



## United Nations Sanctions (Democratic Republic of the Congo) Amendment Regulations 2022

Rt Hon Dame Helen Winkelmann, Administrator of the Government

### Order in Council

At Wellington this 1st day of August 2022

Present:

Her Excellency the Administrator of the Government in Council

These regulations are made under section 2(1) of the United Nations Act 1946—

- (a) on the advice and with the consent of the Executive Council; and
- (b) for the purpose of giving effect to resolution 2582 (2021) of the Security Council of the United Nations, adopted under the United Nations Charter on 29 June 2021.

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## Regulations

### 1 Title

These regulations are the United Nations Sanctions (Democratic Republic of the Congo) Amendment Regulations 2022.

### 2 Commencement

These regulations come into force on 1 September 2022.

### 3 Principal regulations

These regulations amend the United Nations Sanctions (Democratic Republic of the Congo) Regulations 2004.

### 4 Regulation 3 amended (Interpretation)

(1) In regulation 3, replace the definition of **designated person** with:

**designated person** means a person designated under any of the following paragraphs of the following resolutions of the Security Council of the United Nations:

- (a) paragraph 13 of resolution 1596 (2005):
- (b) paragraph 2 of resolution 1649 (2005):
- (c) paragraph 13 of resolution 1698 (2006):
- (d) paragraph 13 of resolution 1807 (2008):
- (e) paragraph 7 of resolution 2293 (2016) (including in relation to an act described in paragraph 3 of resolution 2360 (2017)):

(f) paragraph 3 of resolution 2582 (2021)

(2) In regulation 3, replace the definition of **MONUC** with:

**MONUSCO** means the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo

(3) In regulation 3, revoke the definition of **resolution**.

#### **5 Regulation 4 amended (Exportation of arms to DRC prohibited)**

(1) In regulation 4(1), after “the DRC”, insert “knowing that the arms are intended to be exported to the DRC, or are intended for use in, or for the benefit of, the DRC”.

(2) Replace regulation 4(3) with:

(3) Subclause (1) does not apply to—

(a) arms intended solely for the support of, or use by, MONUSCO; or

(b) protective clothing (including flak jackets and military helmets) temporarily exported to the DRC by the following persons for their personal use in that country:

(i) United Nations personnel:

(ii) representatives of the media, humanitarian and development workers, and associated personnel; or

(c) the following arms, if their exportation has been notified to the committee in advance by the Government of New Zealand:

(i) arms intended solely for the support of, or use by, the African Union Regional Task Force or the Government of the DRC:

(ii) non-lethal military equipment intended solely for self-protection or humanitarian aid:

(iii) arms the supply of which has been approved in advance by the committee.

(4) In subclause (3)(c), an exportation of arms is **notified** to the committee if the committee is provided with all relevant information about the exportation, including (if applicable)—

(a) the intended end user of the arms; and

(b) the proposed date of delivery of the arms; and

(c) the shipment itinerary for the arms.

#### **6 Regulation 5 amended (Customs and Excise Act 2018 to apply to prohibited exports)**

(1) In regulation 5, replace “goods whose exportation is prohibited by regulation 4 as if the exportation of the goods” with “arms that are intended to be exported to the DRC, or are intended for use in, or for the benefit of, the DRC, as if the exportation of the arms”.

- (2) In regulation 5, insert as subclause (2):
- (2) Subclause (1) does not apply to particular goods or to goods of a particular class if—
- (a) the Minister has consented to the exportation of those goods; or
  - (b) the goods are of the kind described in regulation 4(3)(a) to (c).

#### **7 Regulation 6 amended (Detention of prohibited exports)**

- (1) In regulation 6, replace “he or she suspects on reasonable grounds to be goods whose exportation is prohibited by regulation 4” with “that the Customs officer has reasonable cause to suspect are prohibited goods”.
- (2) In regulation 6, insert as subclause (2):
- (2) In this regulation, **prohibited goods** means arms that are intended to be exported to the DRC, or are intended for use in, or for the benefit of, the DRC, other than—
- (a) goods to whose exportation the Minister has consented; and
  - (b) goods of the kind described in regulation 4(3)(a) to (c).

#### **8 Regulation 7 amended (Prohibited exports not to be loaded onto ships or aircraft)**

- (1) In regulation 7, replace “goods whose exportation is prohibited by regulation 4, knowing that the goods are intended to be exported in contravention of that regulation” with “arms, knowing that the arms are intended to be exported to the DRC, or knowing that they are intended for use in, or for the benefit of, the DRC”.
- (2) In regulation 7, insert as subclause (2):
- (2) Subclause (1) does not apply to particular goods or to goods of a particular class if—
- (a) the Minister has consented to the exportation of those goods; or
  - (b) the goods are of the kind described in regulation 4(3)(a) to (c).

#### **9 Regulation 8 amended (Power to withhold clearance of ship or aircraft)**

- (1) In regulation 8, replace “goods any Customs officer knows to be goods whose exportation is prohibited by regulation 4” with “arms that any Customs officer has reasonable cause to suspect are prohibited goods”.
- (2) In regulation 8, insert as subclause (2):
- (2) In this regulation, **prohibited goods** has the meaning given in regulation 6(2).

#### **10 Regulation 9 amended (Transactions with persons in DRC in relation to arms prohibited)**

- (1) In regulation 9(1), replace “any of the goods specified in regulation 4, knowing that those goods” with “any arms, knowing that those arms”.

- (2) Replace regulation 9(1)(b) with:
  - (b) are intended for use in, or for the benefit of, the DRC.
- (3) Replace regulation 9(2) with:
  - (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, delivery, or other dealing with, those goods; or
    - (b) the goods are of the kind described in regulation 4(3)(a) to (c).

