
STATUTORY INSTRUMENTS

2009 No. 1749

UNITED NATIONS

The North Korea (United Nations Sanctions) Order 2009

<i>Made</i>	- - - -	<i>8th July 2009</i>
<i>Laid before Parliament</i>		<i>9th July 2009</i>
<i>Coming into force</i>	- -	<i>10th July 2009</i>

At the Court at Buckingham Palace, the 8th day of July 2009

Present,

The Queen's Most Excellent Majesty in Council

Under article 41 of the Charter of the United Nations the Security Council of the United Nations has, by resolution adopted on 12th June 2009, called upon Her Majesty's Government in the United Kingdom and all other States to apply certain measures to give effect to decisions of that Council in relation to the Democratic People's Republic of Korea (North Korea):

Her Majesty, in exercise of the powers conferred on Her by section 1 of the United Nations Act 1946⁽¹⁾, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:—

Citation, commencement, operation and extent

1.—(1) This Order may be cited as the North Korea (United Nations Sanctions) Order 2009 and shall come into force on 10th July 2009.

(2) This Order shall extend to the United Kingdom.

(3) Articles 3, 4, 5 and 6 shall apply to any person within the United Kingdom and to any person elsewhere who is—

- (a) a British citizen, a British overseas territories citizen, a British Overseas citizen, a British subject, a British National (Overseas) or a British protected person; or
- (b) a body incorporated or constituted under the law of any part of the United Kingdom.

(1) 1946 c. 45.

Interpretation

2. In this Order the following expressions have, except where otherwise expressly provided, the meanings hereby respectively assigned to them, that is to say—

“aircraft” means a fixed wing, swivel wing, rotary wing, tilt rotor or tilt wing airborne vehicle or helicopter;

“body corporate” includes a Scottish partnership and, in relation to such a partnership, any reference to a director or other officer of a body corporate is a reference to a partner;

“commander”, in relation to an aircraft, means the member of the flight crew designated as commander of the aircraft by the operator thereof, or, failing such a person, the person who is for the time being the pilot in command of the aircraft;

“the Commissioners” means the Commissioners for Her Majesty’s Revenue and Customs;

“document” includes information recorded in any form, and in relation to information recorded otherwise than in legible form, references to its production include references to producing a copy of the information in legible form;

“export” includes shipment as stores;

“master”, in relation to a ship, includes any person (other than a pilot) for the time being in charge of the ship;

“military goods” means the goods, software and technology specified in Schedule 2 to the Export Control Order 2008(2) made under the Export Control Act 2002(3);

“operator”, in relation to an aircraft or vehicle, means the person for the time being having the management of the aircraft or vehicle;

“owner”, in relation to a ship, where the owner is not the operator, means the operator and any person to whom it is chartered;

“procurement” means procurement by whatever means, including but not limited to by purchase, import or transport, and including by using any ship, aircraft or vehicle to which article 5 of this Order applies;

“ship” has the meaning it bears in section 313 of the Merchant Shipping Act 1995(4);

“ship supply services” means the provision to a ship of bunker oil or any other supply, provision or service, other than basic provisions for the crew, to facilitate a voyage by that ship;

“shipment” (and cognate expressions) and “stores” shall have the meanings they bear in the Customs and Excise Management Act 1979(5);

“vehicle” means a land transport vehicle.

CARRIAGE OF MILITARY GOODS TO NORTH KOREA

Use of ships, aircraft and vehicles: military goods to North Korea

3.—(1) Except under the authority of a licence granted by the Secretary of State under this article, no ship or aircraft to which this article applies, and no vehicle within the United Kingdom, shall be used for the carriage of military goods if the carriage is, or forms part of, carriage from any place outside North Korea to any destination therein.

(2) This article applies—

(2) S.I. 2008/3231.

(3) 2002 c.28.

(4) 1995 c. 21.

(5) 1979 c.2.

