
STATUTORY INSTRUMENTS

2009 No. 3213

UNITED NATIONS

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

Made - - - - 9th December 2009
Laid before Parliament 10th December 2009
Coming into force - - 11th December 2009

At the Court at Buckingham Palace, the 9th day of December 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 ordered, as follows:—

Citation and commencement

1.—(1) This Order may be cited as the North Korea (United Nations Sanctions) (Amendment) Order 2009 and shall come into force on 11th December 2009.

(2) In this Order “the principal Order” means The North Korea (United Nations Sanctions) Order 2009(2).

Amendment of the principal Order

2. The principal Order is amended as follows.
3. For article 1(3) substitute—

(1) 1946 c. 45.
(2) S.I. 2009/1749.

- “(3) An offence may be committed under this Order by any person in the United Kingdom or by 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.”
4. In article 2 insert a definition of “WMD goods” after the definition of “vehicle” as follows—
- ““WMD goods” means the items, materials, equipment, goods and technology prohibited from being supplied to or procured from North Korea as determined by the Security Council or the Committee pursuant to paragraph 8(a)(ii) of resolution 1718 adopted by the United Nations Security Council on 14 October 2006 or pursuant to paragraph 23 of resolution 1874 adopted by the Security Council on 12 June 2009 or as provided in paragraph 24 of resolution 1874 and which are set out in the documents of the Security Council and the International Atomic Energy Authority (IAEA) listed in Schedule 4.”
5. In article 3(1), 4(1) and 5(1) for “military goods” substitute “military goods or WMD goods” and amend the headings accordingly.
6. Omit article 4(2).
7. In article 6(2) for “article 6” substitute “article 4”.
8. For article 8 substitute—

“Investigation of suspect ships – powers exercisable by authorised officers

8.—(1) An authorised officer who has reasonable grounds to believe that the cargo of any ship contains military goods or WMD goods may exercise the powers set out in Part 1 of Schedule 3 for the purpose of investigating, preventing or suppressing the commission of an offence under article 3(3) or 5(3).

(2) Those powers are exercisable in relation to ships registered in the United Kingdom.

(3) Part 2 of Schedule 3 makes further provision about the exercise of the powers conferred by Part 1 of that Schedule.

(4) In Schedule 3 “the ship” means the ship in relation to which the powers are exercised.

(5) For the purposes of this article or Schedule 3 each of the following is an authorised officer:

- (a) a constable,
- (b) an officer of Revenue and Customs,
- (c) a general customs official,
- (d) a commissioned officer of the regular forces (within the meaning of the Armed Forces Act 2006⁽³⁾),
- (e) a person in command or charge of any aircraft or hovercraft in the service of the regular forces (within the meaning of that Act),
- (f) a person of any other description authorised for the purposes of this article by the Secretary of State.

(6) In this Order, the reference to the commission of an offence includes a reference to the commission of an offence which consists in:

- (a) attempting or conspiring to commit such an offence,

(3) 2006 c.52.

- (b) aiding, abetting, counselling or procuring the commission of such an offence,
- (c) being art and part in the commission of such an offence, or
- (d) encouraging or assisting, or inciting, such an offence.”

9. After article 8 insert—

“Authority to other states in relation to United Kingdom registered ships

8A.—(1) The Secretary of State may authorise a state other than the United Kingdom to exercise, in relation to a ship registered in the United Kingdom powers corresponding to the powers set out in Part 1 of Schedule 3 for a purpose mentioned in article 8(1).

(2) An authorisation under paragraph (1) may be subject to such conditions or limitations, if any, as the Secretary of State sees fit.

(3) An authorisation under paragraph (1) may be given by the Secretary of State—

- (a) of his or her own motion, or
- (b) in response to a request from a state other than the United Kingdom;

(4) An authorisation under paragraph (1) may be general or particular.

Exercise of powers in territorial sea of other states

8B.—(1) The powers set out in Part 1 of Schedule 3 must not be exercised in the territorial sea of a state other than the United Kingdom without the authority of the Secretary of State.

(2) The Secretary of State must not give his or her authority unless the Secretary of State is satisfied that that state has consented to the exercise of those powers.”

10. For article 11 substitute—

“Provisions supplementary to articles 9 and 10 and Schedule 3

11.—(1) No information furnished or document produced by any person in pursuance of a request made under article 9 or 10 or a requirement made under Part 1 of Schedule 3 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 9 or 10 to request or under Part 1 of Schedule 3 to require 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 9 or 10 or Part 1 of Schedule 3 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 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 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;
- (b) a charterer or an operator or a commander or a member of a crew of an aircraft 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 9 or 10.

(4) Nothing in articles 8 to 11 or Schedule 3 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.”

