



Charter of the United Nations (Sanctions— South Sudan) Regulation 2015

Select Legislative Instrument No. 141, 2015

made under the

Charter of the United Nations Act 1945

Compilation No. 1

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About this compilation

This compilation

This is a compilation of the *Charter of the United Nations (Sanctions—South Sudan) Regulation 2015* that shows the text of the law as amended and in force on 12 February 2019 (the *compilation date*).

The notes at the end of this compilation (the *endnotes*) include information about amending laws and the amendment history of provisions of the compiled law.

Uncommenced amendments

The effect of uncommenced amendments is not shown in the text of the compiled law. Any uncommenced amendments affecting the law are accessible on the Legislation Register (www.legislation.gov.au). The details of amendments made up to, but not commenced at, the compilation date are underlined in the endnotes. For more information on any uncommenced amendments, see the series page on the Legislation Register for the compiled law.

Application, saving and transitional provisions for provisions and amendments

If the operation of a provision or amendment of the compiled law is affected by an application, saving or transitional provision that is not included in this compilation, details are included in the endnotes.

Editorial changes

For more information about any editorial changes made in this compilation, see the endnotes.

Modifications

If the compiled law is modified by another law, the compiled law operates as modified but the modification does not amend the text of the law. Accordingly, this compilation does not show the text of the compiled law as modified. For more information on any modifications, see the series page on the Legislation Register for the compiled law.

Self-repealing provisions

If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

Contents

Part 1—Preliminary	1
1 Name.....	1
3 Authority.....	1
4 Definitions.....	1
4A Definition of <i>sanctioned supply</i>	2
Part 2—UN sanction enforcement laws	3
Division 1—Sanctioned supplies and sanctioned services	3
4B Prohibitions relating to a sanctioned supply.....	3
4C Permit to make a sanctioned supply.....	4
4D Prohibitions relating to a sanctioned service.....	5
4E Permit to provide a sanctioned service.....	6
Division 2—Sanctions relating to assets and controlled assets	8
5 Prohibition relating to dealings with designated persons or entities.....	8
6 Prohibition relating to controlled assets.....	8
7 Permit for assets and controlled assets.....	8
Part 3—Miscellaneous	10
8 Delegations by the Minister.....	10
Endnotes	11
Endnote 1—About the endnotes	11
Endnote 2—Abbreviation key	12
Endnote 3—Legislation history	13
Endnote 4—Amendment history	14

Part 1—Preliminary

1 Name

This is the *Charter of the United Nations (Sanctions—South Sudan) Regulation 2015*.

3 Authority

This instrument is made under the *Charter of the United Nations Act 1945*.

4 Definitions

Note: A number of expressions used in this instrument are defined in the Act, including the following:

- (a) asset;
- (b) UN sanction enforcement law.

In this instrument:

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) paramilitary equipment; and
- (e) spare parts for the things mentioned in paragraphs (a) to (d).

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

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

authorised service has the meaning given by subsection 4D(6).

authorised supply has the meaning given by subsection 4B(6).

Committee means the Committee established under paragraph 16 of Resolution 2206.

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

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

designated person or entity means a person or entity:

Section 4A

- (a) designated by the Committee for the purposes of paragraph 12 of Resolution 2206; or
- (b) to whom the measures mentioned in paragraph 12 of Resolution 2206 apply under a decision of the Security Council.

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;
- (d) riot protection shields;
- (e) whips.

protective clothing includes flak jackets and military helmets.

Resolution 2206 means Resolution 2206 (2015) of the Security Council, adopted on 3 March 2015.

Resolution 2428 means Resolution 2428 (2018) of the Security Council, adopted on 13 July 2018.

sanctioned service:

- (a) means the provision to South Sudan of technical assistance, training, financial or other assistance, related to:
 - (i) military activities; or
 - (ii) the provision, maintenance or use of any arms or related matériel; and
- (b) includes the provision to South Sudan of armed mercenary personnel whether or not originating in Australia.

sanctioned supply has the meaning given by section 4A.