- (a) to ships registered in the United Kingdom;
 - (b) to aircraft so registered; and
 - (c) to any other ship or aircraft that is for the time being chartered to any person who is—
 - (i) a British citizen, a British overseas territories citizen, a British Overseas citizen, a British subject, a British National (Overseas) or a British protected person; or
 - (ii) a body incorporated or constituted under the law of any part of the United Kingdom.
- (3) If any ship, aircraft or vehicle is used in contravention of paragraph (1) then—
- (a) in the case of a ship registered in the United Kingdom or any aircraft so registered, the owner and the master of the ship or, as the case may be, the operator and the commander of the aircraft; or
 - (b) in the case of any other ship or aircraft, the person to whom the ship or aircraft is for the time being chartered and, if he or she is such a person as is referred to in paragraph (2)(c) (i) or (ii), the master of the ship or, as the case may be, the operator and the commander of the aircraft; or
 - (c) in the case of a vehicle, the operator of the vehicle,

shall be guilty of an offence under this Order, unless the person proves that he or she did not know and had no reason to suppose that the carriage of the goods in question was, or formed part of, carriage from any place outside North Korea to any destination therein.

(4) Nothing in paragraph (1) shall apply where the supply or delivery or exportation from the United Kingdom of the goods concerned to North Korea was authorised by a licence granted by the Secretary of State under the Export Control Order 2008⁽⁶⁾.

(5) Nothing in this article shall be construed so as to prejudice any other provision of law prohibiting or restricting the use of ships, aircraft or vehicles.

PROCUREMENT OF MILITARY GOODS

Procurement of military goods from North Korea

4.—(1) Except under the authority of a licence granted by the Secretary of State under this article, the procurement of military goods from North Korea is prohibited, whether or not originating in the territory of North Korea.

(2) Any military goods which are procured or attempted to be procured shall be liable to forfeiture.

(3) Any person knowingly concerned in the procurement or attempted procurement of such goods shall be guilty of an offence under this Order.

Use of ships, aircraft and vehicles: military goods from North Korea

5.—(1) Without prejudice to the generality of article 4, and except under the authority of a licence granted by the Secretary of State under this article, no ship or aircraft to which this article applies, and no vehicle within the United Kingdom, shall be used for the carriage of military goods if the carriage is, or forms part of, carriage from North Korea to any destination outside North Korea.

(2) This article applies—

- (a) to ships registered in the United Kingdom;
- (b) to aircraft so registered; and

(6) [S.I. 2008/3231](#).

- (c) to any other ship or aircraft that is for the time being chartered to any person who is—
 - (i) a British citizen, a British overseas territories citizen, a British Overseas citizen, a British subject, a British National (Overseas) or a British protected person; or
 - (ii) a body incorporated or constituted under the law of any part of the United Kingdom.
- (3) If any ship, aircraft or vehicle is used in contravention of paragraph (1) then—
 - (a) in the case of a ship registered in the United Kingdom or any aircraft so registered, the owner and the master of the ship or, as the case may be, the operator and the commander of the aircraft; or
 - (b) in the case of any other ship or aircraft, the person to whom the ship or aircraft is for the time being chartered and, if he or she is such a person as is referred to in paragraph (2)(c) (i) or (ii), the master of the ship or, as the case may be, the operator and the commander of the aircraft; or
 - (c) in the case of a vehicle, the operator of the vehicle,

shall be guilty of an offence under this Order, unless the person proves that he or she did not know and had no reason to suppose that the carriage of the goods in question was, or formed part of, carriage from North Korea to any destination outside North Korea.

(4) Nothing in paragraph (1) shall apply where the procurement of the goods concerned was authorised by a licence granted by the Secretary of State under article 4.

(5) Nothing in this article shall be construed so as to prejudice any other provision of law prohibiting or restricting the use of ships, aircraft or vehicles.

SUPPLY SERVICES TO NORTH KOREAN SHIPS

Supply Services to North Korean ships

6.—(1) Except under the authority of a licence granted by the Secretary of State under this article, the provision of ship supply services to any ship registered in North Korea is prohibited, in the circumstances set out in paragraph (2).

(2) The circumstances referred to in paragraph (1) are where there is information which provides reasonable grounds to believe that the ship is carrying items, the supply, delivery, sale, transfer, export or procurement of which is prohibited by articles 2, 3 or 4 of Council Regulation (EC) No 329/2007⁽⁷⁾, by the Export Control Order 2008⁽⁸⁾ or by article 4 of this Order.

(3) Any person knowingly concerned in the provision or attempted provision of such services in such circumstances shall be guilty of an offence under this Order.