11. For article 13 substitute—

“Customs Investigations

13.—(1) Where the Commissioners for Revenue and Customs or the Secretary of State investigate or propose to investigate any matter with a view to determining—

- (a) whether there are grounds for believing that an offence under article 3(3) or 5(3) of 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 (“CEMA”)(4).

(2) Section 138 of CEMA (provision as to arrest of persons) shall apply to the arrest of a person for an offence under this Order as it applies to the arrest of a person for an offence under the customs and excise Acts.

(3) Sections 145, 146, 146A, 147, 148, 150, 151, 152, 154 and 155 of CEMA (proceedings for offences, mitigation of penalties, proof and other matters) shall apply in relation to offences and penalties under this Order as they apply in relation to offences and penalties under the customs and excise Acts.

(4) For the purposes of the application of section 145 of CEMA to this Order, only offences related to contraventions of the provisions referred to in paragraph 1(a) are offences under the customs and excise Acts.”

12.—(1) Article 14 is amended as follows—

(2) In paragraph (2) for “article 11(3)(b)(ii) or paragraph 5(b) or (d) of Schedule 2” substitute “article 11(3)(a)(ii), paragraph 5(b) or (d) of Schedule 2 or paragraph 15(1), (2) or (3) of Part 3 of Schedule 3”.

(3) In paragraph (4) for “article 11(3)(a), (b)(i) or (c)” substitute “article 11(3)(a)(i) or (b)”.

13. After Schedule 2 insert—

“SCHEDULE 3

Article 8

Enforcement powers in respect of ships

PART 1

THE POWERS

Power to stop, board, divert and detain

1.—(1) An authorised officer may stop and board the ship.

(2) If the authorised officer thinks it is necessary for the exercise of the authorised officer’s functions, the authorised officer may require the ship to be taken to a port or anchorage:

- (a) in the United Kingdom, or
- (b) in any other country or territory willing to receive it,

and detain it there.

(3) If the ship is stopped in waters landward of the baselines from which the territorial sea adjacent to the United Kingdom is measured or in the territorial sea adjacent to the United Kingdom, the authorised officer may require it to be taken to any place in those waters or that sea specified by the authorised officer.

(4) For any purpose mentioned in sub-paragraph (1) to (3), the authorised officer may require the master or any member of the crew to take such action as may be necessary.

(5) If a ship is detained by an authorised officer, that officer must serve on the master a notice in writing stating that it is to be detained until the notice is withdrawn by service on the master of a further notice in writing signed by an authorised officer.

(4) 1979 c.2.

(6) Sub-paragraph (5) does not apply if it is not reasonably practicable to serve the notice on the master.

Power to search and obtain information

2.—(1) An authorised officer may search the ship, anyone on it and anything on it, including its cargo.

(2) An authorised officer may require any person on the ship to give information concerning that person or anything on the ship.

(3) Without prejudice to the generality of those powers an authorised officer may:

- (a) open any containers,
- (b) make tests and take samples of anything on the ship,
- (c) require the production of documents, books or records relating to the ship or anything on it,
- (d) make photographs or copies of anything the authorised officer has power to require to be produced.

Power in respect of suspected offence

3. If an authorised officer has reasonable grounds to suspect that an offence under article 3(3) or 5(3) has been committed the authorised officer may:

- (a) arrest without warrant anyone on the ship whom the authorised officer has reasonable grounds for suspecting to be guilty of the offence, and
- (b) seize and detain anything found on the ship which appears to the authorised officer to be evidence of the offence.

Power in respect of identified prohibited items

4. If an authorised officer identifies on the ship any military goods or WMD goods, the authorised officer may seize the goods, detain them and dispose of them, either by destroying them or in such other manner as the authorised officer may decide.

Assistants

5.—(1) A person may be taken with an authorised officer to assist the authorised officer in the exercise of the authorised officer's powers.

(2) A person taken with an authorised officer under sub-paragraph (1) may perform any of the authorised officer's functions under paragraphs 1 to 4 and 6 and 7 but only under the authorised officer's supervision.

Use of force

6.—(1) An authorised officer may use reasonable force in the performance of the authorised officer's functions.

(2) Such force may be used only if:

- (a) the authorised officer or any person assisting the authorised officer is being obstructed in the performance of the authorised officer's functions, or
- (b) it is necessary to ensure the safety of the authorised officer, any person assisting the authorised officer or any other person on board the ship.

Equipment

7. An authorised officer may take any equipment or materials to assist the authorised officer in the exercise of the authorised officer's powers.

Evidence of authority

8. A person authorised to act as an authorised officer must, if required, produce evidence of that authority.

PART 2

JUDICIAL AUTHORISATION

Judicial authorisation: exercise of powers to divert and search

9.—(1) This paragraph applies where—

- (a) an authorised officer boards a ship under paragraph 1,
- (b) there are one or more persons on board the ship when it is boarded,
- (c) an authorised officer requires the ship to be taken to a place for the purposes of exercising any of the powers of search under paragraph 2(1), and
- (d) for the purposes of taking the ship to that place or for the purposes of exercising any of those powers of search, an authorised officer requires one or more of the persons on board to remain on the ship.

