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STATUTORY INSTRUMENTS

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**2009 No. 1749**

**The North Korea (United Nations Sanctions) Order 2009**

**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.

(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(1);

“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.

#### **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(2).

### **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—

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(2) 1979 c. 2.

- (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 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<sup>(3)</sup>, 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<sup>(4)</sup>, 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<sup>(5)</sup>, 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.

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(3) 1980 c. 43.

(4) 1995 c. 46.

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

(11) In England and Wales, subsection (2) of section 24 of the Police and Criminal Evidence Act 1984<sup>(6)</sup> 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.

(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<sup>(7)</sup> 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.

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<sup>(6)</sup> 1984 c.60.

<sup>(7)</sup> 2003 c.44; at the date of this Order, section 154(1) had not been commenced.