GENERAL

Offences in connection with applications for licences, conditions attaching to licences, etc.

7.—(1) Any person who, for the purpose of obtaining any licence under this Order, makes any statement or furnishes any document or information which to his or her knowledge is false in a material particular, or recklessly makes any statement or furnishes any document or information which is false in a material particular, shall be guilty of an offence under this Order.

⁽⁷⁾ OJ No. L 88, 29.3.2007, p.1.

⁽⁸⁾ S.I. 2008/3231.

(2) Any person who has done any act under the authority of a licence granted by the Secretary of State under this Order and who fails to comply with any conditions attaching to that licence shall be guilty of an offence under this Order:

Provided that no person shall be guilty of an offence under this paragraph where the person proves that the condition with which he or she failed to comply was modified, otherwise than with his or her consent, by the Secretary of State after the doing of the act authorised by the licence.

Investigation, etc. of suspected ships

8.—(1) Where any authorised officer or authorised person has reason to suspect that any ship to which article 3 or 5 applies has been or is being or is about to be used in contravention of article 3(1) or 5(1)—

- (a) the authorised officer or authorised person may (either alone or accompanied and assisted by persons under his or her authority) board the ship and search her and, for that purpose, may use or authorise the use of reasonable force;
- (b) the authorised officer or authorised person may request the master of the ship to furnish such information relating to the ship and her cargo and produce for his or her inspection such documents so relating and such cargo as he or she may specify; and
- (c) in the case of a ship that is reasonably suspected of being or of being about to be used in contravention of article 3(1) or 5(1), any authorised officer or authorised person (either there and then or upon consideration of any information furnished or document or cargo produced in pursuance of a request made under sub-paragraph (b)), with a view to preventing the commission (or the continued commission) of any such contravention, or in order that enquiries into the matter may be pursued, may take the further action specified in paragraph (2).

(2) The further action referred to in paragraph (1)(c) is either—

- (a) to direct the master of the ship to refrain, except with the consent of any authorised officer or authorised person, from landing at any port specified by the authorised officer or authorised person any part of the ship's cargo that is so specified; or
- (b) to request the master of the ship to take any one or more of the following steps:
 - (i) to cause the ship not to proceed with the voyage on which she is then engaged or about to engage until the master is notified by an authorised officer or authorised person that the ship may so proceed;
 - (ii) if the ship is then in port in the United Kingdom, to cause her to remain there until the master is notified by an authorised officer or authorised person that the ship may depart;
 - (iii) if the ship is then in any other place, to take her to any such port specified by the authorised officer or authorised person and to cause her to remain there until the master is notified as mentioned in sub-paragraph (ii); and
 - (iv) to take her to any other destination that may be specified by the authorised officer or authorised person in agreement with the master.

(3) Without prejudice to the provisions of article 11(3), where—

- (a) a master refuses or fails to comply with a request made under paragraph (2)(b); or
- (b) an authorised officer or authorised person otherwise has reason to suspect that such a request that has been so made may not be complied with,

any such authorised officer or authorised person may take such steps as appear to him or her to be necessary to secure compliance with that request and, without prejudice to the generality of the

foregoing, may for that purpose enter upon, or authorise entry upon, that ship and use, or authorise the use of, reasonable force.

(4) Before or on exercising any power conferred by this article, an authorised person, shall, if requested to do so, produce evidence of his or her authority.

(5) In this article—

“authorised officer” means an officer as is referred to in section 284(1) of the Merchant Shipping Act 1995⁽⁹⁾;

“authorised person” means any person authorised by the Secretary of State for the purpose of this article either generally or in a particular case.

Investigation, etc. of suspected aircraft

9.—(1) Where any authorised officer or authorised person has reason to suspect that any aircraft to which article 3 or 5 applies has been or is being or is about to be used in contravention of article 3(1) or 5(1)—

- (a) the authorised officer or authorised person may (either alone or accompanied and assisted by persons under his or her authority) board the aircraft and search it and, for that purpose, may use or authorise the use of reasonable force;
- (b) the authorised officer or authorised person may request the charterer, the operator and the commander of the aircraft or any of them to furnish such information relating to the aircraft and its cargo and produce for his or her inspection such documents so relating and such cargo as he or she may specify; and
- (c) if the aircraft is then in the United Kingdom, any authorised officer or authorised person may (either there and then or upon consideration of any information furnished or document or cargo produced in pursuance of a request made under sub-paragraph (b)) further request the charterer, operator and the commander or any of them to cause the aircraft and any of its cargo to remain in the United Kingdom until notified that the aircraft and its cargo may depart.