4A Definition of *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 arms or related matériel; and
- (c) as a direct or indirect result of the supply, sale or transfer, the goods are transferred to South Sudan.

Part 2—UN sanction enforcement laws

Division 1—Sanctioned supplies and sanctioned services

4B Prohibitions relating to a sanctioned supply

- (1) A person contravenes this subsection if:
 - (a) the person makes a sanctioned supply; and
 - (b) the sanctioned supply is not an authorised supply.
- (2) For an offence under section 27 of the Act that relates to a contravention of subsection (1) by an individual, strict liability applies to the circumstance that the making of the sanctioned supply is not authorised by a permit under section 4C.
- (3) Section 15.1 of the *Criminal Code* (extended geographical jurisdiction—category A) applies to an offence under section 27 of the Act that relates to a contravention of subsection (1).

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

- (4) A person contravenes this subsection if, whether or not in Australia, and whether or not an Australian citizen:
 - (a) the person uses the services of an Australian ship or an Australian aircraft to transport arms or related matériel in the course of, or for the purpose of, making a sanctioned supply; and
 - (b) the sanctioned supply is not an authorised supply.
- (5) A body corporate contravenes this subsection 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.
- (6) An **authorised supply** is a sanctioned supply that is authorised by:
 - (a) a permit under section 4C; or
 - (b) for a supply, sale or transfer 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 2428 and any other relevant resolution.

Note: Other relevant resolutions could in 2018 be viewed on the United Nations' website (<http://www.un.org>).

- (7) A defendant to a charge under section 27 of the Act that relates to a contravention of subsection (1), (4) or (5) bears an evidential burden in relation to the matter in subparagraph (6)(b)(i).

Note: See section 13.3 of the *Criminal Code*.

Section 4C

- (8) For an offence under section 27 of the Act that relates to a contravention of subsection (1), (4) or (5), a permit is taken not to have been properly granted for the purposes of subparagraph (6)(b)(ii) if the prosecution shows that the permit was granted on the basis of:
- (a) false or misleading information provided by any person; or
 - (b) corrupt conduct by any person.

Note: This section is specified as a UN sanction enforcement law in the *Charter of the United Nations (UN Sanction Enforcement Law) Declaration 2008*.

4C Permit to make a sanctioned supply

- (1) A person may apply, in writing, to the Minister for a permit to make a sanctioned supply.
- (2) The Minister may grant the permit only if the sanctioned supply is one of the following:
- (a) a sanctioned supply of arms or related matériel that is intended solely for the support of, or use by, a member of the personnel of the United Nations, including:
 - (i) a member of the personnel of the United Nations Mission in the Republic of South Sudan; and
 - (ii) a member of the personnel of the United Nations Interim Security Force for Abyei;
 - (b) a sanctioned supply of non-lethal military equipment that:
 - (i) is intended solely for humanitarian or protective use; and
 - (ii) has been notified in advance to the Committee;
 - (c) a sanctioned supply of protective clothing that is to be temporarily exported to South Sudan by any of the following, for their personal use only:
 - (i) a member of the personnel of the United Nations;
 - (ii) a representative of the media;
 - (iii) a humanitarian or development worker;
 - (iv) a person associated with a person mentioned in any of subparagraphs (i) to (iii);
 - (d) a sanctioned supply of arms or related matériel that:
 - (i) is to be temporarily exported to South Sudan by the forces of a State which is taking action, in accordance with international law, solely and directly to facilitate the protection or evacuation of its nationals and those for whom it has consular responsibility in South Sudan; and
 - (ii) has been notified to the Committee;
 - (e) a sanctioned supply of arms or related matériel that:
 - (i) is to be made to or in support of the African Union Regional Task Force; and
 - (ii) is intended solely for regional operations to counter the Lord's Resistance Army; and
 - (iii) has been notified in advance to the Committee;
 - (f) a sanctioned supply of arms or related matériel that:

- (i) is to be made solely in support of the implementation of the terms of the peace agreement (within the meaning of Resolution 2428); and
 - (ii) has been approved in advance by the Committee;
 - (g) another sanctioned supply that is a sale or supply of arms or related matériel that has been approved in advance by the Committee.
- (3) The permit must be:
- (a) in writing; and
 - (b) given to the applicant.
- (4) The permit is subject to any conditions specified in the permit.

