



Charter of the United Nations (Sanctions — Sudan) Regulations 2008¹

Select Legislative Instrument 2008 No. 51

I, PHILIP MICHAEL JEFFERY, Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following Regulations under the *Charter of the United Nations Act 1945*.

Dated 10 April 2008

P. M. JEFFERY
Governor-General

By His Excellency's Command

STEPHEN SMITH
Minister for Foreign Affairs

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Part 1 Preliminary

1 Name of Regulations

These Regulations are the *Charter of the United Nations (Sanctions — Sudan) Regulations 2008*.

2 Commencement

These Regulations commence on the day after they are registered.

3 Repeal

The *Charter of the United Nations (Sanctions — Sudan) Regulations 2005* are repealed.

4 Definitions

In these Regulations:

Act means the *Charter of the United Nations Act 1945*.

arms or related matériel includes:

- (a) weapons; and
- (b) ammunition; and
- (c) military vehicles and equipment; and
- (d) spare parts and accessories for the things mentioned in paragraphs (a) to (c); and
- (e) paramilitary equipment.

Australian aircraft has the same meaning as in the *Criminal Code*.

Australian ship has the same meaning as in the *Criminal Code*.

authorised operation means an operation, including an operation led by regional organisations, that is for any of the following purposes and is authorised by the United Nations or is carried out with the consent of the relevant parties:

- (a) monitoring purposes;

Regulation 4

- (b) verification purposes;
- (c) peace support purposes.

Committee means the Committee established by subparagraph 3 (a) of Resolution 1591.

Comprehensive Peace Agreement means the peace agreement between the Government of Sudan and the Sudan People's Liberation Movement/Army, signed at Nairobi on 9 January 2005.

controlled asset means an asset that is, directly or indirectly, owned or controlled by:

- (a) a designated person; or
- (b) a person acting on behalf of or at the direction of a designated person; or
- (c) an entity owned or controlled, directly or indirectly, by a designated person.

designated person means a person designated by the Committee or the Security Council for the purposes of subparagraph 3 (c) of Resolution 1591.

export sanctioned goods has the meaning given by regulation 5.

non-governmental entity or individual means any entity (including the Janjaweed) or individual who is not acting on behalf of the Government of Sudan.

N'djamena Ceasefire Agreement means the ceasefire agreement between the Government of Sudan, the Sudan Liberation Movement and the Justice and Equality Movement, signed at N'djamena on 8 April 2004.

paramilitary equipment means any of the following:

- (a) batons, clubs, riot sticks and similar devices of a kind used for law enforcement purposes;
- (b) body armour, including:
 - (i) bullet-resistant apparel; and
 - (ii) bullet-resistant pads; and
 - (iii) protective helmets;
- (c) handcuffs, leg-irons and other devices used for restraining prisoners;

Regulation 7

- (d) riot protection shields;
- (e) whips;
- (f) parts and accessories designed or adapted for use in, or with, equipment mentioned in any of paragraphs (a) to (e).

protective clothing includes flak jackets and military helmets.

Resolution 1556 means Resolution 1556 (2004) of the Security Council, adopted on 30 July 2004.

Resolution 1591 means Resolution 1591 (2005) of the Security Council, adopted on 29 March 2005.

sanctioned service has the meaning given in regulation 7.

sanctioned supply has the meaning given in regulation 6.

Security Council means the United Nations Security Council.

Note In these Regulations:

- (a) the **Minister** is the Minister for Foreign Affairs; and
- (b) **asset** has the meaning given in section 2 of the Act.

5 Export sanctioned goods

For these Regulations, **export sanctioned goods** means arms or related matériel.

6 Sanctioned supply

A person makes a **sanctioned supply** if:

- (a) the person supplies, sells or transfers goods to another person; and
- (b) the goods are export sanctioned goods; and
- (c) as a direct or indirect result of the supply, sale or transfer the goods are transferred to Sudan.

7 Sanctioned service

For these Regulations, **sanctioned service** means the provision to Sudan of technical training or assistance related to the provision, manufacture, maintenance or use of export sanctioned goods.

Regulation 8

Part 2 UN sanction enforcement laws

8 Prohibitions relating to a sanctioned supply

- (1) A person contravenes this regulation if:
 - (a) the person makes a sanctioned supply; and
 - (b) the sanctioned supply is not an authorised supply.
- (2) Section 15.1 of the *Criminal Code* applies to an offence under section 27 of the Act that relates to a contravention of subregulation (1).

Note This has the effect that the offence has extraterritorial operation.