(2) Without prejudice to the provisions of article 11(3), where an authorised officer or authorised person has reason to suspect that any request that has been made under paragraph (1)(c) may not be complied with, he or she may take such steps as appear to him or her to be necessary to secure compliance with that request and, without prejudice to the generality of the foregoing, may for that purpose—

- (a) enter, or authorise entry, upon any land and upon that aircraft;
- (b) detain, or authorise the detention of, that aircraft and any of its cargo; and
- (c) use, or authorise the use of, reasonable force.

(3) Before or on exercising any power conferred by this article, an authorised person shall, if requested to do so, produce evidence of his or her authority.

(4) In this article—

“authorised officer” means any officer of Revenue and Customs;

“authorised person” means any person authorised by the Secretary of State for the purpose of this article either generally or in a particular case.

(9) 1995 c. 21.

Investigation, etc. of suspected vehicles

10.—(1) Where any authorised officer or authorised person has reason to suspect that any vehicle in the United Kingdom has been or is being or is about to be used in contravention of article 3(1) or 5(1)—

- (a) the authorised officer or authorised person may (either alone or accompanied and assisted by persons under his or her authority) enter the vehicle and search it and, for that purpose, may use or authorise the use of reasonable force;
- (b) the authorised officer or authorised person may request the operator and the driver of the vehicle or either of them to furnish such information relating to the vehicle and any goods contained in it and produce for his or her inspection such documents so relating and such goods as he or she may specify; and
- (c) any authorised officer or authorised person may (either there and then or upon consideration of any information furnished or document or goods produced in pursuance of a request made under sub-paragraph (b)) further request the operator or the driver to cause the vehicle and any goods contained in it to remain in the United Kingdom until notified that the vehicle may depart.

(2) Without prejudice to the provisions of article 11(3), where any authorised officer or authorised person has reason to suspect that any request that has been made under paragraph (1)(c) may not be complied with, he or she may take such steps as appear to him or her to be necessary to secure compliance with that request and, without prejudice to the generality of the foregoing, may for that purpose—

- (a) enter, or authorise entry, upon any land and enter, or authorise entry of, that vehicle;
- (b) detain, or authorise the detention of, that vehicle and any goods contained in it; and
- (c) use, or authorise the use of, reasonable force.

(3) Before or on exercising any power conferred by this article, an authorised person shall, if requested to do so, produce evidence of his or her authority.

(4) In this article—

“authorised officer” means any officer of Revenue and Customs;

“authorised person” means any person authorised by the Secretary of State for the purpose of this article either generally or in a particular case.

Provisions supplementary to articles 8 to 10

11.—(1) No information furnished or document produced by any person in pursuance of a request made under article 8, 9 or 10 shall be disclosed except—

- (a) with the consent of the person by whom the information was furnished or the document was produced:

Provided that a person who has obtained information or is in possession of a document only in his or her capacity as servant or agent of another person may not give consent for the purposes of this sub-paragraph but such consent may instead be given by any person who is entitled to that information or to the possession of that document in his or her own right;

- (b) to any person who would have been empowered under article 8, 9 or 10 to request that it be furnished or produced or to any person holding or acting in any office under or in the service of:
 - (i) the Crown in respect of the Government of the United Kingdom;
 - (ii) the Government of the Isle of Man;
 - (iii) the States of Guernsey or Alderney or the Chief Pleas of Sark;

