



United Nations Sanctions (Afghanistan) Regulations 2001

Michael Hardie Boys, Governor-General

Order in Council

At Wellington this 12th day of March 2001

Present:

The Right Hon Helen Clark presiding in Council

Pursuant to section 2 of the United Nations Act 1946, His Excellency the Governor-General, acting—

- (a) on the advice and with the consent of the Executive Council; and
- (b) for the purpose of giving effect to resolution 1267 (1999) of the Security Council of the United Nations, adopted pursuant to the United Nations Charter on 15 October 1999, and to resolution 1333 (2000) of the Security Council of the United Nations, adopted pursuant to the United Nations Charter on 19 December 2000, calling upon the Government of New Zealand and all other member States of the United Nations to apply in respect of the Taliban the measures set out in that resolution,—

makes the following regulations.

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Regulations

1 Title

These regulations are the United Nations Sanctions (Afghanistan) Regulations 2001.

2 Commencement

These regulations come into force on 16 March 2001.

3 Interpretation

- (1) In these regulations, unless the context otherwise requires,—
arms includes—

- (a) related materiel of all types (for example, weapons, ammunition, military vehicles and equipment, or paramilitary equipment); and
- (b) spare parts for any arms, or for any goods specified in paragraph (a)

Customs or the Customs, and Customs officer have the same meaning as in section 2(1) of the Customs and Excise Act 1996

money includes—

- (a) the bank notes and other currency and money orders of New Zealand or any other country; and
- (b) promissory notes and bills of exchange; and
- (c) any credit in an account with any person

New Zealand includes Tokelau

New Zealand aircraft means any aircraft that is registered or required to be registered in New Zealand under the Civil Aviation Act 1990

New Zealand ship means a ship registered in New Zealand, or recognised by the law of New Zealand as a ship belonging to New Zealand

security—

- (a) includes a share, stock, bond, debenture, debenture stock, mortgage, lien, treasury bill, coupon or warrant representing dividends or interest, and a life or endowment insurance policy, in whatever currency the security is expressed; and
- (b) also includes any document or means by which the right to the ownership or provision of any money or security, or any interest in money or a security, may be exercised; but
- (c) does not include a promissory note or bill of exchange

the Taliban means the Afghan faction known as the Taliban, which also calls itself the Islamic Emirate of Afghanistan

Taliban aircraft means an aircraft that, in accordance with 1 or more resolutions of the Security Council, is for the time being designated as being owned, leased, or operated by or on behalf of the Taliban

Taliban-controlled area means any area within the territory of Afghanistan that, in accordance with 1 or more resolutions

of the Security Council, is for the time being designated as being controlled by the Taliban

Taliban entity means, in relation to a sanction provided for in any of regulations 15 to 17 and imposed under 1 or more resolutions of the Security Council relating to the Taliban, any person or association (other than the Taliban) designated by or under those resolutions as a person or association against whom the sanction is to be imposed.

- (2) A reference in these regulations to the transfer of a security includes a reference to a transfer of the security by way of loan, mortgage, pledge, or bailment, whether in respect of a legal or an equitable interest.
- (3) The Minister of Foreign Affairs and Trade may publish in the *Gazette*—
 - (a) a list of the names of any persons or associations that, in accordance with 1 or more resolutions of the Security Council relating to the Taliban and imposing sanctions, are for the time being designated as Taliban entities in relation to a particular sanction or to particular sanctions;
 - (b) a notice setting out details of any areas within the territory of Afghanistan that, in accordance with 1 or more resolutions of the Security Council, are for the time being designated as Taliban-controlled areas;
 - (c) any additions to, or deletions from, the list referred to in paragraph (a), or the notice referred to in paragraph (b).