Note: Section 13A of the Act deals with the invalidation of permissions etc. granted on the basis of false or misleading information or documents.

4D Prohibitions relating to a sanctioned service

- (1) A person contravenes this subsection if:
- (a) the person provides a sanctioned service; and
 - (b) the sanctioned service is not an authorised service.
- (2) For an offence under section 27 of the Act that relates to a contravention of subsection (1) by an individual, strict liability applies to the circumstance that the provision of the sanctioned service is not authorised by a permit under section 4E.
- (3) Section 15.1 of the *Criminal Code* (extended geographical jurisdiction—category A) applies to an offence under section 27 of the Act that relates to a contravention of subsection (1).

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

- (4) A person contravenes this subsection if, whether or not in Australia, and whether or not an Australian citizen:
- (a) the person uses the services of an Australian ship or an Australian aircraft in the course of, or for the purpose of, providing a sanctioned service; and
 - (b) the sanctioned service is not an authorised service.
- (5) A body corporate contravenes this subsection 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.
- (6) An **authorised service** is a sanctioned service that is authorised by:
- (a) a permit under section 4E; or
 - (b) for a service provided in a foreign country—a permit:
 - (i) granted by the foreign country; and
 - (ii) properly granted by the foreign country; and

Section 4E

- (iii) granted in a way that accords with the foreign country's obligations under Resolution 2428 and any other relevant resolution.

Note: Other relevant resolutions could in 2018 be viewed on the United Nations' website (<http://www.un.org>).

- (7) A defendant to a charge under section 27 of the Act that relates to a contravention of subsection (1), (4) or (5) bears an evidential burden in relation to the matter in subparagraph (6)(b)(i).

Note: See section 13.3 of the *Criminal Code*.

- (8) For an offence under section 27 of the Act that relates to a contravention of subsection (1), (4) or (5), a permit is taken not to have been properly granted for the purposes of subparagraph (6)(b)(ii) if the prosecution shows that the permit was granted on the basis of:

- (a) false or misleading information provided by any person; or
(b) corrupt conduct by any person.

Note: This section is specified as a UN sanction enforcement law in the *Charter of the United Nations (UN Sanction Enforcement Law) Declaration 2008*.

4E Permit to provide a sanctioned service

- (1) A person may apply, in writing, to the Minister for a permit to provide a sanctioned service.
- (2) The Minister may grant the permit only if the sanctioned service is one of the following:
- (a) training or assistance that is intended solely for the support of, or use by, a member of the personnel of the United Nations, including:
- (i) a member of the personnel of the United Nations Mission in the Republic of South Sudan; and
- (ii) a member of the personnel of the United Nations Interim Security Force for Abyei;
- (b) technical assistance or training that:
- (i) is related to a supply of non-lethal military equipment intended solely for humanitarian or protective use; and
- (ii) has been notified in advance to the Committee;
- (c) technical training or assistance that:
- (i) is to be provided to or in support of the African Union Regional Task Force; and
- (ii) is intended solely for regional operations to counter the Lord's Resistance Army; and
- (iii) has been notified in advance to the Committee;
- (d) technical training or assistance that:
- (i) is to be provided solely in support of the implementation of the terms of the peace agreement (within the meaning of Resolution 2428); and
- (ii) has been approved in advance by the Committee;

- (e) the provision of other assistance or personnel that has been approved in advance by the Committee.
- (3) The permit must be:
 - (a) in writing; and
 - (b) given to the applicant.
- (4) The permit is subject to any conditions specified in the permit.