- (iv) the States of Jersey; or
 - (v) the Government of any territory listed in Schedule 1;
 - (c) on the authority of the Secretary of State, to any organ of the United Nations or to any person in the service of the United Nations or of the Government of any other country for the purpose of assisting the United Nations or that Government in securing compliance with or detecting evasion of measures in relation to North Korea decided upon by the Security Council of the United Nations; or
 - (d) with a view to the institution of, or otherwise for the purposes of, any proceedings—
 - (i) in the United Kingdom, for an offence under this Order or, with respect to any of the matters regulated by this Order, for an offence relating to customs; or
 - (ii) for any offence under any law making provision with respect to such matters that is in force in any of the Channel Islands, the Isle of Man or any territory listed in Schedule 1 to this Order.
- (2) Any power conferred by article 8, 9 or 10 to request the furnishing of information or the production of a document or of cargo for inspection shall include a power to specify whether the information should be furnished orally or in writing and in what form and to specify the time by which and the place in which the information should be furnished or the document or cargo produced for inspection.
- (3) Each of the following persons shall be guilty of an offence under this Order, that is to say—
- (a) a master of a ship who disobeys any direction given under article 8(2)(a);
 - (b) a master of a ship or a charterer or an operator or a commander of an aircraft or an operator or a driver of a vehicle who:
 - (i) without reasonable excuse, refuses or fails within a reasonable time to comply with any request made under article 8, 9 or 10 by any person empowered to make it, or
 - (ii) furnishes any document or information which to his or her knowledge is false in a material particular, or recklessly furnishes any document or information which is false in a material particular to such a person in response to such a request;
 - (c) a master or a member of a crew of a ship or a charterer or an operator or a commander or a member of a crew of an aircraft or an operator or a driver of a vehicle who wilfully obstructs any such authorised officer or authorised person (or any person acting under the authority of any such person) in the exercise of his or her powers under article 8, 9 or 10.
- (4) Nothing in articles 8 to 11 shall be construed so as to prejudice any other provision of law conferring powers or imposing restrictions or enabling restrictions to be imposed with respect to ships, aircraft or vehicles.

Obtaining of evidence and information

12. The provisions of Schedule 2 shall have effect in order to facilitate the obtaining, by or on behalf of the Secretary of State or the Commissioners—

- (a) of evidence and information for the purpose of securing compliance with or detecting evasion of—
 - (i) this Order in the United Kingdom; or
 - (ii) any law making provision with respect to any of the matters regulated by this Order that is in force in any of the Channel Islands or the Isle of Man or any territory listed in Schedule 1; and
- (b) of evidence of the commission of—

- (i) in the United Kingdom, an offence under this Order or, with respect to any of the matters regulated by this Order, an offence relating to customs; or
- (ii) with respect to any of those matters, an offence under the law of any of the Channel Islands or the Isle of Man or any territory listed in Schedule 1.

Investigations by the Commissioners

13. Where the Commissioners investigate or propose to investigate any matter with a view to determining—

- (a) whether there are grounds for believing that an offence under this Order has been committed; or
- (b) whether a person should be prosecuted for such an offence,

the matter shall be treated as an assigned matter within the meaning of section 1(1) of the Customs and Excise Management Act 1979⁽¹⁰⁾.

Penalties and proceedings

14.—(1) Any person guilty of an offence under article 3(3), 4(3), 5(3) or 6(3) shall be liable—

- (a) on conviction on indictment to imprisonment for a term not exceeding seven years or to a fine or to both; or
- (b) on summary conviction—
 - (i) in England and Wales or Scotland, to imprisonment for a term not exceeding twelve months or to a fine not exceeding the statutory maximum or to both;
 - (ii) in Northern Ireland, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum or both.

(2) Any person guilty of an offence under article 11(3)(b)(ii) or paragraph 5(b) or (d) of Schedule 2 shall be liable—

- (a) on conviction on indictment to imprisonment for a term not exceeding two years or to a fine or to both;
- (b) on summary conviction—
 - (i) in England and Wales or Scotland, to imprisonment for a term not exceeding twelve months or to a fine not exceeding the statutory maximum or to both;
 - (ii) in Northern Ireland, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum or both.

(3) Any person guilty of an offence under article 7(1) or (2) shall be liable—

- (a) on conviction on indictment to imprisonment for a term not exceeding two years or to a fine or to both;
- (b) on summary conviction to a fine not exceeding the statutory maximum.

(4) Any person guilty of an offence under article 11(3)(a), (b)(i) or (c), or paragraph 5(a) or (c) of Schedule 2, shall be liable on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding level 5 on the standard scale or to both.

