

EXPLANATORY STATEMENT

Issued by the Authority of the Minister for Foreign Affairs

Charter of the United Nations Act 1945

*Charter of the United Nations (Sanctions – Central African Republic)
Amendment (2019 Measures No.1) Regulations 2019*

The *Charter of the United Nations Act 1945* (the Act) provides legislative approval for the Charter of the United Nations (the Charter) in Australian law. United Nations Security Council (UNSC) decisions made under Chapter VII of the Charter relate to action with respect to threats to the peace, breaches of the peace, and acts of aggression. Article 25 of the Charter requires United Nations Member States to accept and carry out the decisions of the UNSC.

Section 6 of the Act therefore provides that the Governor-General may make regulations to give effect to decisions of the UNSC under Chapter VII of the Charter that Article 25 of the Charter requires Australia to carry out, in so far as those decisions require Australia to apply measures not involving the use of armed force.

The *Charter of the United Nations (Sanctions – Central African Republic) Amendment (2019 Measures No.1) Regulations 2019* (the Regulations) would amend the *Charter of the United Nations (Sanctions-Central African Republic) Regulation 2014* (the principal Regulation) in order to give effect to certain provisions of United Nations Security Council (UNSC) Resolution 2399 (2018), continued in UNSC Resolution 2454 (2019). These UNSC Resolutions are decisions under Chapter VII of the Charter, and Australia is required to carry them out pursuant to Article 25 of the Charter.

The UNSC has determined that the situation in the Central African Republic (CAR) continues to constitute a threat to international peace and security in the region, and that existing sanctions imposed in respect to CAR should continue, with some modifications to the exceptions to the arms embargo. The Regulations would implement measures in UNSC Resolution 2399 that sets out the circumstances where arms and related materiel can be supplied, sold or transferred to the CAR. The Regulations update the exceptions to the arms embargo to:

- update the list of international forces providing support to the CAR;
- enable the supply of non-lethal equipment and technical assistance or training for use in the CAR process of security reform in coordination with the UN Multidimensional Integrated Stabilization Mission (MINUSCA);
- enable the supply of arms to Chadian or Sudanese forces solely for use in international patrols to enhance security in the common border areas, in cooperation with MINUSCA;
- require advance notification of the supply of arms to the UN Security Council CAR Sanctions Committee in certain circumstances;
- clarify that ‘CAR security forces’ includes State civilian law enforcement institutions.

Subsection 6(3) of the Act provides that, despite subsection 14(2) of the *Legislation Act 2003*, regulations made for the purposes of subsection 6(1) of the Act may make provision in relation to a matter by applying, adopting or incorporating any matter contained in an instrument or other writing in force or existing from time to time.

UNSC Resolutions, including those referred to in the Regulations, can be accessed free of charge on the internet at <https://www.un.org/securitycouncil/content/resolutions>. UNSC Resolutions do not operate in the same manner as Acts and legislative instruments. That is, subsequent resolutions in respect of a matter or issue do not always state that they are amending or replacing previous resolutions on that matter or issue. Rather, the resolutions need to be read in conjunction with one another.

No public consultation was undertaken in relation to the Regulations under section 17 of the *Legislation Act 2003* because the proposed regulations implement Australia's international legal obligations arising from decisions of the UNSC. The Department of Foreign Affairs and Trade (DFAT) conducts regular outreach to the Australian business community to explain Australian sanctions laws implementing UNSC sanctions.

Details of the Regulations are set out in the Attachment A.

The Act specifies no conditions that need to be satisfied before the power to make the Regulations may be exercised.

The Regulations are a legislative instrument for the purpose of the *Legislation Act 2003*.

The Regulations commence on the day after the Regulations are registered on the Federal Register of Legislation.

The Office of Best Practice Regulation has advised that a Regulation Impact Statement is not required when implementing a decision of the UNSC concerning sanctions (OBPR reference: 21407).

The Regulations are compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011* as set out in Attachment B.

