



Charter of the United Nations (Sanctions— South Sudan) Amendment (2019 Measures No. 1) Regulations 2019

I, General the Honourable Sir Peter Cosgrove AK MC (Ret'd), Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following regulations.

Dated 07 February 2019

Peter Cosgrove
Governor-General

By His Excellency's Command

Marise Payne
Minister for Foreign Affairs

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1 Name

This instrument is the *Charter of the United Nations (Sanctions—South Sudan) Amendment (2019 Measures No. 1) Regulations 2019*.

2 Commencement

- (1) Each provision of this instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this instrument	The day after this instrument is registered.	12 February 2019

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

- (2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

3 Authority

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

4 Schedules

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

Schedule 1—Amendments

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

1 After the heading to section 4

Insert:

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

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

2 Section 4

Insert:

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).

3 Section 4 (definition of *designated person or entity*)

Repeal the definition, substitute:

designated person or entity means a person or entity:

- (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.

4 Section 4

Insert:

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;

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

protective clothing includes flak jackets and military helmets.

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.

5 At the end of Part 1

Add:

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.

6 Part 2 (note)

Repeal the note.

7 Before section 5

Insert:

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*.

- (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;

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- (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
 - (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:

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- (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

8 Subsection 7(1)

Omit “apply”, substitute “apply, in writing”.

9 Subsection 7(2)

Repeal the subsection (including the note), substitute:

- (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*.

10 Subsection 7(9)

Repeal the subsection (including the note), substitute:

- (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.

Schedule 1 Amendments

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