(5) Where any body corporate is guilty of an offence under this Order, and that offence is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director or other officer of the body corporate or any person who was purporting to

⁽¹⁰⁾ 1979 c. 2.

act in any such capacity, he or she, as well as the body corporate, shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

(6) Notwithstanding anything in section 127(1) of the Magistrates' Courts Act 1980⁽¹¹⁾, a summary offence under this Order may be tried by a magistrates' court in England and Wales if an information is laid at any time within three years after the commission of the offence and within 12 months after the date on which evidence sufficient in the opinion of the prosecutor to justify the proceedings comes to his or her knowledge.

(7) Notwithstanding anything in section 136 of the Criminal Procedure (Scotland) Act 1995⁽¹²⁾, summary proceedings in Scotland for an offence under this Order may be commenced at any time within 12 months after the date on which evidence sufficient in the Lord Advocate's opinion to justify the proceedings came to his or her knowledge; and subsection (3) of that section applies for the purpose of this paragraph as it applies for the purpose of that section—

Provided that such proceedings shall not be commenced after the expiration of three years from the commission of the offence.

(8) Notwithstanding anything in article 19 of the Magistrates' Courts (Northern Ireland) Order 1981⁽¹³⁾, summary proceedings in Northern Ireland for an offence under this Order may be instituted at any time within three years after the commission of the offence and within 12 months after the date on which evidence sufficient in the opinion of the prosecutor to justify the proceedings comes to his or her knowledge.

(9) For the purposes of this article—

- (a) a certificate signed by or on behalf of the prosecutor or the Lord Advocate (as the case may be) as to the date on which such evidence as is referred to in paragraphs (6), (7) and (8) came to his or her knowledge shall be conclusive evidence of that fact; and
- (b) a certificate purporting to be so signed shall be presumed to be so signed unless the contrary is proved.

(10) Proceedings against any person for an offence under this Order may be taken before the appropriate court in the United Kingdom having jurisdiction in the place where that person is for the time being.

(11) In England and Wales, subsection (2) of section 24 of the Police and Criminal Evidence Act 1984⁽¹⁴⁾ shall apply to the offences under this Order that are not arrestable offences by virtue of the term of imprisonment for which a person may be sentenced in respect of them, as if they were mentioned in that subsection; and accordingly such offences shall be arrestable offences within the meaning of that Act.

(12) In Scotland, where a constable reasonably believes that a person has committed or is committing an offence under this Order, he or she may arrest that person without a warrant.

(13) No proceedings for an offence under this Order, other than for a summary offence, shall be instituted in England, Wales or Northern Ireland except by the Secretary of State or with the consent of the Attorney General or, as the case may be, the Attorney General for Northern Ireland:

Provided that this paragraph shall not prevent the arrest, or the issue or execution of a warrant for the arrest, of any person in respect of such an offence, or the remand in custody or on bail of any person charged with such an offence, notwithstanding that the necessary consent to the institution of proceedings for the offence has not been obtained.

(11) 1980 c. 43.

(12) 1995 c. 46.

(13) S.I. 1981/1675 (N.I. 26).

(14) 1984 c.60.

(14) In paragraphs 1(b)(i) and 2(b)(i) as they apply to England and Wales in the case of an offence committed before section 154(1) of the Criminal Justice Act 2003⁽¹⁵⁾ comes into force, for “twelve months” substitute “six months”.

Exercise of the powers of the Secretary of State

15.—(1) The Secretary of State may, to such extent and subject to such restrictions and conditions as he or she may think proper, delegate or authorise the delegation of any of his or her powers under this Order to any person, or class or description of persons, approved by him or her, and references in this Order to the Secretary of State shall be construed accordingly.

(2) Any licences granted under this Order shall be in writing and may be either general or special, may be subject to or without conditions, may be limited so as to expire on a specified date unless renewed and may be varied or revoked by the authority that granted them.

Judith Simpson
Clerk of the Privy Council

⁽¹⁵⁾ 2003 c.44; at the date of this Order, section 154(1) had not been commenced.