Note: Section 13A of the Act deals with the invalidation of permissions etc. granted on the basis of false or misleading information or documents.

Division 2—Sanctions relating to assets and controlled assets

5 Prohibition relating to dealings with designated persons or entities

- (1) A person contravenes this subsection if:
 - (a) the person directly or indirectly makes an asset available to, or for the benefit of, a designated person or entity; and
 - (b) the making available of the asset is not authorised by a permit under section 7.
- (2) For an offence under section 27 of the Act that relates to a contravention of subsection (1) by an individual, strict liability applies to the circumstance that the making available of the asset is not authorised by a permit under section 7.
- (3) Section 15.1 of the *Criminal Code* (Extended geographical jurisdiction—category A) applies to an offence under section 27 of the Act that relates to a contravention of subsection (1).

Note 1: Subsection (3) has the effect that the offence has extraterritorial operation.

Note 2: This section is specified as a UN sanction enforcement law in the *Charter of the United Nations (UN Sanction Enforcement Law) Declaration 2008*.

6 Prohibition relating to controlled assets

- (1) A person contravenes this subsection 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; and
 - (c) the use or dealing is not authorised by a permit under section 7.
- (2) For an offence under section 27 of the Act that relates to a contravention of subsection (1) by an individual, strict liability applies to the circumstance that the use of, or dealing with, the asset is not authorised by a permit under section 7.
- (3) Section 15.1 of the *Criminal Code* (Extended geographical jurisdiction—category A) applies to an offence under section 27 of the Act that relates to a contravention of subsection (1).

Note 1: Subsection (3) has the effect that the offence has extraterritorial operation.

Note 2: This section is specified as a UN sanction enforcement law in the *Charter of the United Nations (UN Sanction Enforcement Law) Declaration 2008*.

7 Permit for assets and controlled assets

Application for permit

- (1) A person may apply, in writing, to the Minister for a permit authorising:
-

- (a) the making available of an asset that would otherwise contravene subsection 5(1); or
 - (b) a use of, or dealing with, a controlled asset that would otherwise contravene subsection 6(1).
- (2) The application must be for a basic expense dealing, a legally required dealing, a contractual dealing, a required payment dealing or an extraordinary expense dealing within the meaning of regulation 5 of the *Charter of the United Nations (Dealing with Assets) Regulations 2008*.
- (3) The application must state which kind of dealing the application is for.

Grant of permit

- (4) If the application is for a basic expense dealing, the Minister:
- (a) must give the Committee notice of the application; and
 - (b) may grant the permit only if the Committee does not make a negative decision in relation to the application within 5 working days after the notice is given.
- (5) If the application is for a legally required dealing, the Minister may grant the permit only after giving the Committee notice of the application.
- (6) If the application is for a contractual dealing, the Minister may grant the permit.
- (7) If the application is for a required payment dealing, the Minister may grant the permit only after giving the Committee at least 10 working days' notice.
- (8) If the application is for an extraordinary expense dealing, the Minister:
- (a) must give the Committee notice of the application; and
 - (b) may grant the permit only with the Committee's approval.
- (9) The permit must be:
- (a) in writing; and
 - (b) given to the applicant.
- (10) The permit is subject to any conditions specified in the permit.

Note: Section 13A of the Act deals with the invalidation of permissions etc. granted on the basis of false or misleading information or documents.

Part 3—Miscellaneous

8 Delegations by the Minister

- (1) The Minister may delegate the Minister's powers and functions under this instrument (other than this power of delegation) to:
 - (a) the Secretary of the Department; or
 - (b) an SES employee, or acting SES employee, in the Department.
- (2) The delegation must be in writing.
- (3) The delegate must comply with any directions of the Minister in exercising powers or functions under the delegation.

Endnotes

Endnote 1—About the endnotes

The endnotes provide information about this compilation and the compiled law.

