

HQ DJIATF
2 Seddul Bahr Road
Trentham
New Zealand

HQ DJIATF - O3-0038/07

19 May 20

See Distribution List

FRAGO 004 TO HQ JTF 650.7 OPORD 002/20: ARMY RESERVE EXTENSION AND LEGAL UPDATE

References:

- A. HQ JTF 650.7 OPORD 002/20: OP PROTECT PHASE II
- B. ANNEX E to HQ JFNZ OPINST 068/20
- C. FRAGO 003 to HQ JTF 650.7 OPORD 002/20

Time Zone. Time zone used throughout this order: MIKE

1. **Situation.** In addition to ref A. Following the end of the State of Emergency and move to a national transition period, the CDEMA powers that were previously available to the NZDF, in support of the National Controller and/or NZ Police, are no longer applicable. In addition, the COVID-19 Public Health Response Act 2020 has changed the legal regime going forward. As a result a revised Annex E is enclosed and supersedes ref B and all subsequent FRAGOs.

2. **Mission.** No change to ref A.

3. **Execution.** No change to ref C.

a. **Intent.** No change to ref A.

b. **Concept of Operations.** No change to ref A.

c. **Tasks.** Changes to ref A.

(1) 1 (NZ) Bde is requested to:

(a) Extend Army Reserve support to TU 650.7.1 until 30 Jun 20 of no more than:

i. 2x MIF Managers.

ii. 4x MIF Coordinators.

d. **Coordinating Instructions.** No change to ref C.

4. **Administration and Logistics.** Payment of Army Reserve to be against HQJFNZ s. 9(2)(k)

5. **Command and Signals.** No change to ref A.

6. **Annex.** Replace ref B to Annex E attached.

7. **Acknowledgement Instructions:** Action addressees are to acknowledge receipt of this FRAGO NLT 191600 May 20 by DIXS email to HQJTF650.7 at s. 9(2)(k)

s. 9(2)(a) & 9(2)(k)

Annex:

E. OP PROTECT LEGAL ISSUES

Distribution:

Action:

CFOR AUCKLAND
1 (NZ) Bde
HQ TRADOC (NZ)
BASE HQ AK
BASE HQ OH
BASE HQ WOODBOURNE
TU 650.7.1 (Op PROTECT)
TU 650.7.2 (Op PROTECT)
TG 650.7.3 (Op PROTECT)

Info:

HQ NZDF (AC SCE)
HQ NZDF (NAVY)
HQ NZDF (ARMY)
HQ NZDF (AIR)

HQ JFNZ Internal:

COMJFNZ
MCC
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Registry

OP PROTECT LEGAL ISSUES

1. This annex outlines the legal issues in relation to OP PROTECT.

Domestic Legal Basis for the Deployment of New Zealand Forces

2. Section 5 of the Defence Act 1990 (DA) sets out the justifications for raising and sustaining the NZDF. Section 7 DA confers the power of control over the NZDF on the Minister of Defence, which must be exercised through CDF. On any occasion where the exercise of this power constitutes a significant policy decision or may be controversial, the *Cabinet Manual* requires the Minister to submit the matter for decision.
3. Section 9(1) DA permits the use of the Armed Forces to perform any public service or to provide assistance to the civil power in time of emergency.
4. CDF has directed the NZDF to provide support to the AoG response to COVID-19 in order to minimise the impact of the virus and maintain the well-being of the NZ population.¹ All operations conducted by the NZDF in support of the COVID-19 response are to be conducted IAW domestic and international law.