#### **11 Regulation 10 amended (Carriage of arms to DRC prohibited)**

Replace regulation 10(1) and (2) with:

- (1) No ship or aircraft may be used for the carriage of arms if the carriage is, or forms part of, the carriage of those arms from any place to the DRC.
- (2) Subclause (1) does not apply if—
  - (a) the Minister has consented to the carriage under regulation 4(2) or 9(2)(a); or
  - (b) the arms are of the kind described in regulation 4(3)(a) to (c).

#### **12 Regulation 11 amended (Liability of owner, charterer, master, or pilot in command)**

In regulation 11(2), replace “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” with “However, a person is not guilty of an offence under subclause (1) unless they knew”.

#### **13 Regulation 12 amended (Provision to DRC of assistance, advice, or training relating to military activities prohibited)**

- (1) Replace regulation 12(1) with:
  - (1) No person in New Zealand, and no New Zealand citizen in any place outside New Zealand, may provide any financial or other assistance, financial resources, financial services, advice, or training related to military activities, knowing that they are provided to a person in the DRC.
- (2) Replace regulation 12(3) and (4) with:
- (3) Subclause (1) does not apply if the Minister has consented to the provision of the financial or other assistance, financial resources, financial services, advice, or training.
- (4) Subclause (1) does not apply to the provision of—
  - (a) assistance, advice, or training intended solely for the support of, or use by, MONUSCO; or

- (b) the following, if notified to the committee in advance by the Government of New Zealand:
  - (i) assistance, advice, or training intended solely for the support of, or use by, the African Union Regional Task Force or the Government of the DRC:
  - (ii) technical assistance and training that relates to the supply of non-lethal military equipment intended solely for self-protection or humanitarian aid:
  - (iii) assistance or personnel the provision of which or whom has been approved in advance by the committee.
- (5) For the purposes of this regulation,—
  - (a) **financial services** includes investment, brokering, and related services; and
  - (b) the provision of assistance, advice, or training (including personnel) is **notified** to the committee if the committee is provided with all relevant information about the provision, including (if applicable)—
    - (i) the intended end user of the assistance, advice, or training; and
    - (ii) the proposed date of the provision.

**14 Regulation 12A amended (Prohibition on dealings in assets, money, or securities of, or derived from property of, designated persons)**

- (1) Replace regulation 12A(1) with:
  - (1) No person may transfer, pay for, sell, assign, dispose of, or otherwise deal with any asset, money, or security knowing that it is—
    - (a) 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) located in New Zealand.
- (2) Revoke regulation 12A(3).

**15 Regulation 12B amended (Prohibition on sending funds, etc, to designated persons)**

In regulation 12B(1), replace “knowingly send, transfer, or deliver, or knowingly cause to be sent, transferred, or delivered, whether directly or indirectly, any asset, money, or security” with “send, transfer, or deliver, or cause to be sent, transferred, or delivered, whether directly or indirectly, any asset, money, or security, knowing that it is being sent, transferred, or delivered”.

**16 Regulation 12D amended (Designated person to enter New Zealand only if consistent with determinations of Security Council)**

After regulation 12D(2)(b), insert:

- (c) the person is transiting through New Zealand and the committee has determined that the transit is justified for the purpose of—
  - (i) returning to the territory of the State of their nationality; or
  - (ii) participating in efforts to bring to justice perpetrators of grave violations of human rights or international humanitarian law; or
- (d) the travel is necessary for the fulfilment of judicial process.

### 17 Regulation 13 amended (Preconditions to consent)

- (1) In regulation 13(a), replace “paragraph 20 of the resolution” with “paragraph 1 of resolution 1807 (2008) of the Security Council of the United Nations”.
- (2) In regulation 13(b), replace “paragraph 21 of the resolution” with “paragraph 2 or 3 of resolution 2293 (2016) of the Security Council of the United Nations”.

Rachel Hayward,  
Acting Clerk of the Executive Council.

## Explanatory note

*This note is not part of the regulations, but is intended to indicate their general effect.*

These regulations, which come into force on 1 September 2022, amend the United Nations Sanctions (Democratic Republic of the Congo) Regulations 2004 (the **principal regulations**). They relate to the arms embargo and other United Nations Security Council sanctions against the Democratic Republic of the Congo (**DRC**) that are provided for by the principal regulations.

*Regulations 4, 5(2), 13(2), 16, and 17* of these regulations give effect to United Nations Security Council resolution 2582 (2021), adopted on 29 June 2021. They—

- introduce a new exception to the arms embargo, so that it no longer applies if the supply of arms or provision of military assistance has been approved in advance by the relevant Security Council committee:
- remove the exception for the Congolese army and police forces:
- provide for some exceptions to the arms embargo to be available only if the New Zealand Government has notified the relevant Security Council committee about the export in advance:
- introduce further exceptions to the travel ban on designated persons, so that it does not apply—
  - in some cases where the person is transiting through New Zealand to return to their home country or to help bring human rights violators to justice; or
  - if the travel is necessary to fulfil judicial process:

- make various minor changes, for example, to update references to military forces and Security Council resolutions and to streamline the drafting of the principal regulations.

*Regulations 5(1), 12, 13(1), 14, and 15* introduce a knowledge requirement for certain offences under the principal regulations and make related amendments. The main effect of these changes is that no offence is committed under the arms embargo or asset freeze provisions unless the person knows that what they are doing is connected with the DRC. Previously, a person could be guilty even if they were unaware of their act's link with the DRC.

*Regulations 6 to 11* make minor amendments that are consequential on the amendment made by *regulation 5(1)*.

Issued under the authority of the Legislation Act 2019.

Date of notification in *Gazette*: 4 August 2022.

These regulations are administered by the Ministry of Foreign Affairs and Trade.