Compare: SR 1993/336 r 10C(5), SR 1999/415 r 2

Exportation of acetic anhydride and arms to Taliban-controlled area prohibited

4 Exportation of acetic anhydride and arms to Taliban-controlled area prohibited

- (1) No person may directly or indirectly export from New Zealand to a Taliban-controlled area—
 - (a) acetic anhydride; or
 - (b) arms.
- (2) Subclause (1) does not apply to particular goods or to goods of a particular class if the Minister of Foreign Affairs and Trade has consented to that exportation of those goods.

Compare: SR 2000/223 r 4

5 Customs and Excise Act 1996 to apply to prohibited exports

All provisions of the Customs and Excise Act 1996 with respect to prohibited exports (except section 209) apply with respect to goods whose exportation is prohibited by regulation 4 in all respects as if the exportation of the goods were prohibited under section 56 of that Act.

Compare: SR 2000/223 r 5

6 Detention of prohibited exports

A Customs officer may detain any goods he or she suspects on reasonable grounds to be goods whose exportation is prohibited by regulation 4.

Compare: SR 2000/223 r 6

7 Prohibited exports not to be loaded onto ships or aircraft

The master of a ship or the pilot in command of an aircraft must not permit to be laden in the ship or aircraft any goods whose exportation is prohibited by regulation 4, knowing that the goods are intended to be exported in contravention of that regulation.

Compare: SR 2000/223 r 7

8 Power to withhold clearance of ship or aircraft

The Customs may withhold the clearance of any ship or aircraft so long as there are on board the ship or aircraft any goods any Customs officer knows to be goods whose exportation is prohibited by regulation 4.

Compare: SR 2000/223 r 8

Transactions in relation to imports of acetic anhydride and arms into Taliban-controlled area prohibited

9 Transactions in relation to imports of acetic anhydride and arms into Taliban-controlled area prohibited

- (1) No person in New Zealand, and no New Zealand citizen in any place outside New Zealand, may enter into or be concerned in any sale, transfer, carriage, or delivery of, or other dealing with, any of the goods specified in regulation 4, knowing that those goods—

- (a) are intended to be imported into a Taliban-controlled area; or
 - (b) are to be supplied or delivered to, or to the order of, any person in a Taliban-controlled area.
- (2) Subclause (1) does not apply to particular goods or to goods of a particular class if the Minister of Foreign Affairs and Trade has consented to that sale, transfer, carriage, or delivery of, or other dealing with, those goods.

Compare: SR 2000/223 r 9

Carriage of acetic anhydride and arms to Taliban-controlled area prohibited

10 Carriage of acetic anhydride and arms to Taliban-controlled area prohibited

- (1) No ship or aircraft may be used for the carriage of any of the goods specified in regulation 4 if the carriage is, or forms part of, carriage from any place outside a Taliban-controlled area to any destination in a Taliban-controlled area.
- (2) Subclause (1) does not apply if the Minister of Foreign Affairs and Trade has consented to that carriage of the goods under regulation 4(2) or regulation 9(2).
- (3) In subclause (1), **ship or aircraft** means—
- (a) any New Zealand ship or New Zealand aircraft (as those terms are defined in regulation 3(1));
 - (b) any other ship or aircraft that is, for the time being, chartered to any New Zealand citizen, or to any body incorporated or constituted under the law of New Zealand.
- (4) Subclause (1) does not limit any of regulations 4 to 9.

Compare: SR 2000/223 r 10

11 Liability of owner, charterer, master, or pilot in command

- (1) If any ship or aircraft is used in contravention of regulation 10, each of the following persons is guilty of an offence against these regulations:
- (a) in the case of a New Zealand ship or New Zealand aircraft (as those terms are defined in regulation 3(1)), the owner and the master of the ship or, as the case

- requires, the owner and the pilot in command of the aircraft:
- (b) in the case of any other ship or aircraft, the charterer of the ship or aircraft and, if the master of the ship or pilot in command of the aircraft is a New Zealand citizen, the master or pilot in command.
- (2) 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—
- (a) that the goods carried on the ship or aircraft were or included acetic anhydride, or arms, or both; or
 - (b) that the carriage of the acetic anhydride, or arms, or both was, or formed part of, carriage from any place outside a Taliban-controlled area to any destination in a Taliban-controlled area.
- (3) In this regulation, **owner** and **charterer**, in relation to a ship, include any person acting as the agent of the owner or, as the case requires, the agent of the charterer.

