

**EXPLANATORY MEMORANDUM TO
THE NORTH KOREA (UNITED NATIONS SANCTIONS)**

ORDER 2009

2009 No.1749

1. This explanatory memorandum has been prepared by the Foreign and Commonwealth Office and is laid before Parliament by Command of Her Majesty.

2. Purpose of Instrument

2.1 This instrument, The North Korea (United Nations Sanctions) Order 2009 (“the Order”) implements aspects of United Nations sanctions against North Korea, to give effect to UN sanctions and to supplement existing trade controls. In particular, the Order prohibits the carriage of military goods to North Korea using UK flag vessels or aircraft, the procurement of military goods from North Korea, the use of UK flag vessels and aircraft for the carriage of such goods from North Korea, and the provision of supply services to North Korean ships in specified circumstances.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None. The Order will be made at the Privy Council meeting on 8th July 2009 and laid before Parliament on the following day. The Order will come into force the day after it is laid so that sanctions can be enforced immediately.

4. Legislative Background

4.1 The Order implements aspects of resolution 1874 (2009) adopted by the Security Council of the United Nations on 12th June 2009.

4.2 The supply of proliferation-sensitive goods to North Korea and their procurement from North Korea were prohibited under UN Security Council Resolution 1718 (2006). This was given effect by Council Regulation (EC) No 329/2007 which also prohibited such supply or procurement using the flag vessels or aircraft of Member States.

4.3 The procurement of large scale military goods from North Korea was prohibited under Resolution 1718 (2006). Trade in military goods within the EU is a matter of Member State competence, not by EU Regulation. The main UK export control legislation “The Export Control Order 2008”, prohibits the supply or export of military goods to North Korea. This would also include by the use of a UK flag vessel or aircraft which was under the control of a UK person.

4.4 Where military goods are procured from North Korea, UK trade controls under the Export Control Order 2008 prohibit persons in the UK, or UK persons anywhere, from procuring such goods from North Korea destined for a third country which is an embargoed destination under international sanctions. The existing trade

controls do not apply however to the supply of such goods to an embargoed destination using UK flag vessels or aircraft not under the control of a UK person, or the supply of most items on the military list to a destination which is not an embargoed destination.

4.5 The Order supplements existing UK trade controls in relation to North Korea, until such time as the Export Control Act 2002 may be amended. In particular the Act may require to be amended to enable trade controls to apply to procurement outwith the UK from an embargoed origin, other than to an embargoed destination, and to provide the necessary powers to control the use of UK flag vessels or aircraft in the course of prohibited trade outside the UK, where they are not under the control of a UK person.

4.6 The Order prohibits the procurement of military goods from North Korea regardless of destination. The prohibition means that any person in the UK or any UK person anywhere else, involved in such procurement or attempted procurement, commits a criminal offence. Any military goods which are procured or attempted to be procured are liable to be seized and forfeited. In addition, the Order prohibits the use of UK flag vessels or aircraft for the carriage of military goods to North Korea, or from North Korea to any destination. Any person in control of a UK flag vessel or aircraft, used by them knowingly for the carriage of military goods, to or from North Korea commits an offence. Ancillary powers of investigation are provided in relation to suspected breaches of these prohibitions. Criminal penalties are provided for breaches of the provisions of the Order.

4.7 The Order also prohibits the supply of bunkering and other services to North Korean ships suspected of carrying proliferation sensitive or military goods to or from North Korea, or of carrying luxury goods destined for North Korea. Anyone knowingly involved in providing such services to suspected ships commits an offence.

5. Territorial extent and application

5.1 The Order extends to all of the United Kingdom. It also applies to UK persons and UK flag vessels and aircraft outwith the United Kingdom.

6. European Convention on Human Rights

6.1 The Order is made under section 1 of the United Nations Act 1946, and although laid, is not subject to any Parliamentary procedure. As the instrument is not subject to Parliamentary procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 The UK fully supports the UN restrictive measures against North Korea.

7.2 The Order assists the UK's compliance with its UN obligations to implement restrictive measures.

8. Consultation outcome

8.1 There was no consultation in the UK.

9. Guidance

9.1 Guidance may be sought from the contacts below.

10. Impact

10.1 A Regulatory Impact Assessment has not been prepared for this instrument, as it has no impact on business, charities or voluntary bodies.

10.2 The impact on the public sector is low.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring and review

12.1 UN sanctions measures are monitored and reviewed by the Security Council.

12.2 If the UN measures are suspended or lifted, this Order will be reviewed and suspended or revoked as necessary.

13. Contacts

William Taylor (policy), David Ballantyne (legal), at the Foreign and Commonwealth Office can answer questions regarding this instrument; e-mail William.Taylor@fco.gov.uk (tel 020 7008 3583); or David.Ballantyne@fco.gov.uk, (tel: 020 70082131).