NZDF Support to Other Agencies

5. The NZDF may provide a broad range of support to other government agencies. It is important to note that this does not confer the exercise of enforcement powers or the use of force beyond what is permitted by the Rules of Conduct (ROC) at Enclosure 1 to this annex. All members of the NZDF participating in OP PROTECT are to comply with these ROC. A tactical aide memoir summarising the ROC is at Enclosure 2 to this annex.
6. The primary responsibility for law enforcement matters, including enforcement of the majority of COVID-19 restrictions, is that of the NZ Police and other enforcement agencies. Members of the NZDF may provide direct assistance to members of the NZ Police if called upon.²

¹ See CDF Directive 12/2020 Novel Coronavirus (COVID-19) NZDF Response Management Plan; CDF Operational Directive 17/2020 OP PROTECT – NZDF Novel Coronavirus (COVID-19) Response Management Plan Update; and CDF Operational Directive 18/2020 Op PROTECT NZDF Novel Coronavirus (COVID-19) Response Management Plan Level Four Activation

² For example, Policing Act 2008, s 51. A constable may ask any person, which may include a member of the Armed Forces, to assist them to apprehend or secure a person or convey that person to a police station or other place. This assistance must be given directly, police powers cannot be exercised autonomously or in isolation from a constable.

Special Powers

7. A general description of special powers available to members of the NZDF is below. Legal guidance with regard to the exercise of other statutory powers will be issued as specific NZDF tasks in support of other agencies are authorised.

8. **Civil Defence Emergency Management Act 2002.** On 25 Mar 20 a state of national emergency was declared in accordance with s 66 Civil Defence Emergency Management Act 2002 (CDEMA). The state of national emergency was lifted on 13 May 20. A national transition period is in place.

9. A National Recovery Manager may exercise the functions and powers referred to in part 5B of CDEMA. In particular, the National Recovery Manager may exercise certain powers if, in the opinion of the National Recovery Manager, it is in the public interest; and necessary or desirable to ensure a timely and effective recovery; and proportionate in the circumstances.

10. IAW s 94J CDEMA, the Minister may direct the Director or any Civil Defence Emergency Management Group or person to perform any of the functions or duties or exercise any of the powers conferred on the Director, Group or person.

11. In the event that the Minister directs members of the Armed Forces to perform any of the functions or duties or exercise any of the powers set out in part 5B of CDEMA, further direction and guidance will be provided.

12. **Health Act 1956.** The Health Act (HA) includes special powers that may be exercised by a medical officer of health.³ A medical officer of health may authorise any person, which may include a member of the NZDF, to assist them in the exercise of these powers. However, there is no legal authority for a member of the NZDF to use force beyond self-defence.

13. **COVID-19 Public Health Response Act 2020.** This Act includes provision for the Director-General of Health to authorise persons as enforcement officers for the purpose of enforcing compliance with s 11 orders.⁴ A suitably qualified and trained person who is employed by the Crown or a Crown entity can be authorised to carry out any functions and powers of an enforcement officer. This may include a member of the NZDF. In the event that a member of the NZDF is authorised as an enforcement officer, there is no legal authority to use force beyond self-defence.

³ Health Act 1956, s 70 and Part 4.

⁴ COVID-19 Public Health Act Response Act 2020, s 18.

Discipline

14. NZDF personnel deployed as part of OP PROTECT remain at all times subject to the Armed Forces Discipline Act 1971 (the AFDA). Home unit discipline arrangements remain extant.

15. Personnel serving on OP PROTECT are not on active service for the purposes of the Defence Act 1990 or the AFDA.

Health and Safety

16. The Health and Safety at Work Act 2015 (HSWA) applies. There is an ability to seek an exemption under the HSWA for tasks classified by CDF as an "operational activity". The threshold for an exemption is necessarily high. In the event of uncertainty about the application of the HSWA or the appropriateness of an exemption from the Act, legal advice should be sought.

17. DFO 10 (Safety) applies to all members of the NZDF at all times while undertaking any activity with the NZDF. NZDF personnel serving on OP PROTECT, while on duty or at work, are to:

- a. Take reasonable care for his or her own safety;
- b. Take reasonable care that his or her acts or omissions do not adversely affect the health and safety of other persons (including NZDF visitors, other government department workers and government officials of other states); and
- c. Comply with the instructions given by COMJFNZ to allow his compliance with the HSWA.