SCHEDULE 1

Article 11

DISCLOSURE OF INFORMATION – LISTED TERRITORIES

Anguilla
Bermuda
British Antarctic Territory
British Indian Ocean Territory
Cayman Islands
Falkland Islands
Gibraltar
Montserrat
Pitcairn, Henderson, Ducie and Oeno Islands
St Helena and Dependencies
South Georgia and the South Sandwich Islands
The Sovereign Base Areas of Akrotiri and Dhekelia in the Island of Cyprus
Turks and Caicos Islands
Virgin Islands

SCHEDULE 2

Article 12

EVIDENCE AND INFORMATION

1.—(1) Without prejudice to any other provision of this Order, or any provision of any other law, the Secretary of State or the Commissioners may request any person in or resident in the United Kingdom to furnish to him or her, or to them any information in his or her possession or control, or to produce to him or her, or to them any document in his or her possession or control, which he or she, or they may require for the purpose of securing compliance with or detecting evasion of this Order; and any person to whom such a request is made shall comply with it within such time and in such manner as may be specified in the request.

(2) Nothing in sub-paragraph (1) shall be taken to require any person who has acted as counsel or solicitor for any person to furnish or produce any privileged information or document in his or her possession in that capacity.

(3) Where a person is convicted of failing to furnish information or produce a document when requested so to do under this paragraph, the court may make an order requiring him or her, within such period as may be specified in the order, to furnish the information or produce the document.

(4) The power conferred by this paragraph to request any person to produce documents shall include power to take copies of or extracts from any document so produced and to request that person, or, where that person is a body corporate, any other person who is a present or past officer of, or is employed by, the body corporate, to provide an explanation of any of them.

(5) The furnishing of any information or the production of any document under this paragraph shall not be treated as a breach of any restriction imposed by statute or otherwise.

2.—(1) If any justice of the peace is satisfied by information on oath given by any constable or person authorised by the Secretary of State or the Commissioners to act for the purposes of this paragraph either generally or in a particular case—

(a) that there is reasonable ground for suspecting that an offence under this Order or, with respect to any of the matters regulated by this Order, an offence under any enactment relating to customs has been or is being committed and that evidence of the commission of the offence is to be found on any premises specified in the information, or in any vehicle, ship or aircraft so specified; or

(b) that any documents which ought to have been produced under paragraph 1 and have not been produced are to be found on any such premises or in any such vehicle, ship or aircraft,

he or she may grant a search warrant authorising any constable or any officer of Revenue and Customs, together with any other persons named in the warrant and any other constables, to enter the premises specified in the information or, as the case may be, any premises upon which the vehicle, ship or aircraft so specified may be, at any time within one month from the date of the warrant and to search the premises, or, as the case may be, the vehicle, ship or aircraft.

(2) Any authorised person who has entered any premises or any vehicle, ship or aircraft in accordance with sub-paragraph (1) may do any or all of the following things—

- (a) inspect and search those premises or the vehicle, ship or aircraft for any material which he or she has reasonable grounds to believe may be evidence in relation to an offence referred to in this paragraph;
- (b) seize anything on the premises or on the vehicle, ship or aircraft which he or she has reasonable grounds for believing is evidence in relation to an offence referred to in this paragraph;
- (c) seize anything on the premises or on the vehicle, ship or aircraft which he or she has reasonable grounds to believe are required to be produced in accordance with paragraph 1; or
- (d) seize anything that is necessary to be seized in order to prevent it being concealed, lost, damaged, altered or destroyed.

(3) Any information required in accordance with sub-paragraph (2) which is contained in a computer and is accessible from the premises or from any vehicle, ship or aircraft must be produced in a form in which it can be taken away and in which it is visible and legible.

(4) A constable or officer of Revenue and Customs lawfully on the premises or on the vehicle, ship or aircraft by virtue of a warrant issued under sub-paragraph (1) may—

- (a) search any person whom he or she has reasonable grounds to believe may be in the act of committing an offence referred to in this paragraph; and
- (b) seize anything he or she finds in a search referred to in paragraph (a), if he or she has reasonable grounds for believing that it is evidence of an offence referred to in this paragraph:

Provided that no person shall be searched in pursuance of this sub-paragraph except by a person of the same sex.

(5) Where, by virtue of this paragraph, a person is empowered to enter any premises, vehicle, ship or aircraft he or she may use such force as is reasonably necessary for that purpose.

(6) Any documents or articles of which possession is taken under this paragraph may be retained for a period of three months or, if within that period there are commenced any proceedings for such an offence as aforesaid to which they are relevant, until the conclusion of those proceedings.