- (3) A person, whether or not in Australia, and whether or not an Australian citizen, contravenes this regulation if the person uses the services of an Australian ship or an Australian aircraft to transport export sanctioned goods in the course of, or for the purpose of, making a sanctioned supply that is not an authorised supply.
- (4) A body corporate contravenes this regulation if:
 - (a) the body corporate has effective control over the actions of another body corporate or entity, wherever incorporated or situated; and
 - (b) the other body corporate or entity makes a sanctioned supply; and
 - (c) the sanctioned supply is not an authorised supply.
- (5) For this regulation:

authorised supply means a sanctioned supply that is authorised by:

 - (a) a permit under regulation 9; or
 - (b) if the supply, sale or transfer takes place in or from a foreign country — a permit:
 - (i) granted by the foreign country; and
 - (ii) properly granted by the foreign country; and

Regulation 9

- (iii) granted in a way that accords with the foreign country's obligations under Resolution 1556 and Resolution 1591.
- (6) A defendant, to a charge under section 27 of the Act that relates to subregulation (1), (3) or (4), bears an evidential burden in relation to the matter in subparagraph (b) (i) of the definition of authorised supply in subregulation (5).
- (7) For paragraph (b) of the definition of authorised supply in subregulation (5), a permit is taken not to have been properly granted if the prosecution shows that the permit was granted on the basis of false or misleading information provided by any person, or of corrupt conduct by any person.

Note This regulation is a UN sanction enforcement law as specified by the Minister under the *Charter of the United Nations (UN Sanction Enforcement Law) Declaration 2008*.

9 Permit to make a sanctioned supply

- (1) The Minister may, on application, grant a person a permit authorising the making of a sanctioned supply.

Note Section 13A of the Act applies to a permit granted by the Minister under this subregulation.

- (2) The Minister may grant a permit only if the sanctioned supply:
 - (a) is for an authorised operation; or
 - (b) is a supply of non-lethal military equipment that is intended solely for humanitarian use, human rights monitoring or protective use; or
 - (c) is a supply of protective clothing that is temporarily exported to Sudan for the personal use of:
 - (i) a member of the personnel of the United Nations; or
 - (ii) a person engaged in human rights monitoring; or
 - (iii) a representative of the media; or
 - (iv) a humanitarian or development worker or an associated person; or
 - (d) is provided in support of the implementation of the Comprehensive Peace Agreement; or

Regulation 10

- (e) is a supply that:
 - (i) consist of military equipment and supplies for use in the Darfur region; and
 - (ii) is approved in advance by the Committee in response to a request by the Government of Sudan.
- (3) The Minister must not grant a permit to:
 - (a) any non-governmental entity or individual operating in the states of North Darfur, South Darfur or West Darfur; or
 - (b) a party to the N'djamena Ceasefire Agreement; or
 - (c) any belligerent in Sudan in the states of North Darfur, South Darfur or West Darfur.
- (3) A permit is subject to any conditions specified in the permit.

10 Prohibitions relating to the provision of sanctioned services

- (1) A person contravenes this regulation if:
 - (a) the person provides a sanctioned service; and
 - (b) it is not an authorised service; and
 - (c) it is not provided in relation to an authorised supply.
- (2) Section 15.1 of the *Criminal Code* applies to an offence under section 27 of the Act that relates to a contravention of subregulation (1).

Note This has the effect that the offence has extraterritorial operation.

- (3) A body corporate contravenes this regulation if:
 - (a) the body corporate has effective control over the actions of another body corporate or entity, wherever incorporated or situated; and
 - (b) the other body corporate or entity provides a sanctioned service; and
 - (c) the sanctioned service is not an authorised service; and
 - (d) the sanctioned service is not provided in relation to an authorised supply.

Regulation 10

(4) For this regulation:

authorised service means a sanctioned service that is authorised by:

- (a) a permit under regulation 11; or
- (b) if the service is provided in a foreign country — a permit:
 - (i) granted by the foreign country; and
 - (ii) properly granted by the foreign country; and
 - (iii) granted in a way that accords with the foreign country's obligations under Resolution 1556 and Resolution 1591.

authorised supply means a sanctioned supply that is authorised by:

- (a) a permit under regulation 9; or
- (b) if the supply, sale or transfer takes place in or from a foreign country — a permit:
 - (i) granted by the foreign country; and
 - (ii) properly granted by the foreign country; and
 - (iii) granted in a way that accords with the foreign country's obligations under Resolution 1556 and Resolution 1591.

(5) A defendant, to a charge under section 27 of the Act that relates to subregulation (1) or (3), bears an evidential burden in relation to:

- (a) the matter in subparagraph (b) (i) of the definition of authorised service in subregulation (4); and
- (b) the matter in subparagraph (b) (i) of the definition of authorised supply in subregulation (4).