Legal Support

18. J09 Branch, HQ JFNZ, is the central POC for legal support for OP PROTECT.


19. Where appropriate, the Joint Watch Centre is to be carbon copied on all correspondence with J09 branch. Legal contact can be via the following means:

- a. s. 9(2)(k)
- b.
- c.
- d.

20. Legal advisers in support of OP PROTECT are as follows:

- a. HQ JTF 650.7 – s. 9(2)(a) & 9(2)(k)

b. s. 9(2)(a) & 9(2)(k)



Enclosures:

1. OP PROTECT Rules of Conduct (issue 4)
2. ROC Tactical Aide Memoire (issue 3)

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**OPERATION PROTECT
NEW ZEALAND DEFENCE FORCE RULES OF CONDUCT (ISSUE 4)**

References:

- A. CDF Operational Directive 06/2020
- B. Defence Act 1990
- C. Health Act 1956
- D. Crimes Act 1961
- E. Policing Act 2008
- F. Search and Surveillance Act 2012

Background

1. At Ref A, CDF directed the NZDF to provide support to the AoG response to COVID-19 in order to minimise the impact of the virus and maintain the well-being of the NZ population.
2. OP PROTECT NZDF Rules of Conduct (ROC) enable the achievement of CDF's intent.
3. The ROC are necessarily comprehensive but should not to be interpreted as an indication of the likelihood of each action or task, including the use of force, being required. Instead, the ROC are intended to fully prepare members of the Armed Forces to conduct a range of actions or tasks, as permitted, including limits on the use of force.

Application

4. The ROC apply at all times to all members of the Armed Forces who are participating in OP PROTECT.
5. The ROC do NOT apply to other domestic NZDF operations, for example a counter-terrorism response.
6. The ROC are to be read in a restrictive manner. Conduct not specifically permitted by these rules is to be deemed by members of the Armed Forces as prohibited.
7. The ROC describe certain powers that may be exercised by members of the Armed Forces when authorised to do so by a medical officer of health or a constable. Members of the Armed Forces may NOT exercise such powers without such authorisation.
8. Requests to amend the ROC should be made to COMJFNZ.
9. Members of the Armed Forces are to conduct themselves in a manner intended to deter activities that undermine public safety and security, and promote

confidence among members of the general public. Accordingly, members of the Armed Forces are to:

- a. only use force that is lawful and necessary, proportionate and reasonable; and
- b. as far as is possible, limit any actions that may undermine public confidence.

10. In circumstances requiring the lawful use of force or coercive powers, members of the Armed Forces are to:

- a. in addition to these orders, consider their mission, current situation, command intent, and all other available guidance in determining how to use force for the accomplishment of their task or in self-defence;
- b. only exercise coercive powers or use force for the minimum time necessary; and
- c. hand over the responsibility for managing any enforcement incident to the NZ Police or appropriate enforcement agency as soon as practicable.

Rules of Conduct:

11. **Defence of people and property⁵**

- a. Use of force is permitted for individual self-defence and defence of any other person.
- b. Use of force is permitted to protect property which, if damaged or destroyed would be likely to cause imminent death or serious injury to any person.
- c. Use of force which does not include striking or causing bodily harm is permitted to protect NZDF or designated property which, if damaged or destroyed would not be likely to cause death or serious injury to any person.

12. **General support to law enforcement**

- a. Presence patrolling consistent with task accomplishment is permitted.

AMPLIFICATION: lawful, necessary, proportionate and reasonable force may be used

⁵ See s 48 Crimes Act 1961

- b. Assisting a member of the NZ Police to apprehend a person or transport a detained person to a police station or other place is permitted.⁶

AMPLIFICATION (1): lawful, necessary, proportionate and reasonable force may be used

AMPLIFICATION (2): assistance must be given directly and in the presence of that member of NZ Police

13. **Defence Areas.** Persons holding an MD4 card may exercise the powers listed on that card in relation to the relevant Defence Area.