Compare: SR 2000/223 r 11

Provision to Taliban-controlled area of technical assistance or training relating to arms prohibited

12 Provision to Taliban-controlled area of technical assistance or training relating to arms prohibited

- (1) No person in New Zealand, and no New Zealand citizen in any place outside New Zealand, may provide to, or at the request of, any person in a Taliban-controlled area any technical assistance or training relating to the provision, manufacture, maintenance, or use, of any arms.
- (2) Subclause (1) does not apply if the Minister of Foreign Affairs and Trade has consented to that provision of the assistance or training.

Compare: SR 2000/223 r 12

Flights by Taliban aircraft, or to or from Taliban-controlled areas

13 Taliban aircraft not to land in, or take-off from, New Zealand

- (1) No person may permit or authorise a Taliban aircraft—

- (a) to land in a place in New Zealand; or
 - (b) to take-off from a place in New Zealand.
- (2) Subclause (1) does not apply if the Minister of Foreign Affairs and Trade has consented to (as the case requires) that landing or take-off of the Taliban aircraft.

Compare: SR 1999/415 r 3

14 No aircraft flying to or from Taliban-controlled areas to take-off from, land in, or fly over, New Zealand

- (1) No person may permit or authorise any aircraft—
- (a) to take-off from any place in New Zealand if that person suspects on reasonable grounds that the aircraft will land in a Taliban-controlled area; or
 - (b) to land in New Zealand if that person suspects on reasonable grounds that the aircraft commenced its journey in a Taliban-controlled area or landed in a Taliban-controlled area during the course of its journey; or
 - (c) to fly over New Zealand or any part of New Zealand if that person suspects on reasonable grounds that the aircraft will land in a Taliban-controlled area or that the aircraft commenced its journey in a Taliban-controlled area or landed in a Taliban-controlled area during the course of its journey.
- (2) Subclause (1) does not apply if the Minister of Foreign Affairs and Trade has consented to (as the case requires) that take-off, landing, or passage, of the aircraft.

Compare: SR 1993/336 r 8A

Funds of or for Taliban and Taliban entities

15 Prohibition on dealings in assets, money, or securities held by, or derived from property of, Taliban and Taliban entities

- (1) No person may knowingly transfer, pay for, sell, assign, dispose of, or otherwise deal with any asset, money, or security—
- (a) that is either—
 - (i) owned or controlled, whether directly or indirectly, by the Taliban or a Taliban entity; or

- (ii) derived or generated from any asset, money, or security of the kind specified in subparagraph (i); and
 - (b) that is located in New Zealand.
- (2) Subclause (1) does not apply if the Minister of Finance has consented to that transfer, sale, assignment, or disposal of, payment for, or other dealing with, the asset, money, or security.
- (3) It is a defence to a prosecution under this regulation in respect of any asset, money, or security derived or generated from any asset, money, or security of the kind specified in subclause (1)(a)(i) (**a restricted item**) if the defendant proves that he or she received the asset, money, or security in good faith, at a time when he or she did not know that it was a restricted item or derived or generated from a restricted item.

Compare: SR 1999/415 r 4

16 Prohibition on sending funds to Taliban and Taliban entities

- (1) No person may in New Zealand, and no New Zealand citizen may in any place outside New Zealand, knowingly send, transfer, or deliver, or knowingly cause to be sent, transferred, or delivered, whether directly or indirectly, any money or security—
 - (a) to the Taliban or a Taliban entity; or
 - (b) for the benefit of the Taliban or a Taliban entity.
- (2) Subclause (1) does not apply if the Minister of Finance has consented to that sending, transfer, or delivery, of the money or security.

