



Defence Amendment Regulations 2005

Silvia Cartwright, Governor-General

Order in Council

At Wellington this 21st day of March 2005

Present:

Her Excellency the Governor-General in Council

Pursuant to section 93 of the Defence Act 1990, Her Excellency the Governor-General, acting on the advice and with the consent of the Executive Council, makes the following regulations.

Contents

1	Title	35	Apprehension and detention of persons committing offences
2	Commencement	36	Members of police may exercise powers
3	Enacting statement amended	37	Restricted places
4	New heading to Part III substituted	38	Offences in respect of defence areas, naval ships, and military aircraft
5	New regulation 31 substituted	39	Penalties
	31 General powers of officer in charge	40	Application of Part III to other countries
6	Powers of search		
7	New regulations 33 to 40 substituted		
	33 Person may be required to supply information		
	34 Removal of persons		

Regulations

1 Title

- (1) These regulations are the Defence Amendment Regulations 2005.
- (2) In these regulations, the Defence Regulations 1990¹ are called “the principal regulations”.

¹ SR 1990/78

2 Commencement

These regulations come into force on the 28th day after the date of their notification in the *Gazette*.

3 Enacting statement amended

The enacting statement in the principal regulations is amended by omitting the expression “section 99”, and substituting the expression “section 93 and section 101”.

4 New heading to Part III substituted

The principal regulations are amended by omitting the heading to Part III, and substituting the following heading:

**“Control and security of defence areas, naval ships,
and military aircraft”.**

5 New regulation 31 substituted

The principal regulations are amended by revoking regulation 31, and substituting the following regulation:

“31 General powers of officer in charge

The officer in charge of a defence area, naval ship, or military aircraft may—

“(a) for the purpose of controlling, or maintaining the security of, the area, ship, or aircraft—

“(i) prohibit or restrict the entry of all or any persons, vehicles, ships, boats, and aircraft to the area; or

“(ii) prohibit or restrict the entry of all or any persons on board the ship or aircraft; or

“(iii) prohibit or restrict the movements and activities of all or any persons, vehicles, ships, boats, and aircraft within the area; or

- “(iv) prohibit or restrict the movements and activities of all or any persons on board the ship or aircraft; or
 - “(v) direct any person or persons within the area or on board the ship or aircraft to leave the area, ship, or aircraft or any part of it, either immediately or within the time that the officer in charge specifies; or
 - “(vi) direct any person owning or in possession or control of or driving a vehicle, ship, boat, or aircraft within the area or any part of it to remove it from the area or that part, either immediately or within the time that the officer in charge specifies; or
- “(b) authorise any person in writing for the purposes of all or any of the provisions of this Part.”

6 Powers of search

- (1) Regulation 32 of the principal regulations is amended by revoking subclause (1), and substituting the following subclause:
- “(1) The officer in charge of a defence area, naval ship, or military aircraft or any authorised person may, for the purpose of maintaining the security of the area, ship, or aircraft, detain and search any person who is in, or is entering or leaving, or is about to enter or leave, the area, ship, or aircraft, both as to—
- “(a) his or her person; and
 - “(b) any vehicle, ship, boat, aircraft, receptacle, parcel, or chattel of any description in his or her possession or under his or her control.”
- (2) Regulation 32(5) of the principal regulations is amended by inserting, after the word “area”, the words “, naval ship, or military aircraft”.

7 New regulations 33 to 40 substituted

The principal regulations are amended by revoking regulations 33 to 40, and substituting the following regulations:

“33 Person may be required to supply information

The officer in charge of a defence area, naval ship, or military aircraft, or any authorised person, or any member of the Police may require any person who is in the area or on board the ship or aircraft, or who is entering or leaving it, or who is about to

enter or leave it, to supply to the officer, authorised person, or member of the Police the following information:

- “(a) his or her true name; and
- “(b) his or her residential address; and
- “(c) an explanation of his or her presence or intended presence in the area, or on board the ship or aircraft.

“34 Removal of persons

- “(1) An authorised person may remove a person (A) from a defence area, naval ship, or military aircraft or any part of a defence area, naval ship, or military aircraft if A, without lawful excuse, refuses or fails to comply with a direction given to A under regulation 31 to leave the area, ship, or aircraft or part of the area, ship, or aircraft.
- “(2) The authorised person may use the force that is reasonably necessary for removing A.

“35 Apprehension and detention of persons committing offences

- “(1) This regulation applies to a person (A) who is found committing, or is suspected on reasonable grounds of having committed, an offence against the law of the country in which a defence area, naval ship, or military aircraft is situated (whether New Zealand or elsewhere) while A is—
 - “(a) in the area or on board the ship or aircraft; or
 - “(b) entering or leaving the area, ship, or aircraft; or
 - “(c) attempting to enter or leave the area, ship, or aircraft.
- “(2) The officer in charge of the area, ship, or aircraft, or any authorised person, may, for the purposes of subclauses (4) or (5), apprehend and detain A if A is—
 - “(a) in the area or on board the ship or aircraft; or
 - “(b) entering or leaving the area, ship, or aircraft; or
 - “(c) attempting to enter or leave the area, ship, or aircraft.
- “(3) The officer or the authorised person may use the force that is reasonably necessary for apprehending and detaining A.
- “(4) Subject to subclause (5), every officer or authorised person who detains a person under subclause (2) (not being a person subject to the Armed Forces Discipline Act 1971) must as soon as possible deliver that person to a member of the police of the civil power of the country in which the area, ship, or

aircraft is situated for the purpose of that person's arrest under the powers of that member of the police.