Authority: Section 6 of the
*Charter of the United
Nations Act 1945*

Charter of the United Nations (Sanctions – Central African Republic) Amendment (2019 Measures No. 1) Regulations 2019

Section 1 – Name

Section 1 provides that the title of the instrument is the *Charter of the United Nations (Sanctions – Central African Republic) Amendment (2019 Measures No. 1) Regulations 2019*.

Section 2 – Commencement

Section 2 provides that all of the provisions in the instrument commence on the day after the instrument is registered.

Section 3 – Authority

Section 3 provides that the instrument is made under the *Charter of the United Nations Act 1945*.

Section 4 – Schedule

Section 4 provides that each instrument that is specified in a Schedule to the instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to the instrument has effect according to its terms.

Schedule 1 – Amendments

Schedule 1 sets out the changes that the Regulations make to the *Charter of the United Nations (Sanctions - Central African Republic) Regulation 2014* (the principal Regulations).

Item 1

This item repeals the definition of AU-RTF set out in section 4 of the principal Regulation. This amendment is consequential to item 9, which removes AU-RTF from the list of organisations in respect of which the Minister for Foreign Affairs may grant a permit authorising the supply of arms or related materiel.

Item 2

This item repeals the definition of BINUCA set out in section 4 of the principal Regulation. This amendment is consequential to item 9, which removes BINUCA from the list of organisations in respect of which the Minister for Foreign Affairs may grant a permit authorising the supply of arms or related materiel.

Item 3

Division 2 of Part 2 of the principle Regulation imposes targeted financial sanctions in relation to persons and entities designated by the Committee established under UNSC Resolution 2127.

This item amends the definition of ‘designated person or entity’ set out in section 4 of the principal Regulation to make it clear the definition encompasses sanction measures set out in

UNSC Resolution 2134 as extended by later resolutions relating to the CAR. The definition of ‘designated person or entity’ reflects operative paragraph 24 of UNSCR 2399, which makes it clear that the targeted financial sanction measures initially set out in UNSC 2134 (2014) are extended.

Item 4

This item repeals the definition of EUFOR RCA set out in section 4 of the principal Regulation. This amendment is consequential to item 9, which removes EUFOR RCA from the list of organisations in respect of which the Minister for Foreign Affairs may grant a permit authorising the supply of arms or related materiel.

Item 5

This item repeals the definition of MICOPAX set out in section 4 of the principal Regulation. This amendment is consequential to item 9, which removes the MICOPAX from the list of organisations in respect of which the Minister for Foreign Affairs may grant a permit authorising the supply of arms or related materiel.

Item 6

This item repeals the definition of MISCA set out in section 4 of the principal Regulation. This amendment is consequential to item 9, which removes the MISCA from the list of organisations in respect of which the Minister for Foreign Affairs may grant a permit authorising the supply of arms or related materiel.

Item 7

This item inserts into section 4 of the principal Regulation a definition of ‘Resolution 2387’. This proposed amendment is consequential to item 9

Item 8

This item repeals the existing paragraphs 9(2)(a) to (f) of the principal Regulation and inserts new paragraphs setting out the circumstances where the Minister for Foreign Affairs may grant a permit authorising the supply of arms or related materiel to the Central African Republic.

Paragraph 9(2)(a) allows the Minister to grant a permit if the sanctioned supply is intended solely for the support of, or use by, the forces and organisations listed in subparagraphs 9(2)(a)(i) – 9(2)(a)(iv). Paragraph 9(2)(a) gives effect to operative paragraph 1(a) of UNSCR 2399.

Paragraph 9(2)(b) outlines circumstances where a permit can be issued to allow the supply of non-lethal equipment to be used in the Central African Republic process of security reform. Paragraph 9(2)(b) gives effect to operative paragraph 1(b) of UNSCR 2399. This is a new exception to the arms embargo, and reflects the UNSC position outlined in UNSCR 2454 that there is a need for the CAR authorities to train and equip their defence and security forces to be able to respond to threats to the security of all citizens of the CAR.