Compare: SR 1999/415 r 5

Offices of Taliban and of Taliban entities

17 Offices of Taliban and Taliban entities not to be established or maintained

- (1) No person may, in New Zealand, establish or maintain an office for, on behalf of, or for the purpose of promoting the interests of, the Taliban or any Taliban entity.

- (2) Subclause (1) does not apply if the Minister of Foreign Affairs and Trade has consented to the office being established or maintained.

Compare: SR 1993/336 r 10B

Miscellaneous provisions

18 Offences

Every person commits an offence against these regulations, and is liable accordingly under section 3 of the United Nations Act 1946, who acts in contravention of or fails to comply in any respect with any of the provisions of these regulations.

Compare: SR 2000/223 r 13

19 Attorney-General's consent and certificate in certain cases

If an offence against these regulations is alleged to have been committed outside New Zealand, a prosecution for the offence may not be commenced without—

- (a) the Attorney-General's consent; and
- (b) the Attorney-General's certificate that it is expedient that the proceedings be commenced.

Compare: SR 2000/223 r 14

20 Customs and Excise Act 1996 not affected

These regulations do not affect the operation of the Customs and Excise Act 1996.

Compare: SR 2000/223 r 15

21 Revocation

The United Nations Sanctions (Afghanistan) Regulations 1999 (SR 1999/415) are revoked.

Diane Wilderspin,
Acting for 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 16 March 2001, revoke and replace the United Nations Sanctions (Afghanistan) Regulations 1999.

These regulations—

- continue the existing sanctions (imposed under resolution 1267 (1999) of the Security Council of the United Nations, adopted on 15 October 1999) in place in respect of the Taliban (a militarised political grouping in control of large areas of Afghanistan); and
- give effect to resolution 1333 (2000) of the Security Council of the United Nations, adopted on 19 December 2000, imposing additional sanctions in respect of the Taliban for non-compliance with previous Security Council resolutions and violations of international law.

The additional sanctions require a number of additional provisions. A number of the additional provisions relate to the following goods (the **goods**):

- acetic anhydride, a chemical used to convert morphine – an extract from the dried milky exudate of the unripe seed capsules of opium poppies (*Papaver somniferum*) – into heroin, the production, sale, or use of which is often illicit; and
- arms, which include not only related materiel of all types – for example, weapons, ammunition, military vehicles and equipment, and paramilitary equipment – but also spare parts for any arms, or for any related materiel).

The additional provisions—

- prohibit the exportation of the goods from New Zealand to any area within Afghanistan that, in accordance with Security Council resolutions, is designated as being controlled by the Taliban (a **Taliban-controlled area**); and
- prohibit any person who is in New Zealand or is a New Zealand citizen outside New Zealand—
 - from entering into or being concerned in any transaction involving the sale, transfer, carriage, or delivery

of, or other dealing with, the goods, if the person knows that the goods are destined for a Taliban-controlled area; and

- from providing to, or at the request of, any person in a Taliban-controlled area any technical assistance or training relating to the provision, manufacture, maintenance, or use of, any arms; and
- prohibit the carriage of the goods on any New Zealand ship, New Zealand aircraft, or ship or aircraft chartered by a New Zealand citizen or by a body incorporated or constituted under the law of New Zealand, if the carriage is, or forms part of, carriage from any place outside a Taliban-controlled area to any destination in a Taliban-controlled area; and
- prohibit any aircraft from landing in, taking-off from, or flying over, New Zealand if it commenced its journey, or will land in, or has during the course of its journey landed in, a Taliban-controlled area; and
- prohibit any person from establishing or maintaining, in New Zealand, an office for, on behalf of, or for the purpose of promoting the interests of, the Taliban or a Taliban entity (such as Ariana Afghan Airlines); and
- freeze funds and other financial resources owned or controlled by Taliban entities (such as Usama bin Laden, and individuals or entities associated with the Al-Qaida organization). The freeze extends to funds derived or generated from such funds; and
- ensure that Taliban entities are denied the benefit of those funds and resources, or any other funds or resources.

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