The following endnotes are included in every compilation:

Endnote 1—About the endnotes

Endnote 2—Abbreviation key

Endnote 3—Legislation history

Endnote 4—Amendment history

Abbreviation key—Endnote 2

The abbreviation key sets out abbreviations that may be used in the endnotes.

Legislation history and amendment history—Endnotes 3 and 4

Amending laws are annotated in the legislation history and amendment history.

The legislation history in endnote 3 provides information about each law that has amended (or will amend) the compiled law. The information includes commencement details for amending laws and details of any application, saving or transitional provisions that are not included in this compilation.

The amendment history in endnote 4 provides information about amendments at the provision (generally section or equivalent) level. It also includes information about any provision of the compiled law that has been repealed in accordance with a provision of the law.

Editorial changes

The *Legislation Act 2003* authorises First Parliamentary Counsel to make editorial and presentational changes to a compiled law in preparing a compilation of the law for registration. The changes must not change the effect of the law. Editorial changes take effect from the compilation registration date.

If the compilation includes editorial changes, the endnotes include a brief outline of the changes in general terms. Full details of any changes can be obtained from the Office of Parliamentary Counsel.

Misdescribed amendments

A misdescribed amendment is an amendment that does not accurately describe the amendment to be made. If, despite the misdescription, the amendment can be given effect as intended, the amendment is incorporated into the compiled law and the abbreviation “(md)” added to the details of the amendment included in the amendment history.

If a misdescribed amendment cannot be given effect as intended, the abbreviation “(md not incorp)” is added to the details of the amendment included in the amendment history.

Endnotes

Endnote 2—Abbreviation key

Endnote 2—Abbreviation key

ad = added or inserted	o = order(s)
am = amended	Ord = Ordinance
amdt = amendment	orig = original
c = clause(s)	par = paragraph(s)/subparagraph(s) /sub-subparagraph(s)
C[x] = Compilation No. x	pres = present
Ch = Chapter(s)	prev = previous
def = definition(s)	(prev...) = previously
Dict = Dictionary	Pt = Part(s)
disallowed = disallowed by Parliament	r = regulation(s)/rule(s)
Div = Division(s)	reloc = relocated
ed = editorial change	renum = renumbered
exp = expires/expired or ceases/ceased to have effect	rep = repealed
F = Federal Register of Legislation	rs = repealed and substituted
gaz = gazette	s = section(s)/subsection(s)
LA = <i>Legislation Act 2003</i>	Sch = Schedule(s)
LIA = <i>Legislative Instruments Act 2003</i>	Sdiv = Subdivision(s)
(md) = misdescribed amendment can be given effect	SLI = Select Legislative Instrument
(md not incorp) = misdescribed amendment cannot be given effect	SR = Statutory Rules
mod = modified/modification	Sub-Ch = Sub-Chapter(s)
No. = Number(s)	SubPt = Subpart(s)
	<u>underlining</u> = whole or part not commenced or to be commenced

Endnote 3—Legislation history

Endnote 3—Legislation history

Name	Registration	Commencement	Application, saving and transitional provisions
Charter of the United Nations (Sanctions—South Sudan) Regulation 2015 (SLI No. 141, 2015)	21 Aug 2015 (F2015L01299)	22 Aug 2015 (s 2(1) item 1)	
Charter of the United Nations (Sanctions—South Sudan) Amendment (2019 Measures No. 1) Regulations 2019	11 Feb 2019 (F2019L00112)	12 Feb 2019 (s 2(1) item 1)	—

Endnotes

Endnote 4—Amendment history

Endnote 4—Amendment history

Provision affected	How affected
Part 1	
s 2	rep LA s 48D
s 4	am F2019L00112
s 4A	ad F2019L00112
Part 2	
Part 2	am F2019L00112
Division 1	
Division 1	ad F2019L00112
s 4B	ad F2019L00112
s 4C	ad F2019L00112
s 4D	ad F2019L00112
s 4E	ad F2019L00112
Division 2	
Division 2 heading.....	ad F2019L00112
s 7	am F2019L00112