(6) For paragraph (b) of the definitions of authorised service and of authorised supply in subregulation (4), a permit is taken not to have been properly granted if the prosecution shows that the permit was granted on the basis of false or misleading information provided by any person, or of corrupt conduct by any person.

Note This regulation is a UN sanction enforcement law as specified by the Minister under the *Charter of the United Nations (UN Sanction Enforcement Law) Declaration 2008*

Regulation 11

11 Permit to provide a sanctioned service

- (1) The Minister may, on application, grant a person a permit authorising the provision of a sanctioned service.

Note Section 13A of the Act applies to a permit granted by the Minister under this subregulation.

- (2) The Minister may grant a permit only if the sanctioned service:
- (a) is for an authorised operation; or
 - (b) is provided in relation to a supply of non-lethal military equipment that is intended solely for humanitarian use, human rights monitoring or protective use; or
 - (c) is provided in support of the implementation of the Comprehensive Peace Agreement.
- (3) The Minister must not grant a permit to:
- (a) any non-governmental entity or individual operating in the states of North Darfur, South Darfur or West Darfur; or
 - (b) a party to the N'djamena Ceasefire Agreement; or
 - (c) any belligerent in Sudan in the states of North Darfur, South Darfur or West Darfur.
- (4) A permit is subject to any conditions specified in the permit.

12 Prohibition relating to dealings with designated person or entity

- (1) A person contravenes this regulation if:
- (a) the person directly or indirectly makes an asset available to, or for the benefit of:
 - (i) a designated person; or
 - (ii) a person acting on behalf of or at the direction of a designated person; or
 - (iii) an entity owned or controlled, directly or indirectly, by a designated person; and
 - (b) the making available of the asset is not authorised by a permit under regulation 14.

Regulation 14

- (2) Section 15.1 of the *Criminal Code* applies to an offence under section 27 of the Act that relates to a contravention of subregulation (1).

Note 1 Subregulation (2) has the effect that the offence has extraterritorial operation.

Note 2 This regulation is a UN sanction enforcement law as specified by the Minister under the *Charter of the United Nations (UN Sanction Enforcement Law) Declaration 2008*.

13 Prohibition relating to sanctions controlled assets

- (1) A person contravenes this regulation if:
- (a) the person holds a controlled asset; and
 - (b) the person:
 - (i) uses or deals with the asset; or
 - (ii) allows the asset to be used or dealt with; or
 - (iii) facilitates the use of, or the dealing with, the asset;
 - (c) the use or dealing not authorised by a permit under regulation 14.
- (2) Section 15.1 of the *Criminal Code* applies to an offence under section 27 of the Act that relates to a contravention of subregulation (1).

Note 1 Subregulation (2) has the effect that the offence has extraterritorial operation.

Note 2 This regulation is a UN sanction enforcement law as specified by the Minister under the *Charter of the United Nations (UN Sanction Enforcement Law) Declaration 2008*.

14 Permit for dealing with or using sanctions controlled assets

- (1) The Minister may, on application, grant a person a permit authorising:
- (a) the making available of an asset to a person or entity that would otherwise contravene subregulation 12 (1); or
 - (b) a use of, or a dealing with, a controlled asset.

Note Section 13A of the Act applies to a permit granted by the Minister under this subregulation.

Regulation 14

- (2) An application must be for a basic expense dealing, a legally required dealing or an extraordinary expense dealing mentioned in regulation 5 of the *Charter of the United Nations (Dealing with Assets) Regulations 2008*.
- (3) An application must specify which kind of dealing mentioned in subregulation (2) the application is for.
- (4) If an application is for a basic expense dealing, the Minister:
 - (a) must notify the Committee of the application; and
 - (b) may grant a permit only if a period of 2 working days has passed since notification was given and during that period the Committee has not advised against granting the permit.
- (5) If an application is for an extraordinary expense dealing, the Minister:
 - (a) must notify the Committee of the application; and
 - (b) may grant a permit only with the approval of the Committee.
- (6) If an applications is for a legally required dealing, the Minister must not grant a permit unless the Minister notifies the Committee of the application before granting the permit.
- (7) A permit is subject to any conditions specified in the permit.

Note Part 2 of the *Charter of the United Nations (Dealing with Assets) Regulations 2008* applies to these Regulation.

Note

- 1. All legislative instruments and compilations are registered on the Federal Register of Legislative Instruments kept under the *Legislative Instruments Act 2003*. See <http://www.frli.gov.au>.