14. **Health Act 1956.** If authorised by a medical officer of health and as directed by a Task Unit Commander or delegate, it is permitted to:

- a. Enter into or on any land, building, aircraft, or ship.

AMPLIFICATION: force is not to be used in the exercise of this power, except in self-defence.

- b. Inspect any land, building, aircraft, or ship or anything in or on it.

AMPLIFICATION: force is not to be used in the exercise of this power, except in self-defence.

- c. Board any ship in any port and inspect any part of the ship and inspect any animals and goods on the ship, and the passenger list, and with the prior authority of the Director-General of Health, inspect the logbook and other ship's papers.

AMPLIFICATION: force is not to be used in the exercise of this power, except in self-defence

- d. Require information from people liable for quarantine in order to enable the management of risks to public health. This can include requiring information from people entering, on or leaving Defence Areas.

AMPLIFICATION: force is not to be used in the exercise of this power, except in self-defence

- e. Impose directions, requirements or conditions on a person liable for quarantine.

AMPLIFICATION: force is not to be used in the exercise of this power, except in self-defence

- f. Arrest a person liable for quarantine who leaves a ship without authority from a Medical Officer of Health.

⁶ See Policing Act 2008 s 51

AMPLIFICATION: lawful, necessary, proportionate and reasonable force may be used

- g. Arrest a person who has arrived by aircraft and is liable for quarantine who leaves the part of an airport they are quarantined in or leaves before being granted permission, without authority from a Medical Officer of Health.⁷

AMPLIFICATION: lawful, necessary, proportionate and reasonable force may be used

- h. Direct the detention of a craft that has arrived in New Zealand and its passengers for inspection, if a person on board that craft appears to be ill or has died from COVID-19.

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⁷ 'Pratique' is the permission granted to a ship to have dealings with a port, given after quarantine or on showing a clean bill of health.

OP PROTECT - TACTICAL AIDE Memoire (ISSUE 3)

GENERAL

1. Act under the lawful commands of your superior officers.
2. All reasonable efforts must be made to resolve situations without the use of force.
3. In all situations, use only the *minimum force necessary* to deal with the situation.
4. Where possible you are to use a graduated response.
5. The Rules of Conduct may permit additional powers for specified tasks.
6. The Rules of Conduct should not be interpreted as an indication of the likelihood of each action or task, including the use of force, being required. The Rules of Conduct are intended to fully prepare members of the Armed Forces to conduct a range of actions or tasks, as permitted, including limits on the use of force.

INQUIRIES

7. You are authorised to answer basic questions from the public or media about issues *within your area of expertise*. For any other inquiries, you are to direct the public or media to your superior or Defence Public Affairs.

CONDUCT

8. You are to conduct yourself in a manner intended to deter activities that undermine public safety and security, and to promote confidence among members of the general public.

USE OF FORCE

9. You are authorised to use reasonable force to defend yourself or any other person.
10. You are authorised to use reasonable force limited to pushing, shoving, fending or grabbing to protect NZDF or designated property.
11. You are authorised to use reasonable force to protect any property which, if attacked or destroyed, would be likely to cause imminent serious injury to you or any other person.
12. You are authorised to use reasonable force, but not force which might cause serious injury, when conducting a lawful arrest or detention.

DIRECTING THE PUBLIC

13. If assisting a Medical Officer of Health you may impose directions, requirements or conditions on a person liable for quarantine.

ENTRY

14. If assisting a Medical Officer of Health you may:
 - a. Enter any land, building or ship to inspect it.
 - b. Require information from people liable for quarantine or entering New Zealand.

ARREST, DETENTION AND PUBLIC ORDER

15. You may assist a police officer to arrest a person and take them anywhere directed.
16. If assisting a Medical Officer of Health you may:
 - a. Detain individuals who are subject to public health order.
 - b. Arrest a person who is liable for quarantine and is leaving a ship or aircraft without authority.

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