- “(5) Every officer or authorised person who detains a member of an allied force under subclause (2) must as soon as possible deliver that person to the officer commanding that force, or any member of that force acting under the authority of the commanding officer, for the purpose of that person's arrest under the powers of that officer or member.

“36 **Members of police may exercise powers**

Any power that may be exercised in a defence area or on board a naval ship or military aircraft by an authorised person under this Part may, at the request of the officer in charge of the area, ship, or aircraft, be exercised by a member of the police.

“37 **Restricted places**

- “(1) The officer in charge of a defence area, naval ship, or military aircraft may at any time declare the area, ship, or aircraft or any part of the area, ship, or aircraft to be a restricted place.
- “(2) In the case of a defence area or part of it, the officer must cause the restricted place to be clearly delineated or otherwise defined. The requirements of this subclause are in addition to the requirements of regulation 30.
- “(3) A person must not enter or remain in a restricted place except with the permission of the officer in charge of it and in accordance with any conditions that the officer may impose.

“38 **Offences in respect of defence areas, naval ships, and military aircraft**

- “(1) Every person commits an offence against this Part who, without lawful excuse,—
- “(a) enters or remains in a defence area or any part of it in contravention of a prohibition or restriction imposed under regulation 31 by the officer in charge of the area; or
- “(b) boards or remains on board a naval ship or military aircraft or part of a naval ship or military aircraft in contravention of a prohibition or restriction imposed under regulation 31 by the officer in charge of the ship or aircraft; or

- “(c) contravenes or fails to comply with any direction given to that person under regulation 31 by the officer in charge of the defence area, naval ship, or military aircraft; or
 - “(d) refuses to permit, or submit to, or resists, any detention or search that he or she is required to undergo under regulation 32; or
 - “(e) contravenes regulation 33 or regulation 37(3); or
 - “(f) wilfully obstructs any of the following persons in the exercise of any powers under this Part:
 - “(i) the officer in charge of a defence area, naval ship, or military aircraft:
 - “(ii) an authorised person:
 - “(iii) a member of the police.
- “(2) Every person commits an offence against this Part who, without the permission of the officer in charge of the defence area, naval ship, or military aircraft—
- “(a) injures, weakens, breaks down, or destroys—
 - “(i) any structure or equipment, or any earthworks, road, drain, tree, or vegetation, in or on the defence area; or
 - “(ii) any structure or equipment on board the ship or aircraft; or
 - “(b) defaces, obliterates, removes, or destroys any printed or written notice, direction, or regulation posted, attached, or affixed to or upon any building, erection, post, fence, gate, or other structure, or to or upon any other public property, in or on the defence area; or
 - “(c) defaces, or attaches or affixes anything to or upon,—
 - “(i) any building, erection, post, fence, gate, or other structure, or any other public property, in or on the defence area; or
 - “(ii) the ship or aircraft.

“39 Penalties

Every person who commits an offence against this Part is liable on summary conviction to imprisonment for a term not exceeding 3 months or to a fine not exceeding \$1,000 or both.

“40 **Application of Part III to other countries**

Nothing in this Part authorises any act in a defence area, or on board a naval ship or military aircraft, situated in a country other than New Zealand if the act would be contrary to the law of that country.”

Rebecca Kitteridge,
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 come into force on the 28th day after the date of their notification in the *Gazette* and amend the Defence Regulations 1990 (“the principal regulations”). Broadly the effect of the amendments is to confer (with minor modifications) the same powers of control currently vested in the officer in command of a defence area on the officer in command of a naval ship or military aircraft. Those powers relate to—

- general powers of controlling entry, movement, activities, and removal (*new regulation 31*);
- search (*new regulation 32(1)*);
- supply of information (*new regulation 33*);
- removal of persons (*new regulation 34*);
- apprehension and detention of persons committing offences (*new regulation 35*);
- declaration of restricted place (*new regulation 37*).

There are consequential amendments to *regulation 32(5)* of the principal regulations and in *new regulation 36* (members of police may exercise powers), *new regulation 38* (offences), and *new regulation 40* (application of Part III of principal regulations to other countries). *New regulation 39* is substituted only for the purpose of updating it to conform with the modern drafting style.

Issued under the authority of the Acts and Regulations Publication Act 1989.
Date of notification in *Gazette*: 24 March 2005.
These regulations are administered in the New Zealand Defence Force.