Paragraph 9(2)(c) outlines circumstances where a permit can be issued to allow the making of a sanctioned supply to Chadian or Sudanese forces. Paragraph 9(2)(c) gives effect to operative paragraph 1(c) of UNSCR 2399. This is a new exception to the arms embargo, and reflects the role of neighbouring countries, in cooperation with the African-led International Support Mission in the CAR (MINUSCA), in contributing to peace and stability in common border areas.

Paragraph 9(2)(d) outlines circumstances in which a permit can be issued for to allow the supply of non-lethal military equipment for humanitarian or protective use. Paragraph 9(2)(d) gives effect to operative paragraph 1(d) of UNSCR 2399, and reflects existing paragraph 9(2)(b) of the principal Regulations.

Paragraph 9(2)(e) outlines circumstances in which a permit can be issued to allow the supply of protective clothing. Paragraph 9(2)(e) gives effect to operative paragraph 1(e) of UNSCR 2399, and reflects existing paragraph 9(2)(c) of the principle Regulations.

Paragraph 9(2)(f) outlines circumstances in which a permit can be issued to allow the supply of small arms or other related equipment to defend against poaching, smuggling or other unlawful activities. Paragraph 9(2)(f) gives effect to operative paragraph 1(f) of UNSCR 2399, and extends the existing requirements set out in paragraph 9(2)(d) of the principle Regulations to also include the requirement that the supply of equipment also be notified in advance to the Committee.

Paragraph 9(2)(g) outlines circumstances in which a permit can be issued to supply arms or other related lethal equipment to CAR security forces. Paragraph 9(2)(g) gives effect to operative paragraph 1(g) of UNSCR 2399, and extends the existing requirements set out in paragraph 9(2)(e) of the principal Regulations to specify that CAR security forces includes State civilian law enforcement institutions.

Paragraph 9(2)(h) provides that the Minister may grant a permit authorising another supply of arms or related materiel that has been approved in advance by the Committee. Paragraph 9(2)(h) gives effect to operative paragraph 1(h) of UNSCR 2399, and reflects existing paragraph 9(2)(f) of the principle Regulations.

Item 9

This item repeals existing paragraphs 11(2)(a) and (b) of the principal Regulation and inserts new paragraphs setting out the circumstances where the Minister for Foreign Affairs may grant a permit authorising the provision to the CAR of assistance related to: military activities; or to the provision, maintenance or use of any arms or related materiel (a ‘sanctioned service’ as defined in section 6 of the principal Regulations and prohibited under section 10 of the Regulations).

Paragraph 11(2)(a) outlines circumstances where a permit can be issued to allow a sanctioned service to be provided for use in the Central African Republic process of security reform. Paragraph 11(2)(a) gives effect to operative paragraph 1(b) of UNSCR 2399. This is a new exception to the arms embargo, and reflects the UNSC position outlined in UNSCR 2454 that there is a need for the CAR authorities to train and equip their defence and security forces to be able to respond to threats to the security of all citizens of the CAR.

Paragraph 11(2)(b) outlines circumstances where a permit may be issued to allow the provision of technical assistance or training related to a supply of non-lethal military equipment for humanitarian or protective use. Paragraph 11(2)(b) gives effect to operative paragraph 1(d) of UNSCR 2399, and reflects existing paragraph 11(2)(a) of the principle Regulations.

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Paragraph 11(2)(c) provides that the Minister may grant a permit authorising the provision of other assistance or personnel that has been approved in advance by the Committee. Paragraph 11(2)(c) gives effect to operative paragraph 1(h) of UNSCR 2399, and reflects existing paragraph 11(2)(b) of the principle Regulations.