(7) In the application of this paragraph to Scotland any reference to a justice of the peace includes a reference to the sheriff; and any reference to information on oath is a reference to evidence on oath.

3. A person authorised by the Secretary of State to exercise any power for the purposes of this Schedule shall, if requested to do so, produce evidence of his or her authority before exercising that power.

Status: This is the original version (as it was originally made).

4. No information furnished or document produced (including any copy of an extract made of any document produced) by a person in pursuance of a request made under this Schedule and no document seized under paragraph 2(2) shall be disclosed except:

- (a) with the consent of the person by whom the information was furnished or the document was produced or the person from whom the document was seized:

Provided that a person who has obtained information or is in possession of a document only in his or her capacity as servant or agent of another person may not give consent for the purposes of this subparagraph but such consent may instead be given by any person who is entitled to that information or to the possession of that document in his or her own right; or

- (b) to any person who would have been empowered under this Schedule to request that it be furnished or produced or to any person holding or acting in any office under or in the service of—
 - (i) the Crown in respect of the Government of the United Kingdom;
 - (ii) the Government of the Isle of Man;
 - (iii) the States of Guernsey or Alderney or the Chief Pleas of Sark;
 - (iv) the States of Jersey; or
 - (v) the Government of any territory listed in Schedule 1 to this Order;
- (c) on the authority of the Secretary of State, to any organ of the United Nations or to any person in the service of the United Nations or of the Government of any other country for the purpose of assisting the United Nations or that Government in securing compliance with or detecting evasion of measures in relation to North Korea decided upon by the Security Council of the United Nations; or
- (d) with a view to the institution of, or otherwise for the purposes of, any proceedings—
 - (i) in the United Kingdom, for an offence under this Order or, with respect to any of the matters regulated by this Order, for an offence against any enactment relating to customs; or
 - (ii) for any offence under any law making provision with respect to such matters that is in force in any of the Channel Islands, the Isle of Man or any territory listed in Schedule 1.

5. Any person who—

- (a) without reasonable excuse, refuses or fails within the time and in the manner specified (or, if no time has been specified, within a reasonable time) to comply with any request made under this Schedule by any person who is empowered to make it; or
- (b) furnishes any information or produces any document which to his or her knowledge is false in a material particular; or recklessly furnishes any document or information which is false in a material particular to such a person in response to such a request; or
- (c) otherwise wilfully obstructs any person in the exercise of his powers under this Schedule; or
- (d) with intent to evade the provisions of this Schedule, destroys, mutilates, defaces, secretes or removes any document,

shall be guilty of an offence under this Order.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order, made under the United Nations Act 1946, gives effect to United Nations sanctions against North Korea under resolution 1874(2009) of the Security Council adopted on 12 June 2009. This Order supplements existing trade controls, by prohibiting the carriage of military goods to North Korea using UK flag vessels or aircraft, the procurement of military goods from North Korea, the carriage of such goods from North Korea using UK flag vessels or aircraft, and the supply of services to North Korean ships in specified circumstances..

The substantive provisions of this Order include the following—

Military goods are defined in article 2 by reference to subsidiary legislation made under the Export Control Act 2002.

Article 3 prohibits the use of vessels, aircraft and vehicles for the carriage of military goods to North Korea. A breach of this article is an offence.

Article 4 prohibits the procurement of military goods from North Korea. Any person knowingly concerned in such procurement commits an offence.

Article 5 prohibits the use of vessels, aircraft and vehicles for the carriage of military goods from North Korea. A breach of this article is an offence.

Article 6 prohibits the provision of ship supply services to ships registered in North Korea in specified circumstances. Ship supply services are defined as “the provision to a ship of bunker oil or any other supply, provision or service, other than basic provisions for the crew, to facilitate a voyage by that ship.” Any person knowingly concerned in the provision of ship supply services in such circumstances commits an offence.

Articles 7 to 13 contain ancillary provisions to facilitate enforcement of the above provisions and to detect the evasion of any prohibition.

Article 14 provides penalties for the offences specified in this Order and for proceedings.

Schedule 1 lists the overseas territories to which information may be disclosed as provided in article 11.

Schedule 2 makes provision for the gathering of evidence and information.

A full regulatory impact assessment has not been produced for this instrument as no impact on the private or voluntary sectors is foreseen.