29 March 2005.
- (2) 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 that it was a restricted item or derived or generated from a restricted item.

Regulation 13A: inserted, on 20 November 2008, by regulation 9 of the United Nations Sanctions (Sudan) Amendment Regulations 2008 (SR 2008/398).

13B Prohibition on sending funds, etc, to designated persons

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.

Regulation 13B: inserted, on 20 November 2008, by regulation 9 of the United Nations Sanctions (Sudan) Amendment Regulations 2008 (SR 2008/398).

13C Exceptions to regulations 13A and 13B

- (1) Nothing in regulation 13A(1) or 13B 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 3(g)(i) of resolution 1591 (2005) 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 3(g)(ii) of resolution 1591 (2005) of the Security Council of the United Nations and is authorised under that paragraph; or
- (c) is authorised under paragraph 3(g)(iii) of resolution 1591 (2005) of the Security Council of the United Nations (which relates to assets, money, or securities subject to judicial, administrative, or arbitral liens or judgments).

Regulation 13C: inserted, on 20 November 2008, by regulation 9 of the United Nations Sanctions (Sudan) Amendment Regulations 2008 (SR 2008/398).

Entry and transit of designated persons

Heading: inserted, on 20 November 2008, by regulation 9 of the United Nations Sanctions (Sudan) Amendment Regulations 2008 (SR 2008/398).

13D Designated persons to enter New Zealand only if consistent with determinations of Security Council

- (1) No 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 to a designated person who is a New Zealand citizen.
- (3) Subclause (1) does not apply so as to prevent a person from entering or transiting through New Zealand if—
 - (a) the Committee has determined that the travel is justified on the ground of humanitarian need, including religious obligation; or
 - (b) the Committee has concluded that the travel would otherwise further the objectives of Security Council resolutions relating to Sudan.
- (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 13D: inserted, on 20 November 2008, by regulation 9 of the United Nations Sanctions (Sudan) Amendment Regulations 2008 (SR 2008/398).

Regulation 13D(4): substituted, at 2 am on 29 November 2010, by section 406(2) of the Immigration Act 2009 (2009 No 51).

Regulation 13D(5): substituted, at 2 am on 29 November 2010, by section 406(2) of the Immigration Act 2009 (2009 No 51).

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 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 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.

Reprints notes

1 *General*

This is a reprint of the United Nations Sanctions (Sudan) 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 (Sudan) Amendment Regulations 2008 (SR 2008/398)