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Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*

*Charter of the United Nations (Sanctions – Central African Republic) Amendment
(2019 Measures No.1) Regulations 2019
(the Regulations)*

This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview

The *Charter of the United Nations Act 1945* (the Act) provides legislative approval for the Charter of the United Nations (the Charter) in Australian law. United Nations Security Council (UNSC) decisions made under Chapter VII of the Charter relate to action with respect to threats to the peace, breaches of the peace, and acts of aggression. Article 25 of the Charter requires United Nations Member States to accept and carry out the decisions of the UNSC.

Section 6 of the Act therefore provides that the Governor-General may make regulations to give effect to decisions of the UNSC under Chapter VII of the Charter that Article 25 of the Charter requires Australia to carry out, in so far as those decisions require Australia to apply measures not involving the use of armed force.

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The UNSC has determined that the situation in the Central African Republic (CAR) continues to constitute a threat to international peace and security in the region, and that existing sanctions imposed in respect to the CAR should continue, with some minor modifications to the exceptions to the arms embargo. The Regulations implement measures in UNSC Resolution 2399 and set out the circumstances where arms and related materiel can be supplied, sold or transferred to the CAR. The Regulations update the exceptions to the arms embargo to:

- update the list of international forces providing support to the CAR;
- enable the supply of non-lethal equipment and technical assistance or training for use in the CAR process of security reform in coordination with the UN Multidimensional Integrated Stabilization Mission (MINUSCA);

- enable the supply of arms to Chadian or Sudanese forces solely for use in international patrols to enhance security in the common border areas, in cooperation with MINUSCA;
- require advance notification of the supply of arms to the UNSC CAR Sanctions Committee in certain circumstances;
- clarify that ‘CAR security forces’ includes State civilian law enforcement institutions.

Advancement of Human Rights

Since independence in 1960, the CAR has experienced multiple coups d'états with peace and security implications for the entire region. Following a coup in 2013, the political and security situation in the country has remained highly unstable and unpredictable. The objective of the UNSC Resolutions relating to the CAR is to re-establish peace and security in an environment that over the years has been characterised by a breakdown in law and order, the absence of the rule of law and intersectorian tensions.

The principle Regulations impose an arms embargo to prevent the supply of arms and related materiel and provision of mercenaries to the CAR. They also apply targeted financial sanctions (travel ban and asset freeze) against individuals and entities that the UNSC has determined should be subject to targeted measures due to their involvement in certain designated activity. This includes activity such as planning, directing or committing acts of sexual and gender-based violence; recruiting or using children in armed conflict, violating international humanitarian law, obstructing the delivery or distribution of humanitarian assistance and conducting attacks against UN missions or international security presences.

The Regulations, which implement UNSCR 2399 into Australian law, advance human rights by ensuring that the entry into the CAR of arms and related materiel occurs in line with UNSC resolutions and does not undermine national and international efforts to promote security, justice and rule of law in the CAR.

The Parliamentary Joint Committee on Human Rights has accepted that the use of sanctions to apply pressure to regimes and individuals in order to end the repression of human rights may be regarded as a legitimate objective for the purposes of international human rights law. However, it has emphasised that Australia's sanctions regimes should be proportionate to their stated objective.

The Regulations update the existing exceptions to the UN-mandated arms embargo contained in regulation 9 and 11 of the principle Regulations to enable the Minister for Foreign Affairs to grant a permit authorising the provision of arms and related materiel, and related services, to the CAR. The specified and limited circumstances in which the UNSC has determined the provision of arms and related materiel to the CAR is allowed reflects the transitional political process that is underway in the CAR, and the need for supporting international forces and CAR forces to have access to such goods to achieve the goal of achieving peace and stability in the CAR. The Regulations promote protection of human rights and implement a binding decision of the UNSC, which Australia is required as a matter of international law to implement.

Human rights compatibility

Given the primary purpose of the Regulations is to update existing exceptions to the arms embargo in the principle Regulations to reflect UNSCR 2399 and the amendments do not change the broader operation of the regime, the Legislative Instrument does not engage any of the applicable rights or freedoms.

Conclusion

This Legislative Instrument is compatible with human rights as it does not raise any human rights issues.