(2) The persons may be required to remain on board the ship after the end of the period of 48 hours beginning with the time when the ship is boarded (“the 48 hour period”) only if—

- (a) the requirement is authorised by a judicial authority under sub-paragraph (4), or
- (b) the requirement is authorised by virtue of sub-paragraphs (6) and (7).

(3) An application for authorisation by a judicial authority may be made by any authorised officer.

(4) The judicial authority must authorise an authorised officer to require the persons to remain on board for a further period not exceeding 72 hours if satisfied—

- (a) that it is reasonable for an authorised officer to require the ship to be taken to the place in question for the purposes of exercising any of the powers of search under paragraph 2(1), and
- (b) that all reasonable steps are being taken to ensure that the ship arrives at the place, and that the search is completed, as soon as is practicable.

(5) If the judicial authority does not authorise an authorised officer to require the persons to remain on board for a further period, any authorised officers on board the ship, and any persons taken with them under paragraph 5, must leave the ship as soon as it is practicable for them to do so without endangering themselves or any other person on board the ship.

(6) Sub-paragraph (7) applies if all reasonable steps are taken by an authorised officer to obtain authorisation by a judicial authority but either—

- (a) it is not possible to make an application for authorisation before the end of the 48 hour period, or
- (b) although such an application is made within the 48 hour period, it is not determined during that period.

(7) The persons may be required to remain on board the ship after the end of the 48 hour period but only for so long as is necessary to enable an application for authorisation to be made (if it has not already been made) and determined.

(8) In subparagraph (1) the reference to an authorised officer includes a reference to a person taken with an authorised officer under paragraph 5.

(9) In this paragraph and paragraph 10, “judicial authority” means any of the following—

- (a) a judge entitled to exercise the jurisdiction of the Crown Court in England and Wales or in Northern Ireland;
- (b) a District Judge (Magistrates' Courts) in England and Wales or in Northern Ireland;
- (c) a justice of the peace in England and Wales;
- (d) a sheriff in Scotland;
- (e) a lay magistrate in Northern Ireland.

10.—(1) This paragraph applies where a judicial authority gives authorisation under paragraph 9(4) (whether the authorisation is the first given in relation to the persons or, by virtue of sub-paragraph (2) below, the second or subsequent).

(2) Sub-paragraphs (2) to (8) of paragraph 9 apply in relation to the persons as if the references in sub-paragraphs (2), (6)(a) and (b) and (7) to the 48 hour period were references to the further period authorised by the judicial authority.

11.—(1) An application made, or an authorisation given, under paragraph 9 may be made or given orally or in writing.

(2) An application under that paragraph may be made and determined without notice to any of the persons required to remain on the ship.

(3) Nothing in paragraph 9(5) prevents authorised officers (or persons taken with them under paragraph 5) who are required to leave the ship from taking with them anything that has been lawfully seized in the exercise of the powers conferred by Part 1 of this Schedule.

Judicial authorisation: arrested persons

12.—(1) This paragraph applies where an authorised officer arrests a person under paragraph 3(a).

(2) The arrested person may be detained after the end of the period of 48 hours beginning with the time of the arrest (“the 48 hour period”) only if—

- (a) the detention is authorised by a judicial authority under sub-paragraph (4), or
- (b) the detention is authorised by virtue of sub-paragraphs (6) and (7).

(3) An application for authorisation may be made by any authorised officer.

(4) A judicial authority must authorise the detention of the person for a further period not exceeding 72 hours if satisfied—

- (a) that there are reasonable grounds to suspect that the person is guilty of an offence under article 3(3) or 5(3),
- (b) that all reasonable steps are being taken to ensure that the person is brought as soon as is practicable to the United Kingdom to be dealt with in respect of the offence, and
- (c) that the detention of the person is necessary for one or more of the purposes mentioned in sub-paragraph (5).

(5) Those purposes are—

- (a) to obtain evidence that the person has committed the offence, whether by questioning the person or otherwise;
- (b) to preserve evidence relating to the commission of the offence or to prevent the person interfering with witnesses;
- (c) to prevent the person evading, or attempting to evade, prosecution for the offence;
- (d) to prevent the person from being injured or from causing injury;
- (e) to prevent the person causing loss of, or damage to, property.

(6) Sub-paragraph (7) applies if all reasonable steps are taken by an authorised officer to obtain authorisation by a judicial authority but either—

- (a) it is not possible to make an application for authorisation before the end of the 48 hour period, or
- (b) although such an application is made within the 48 hour period, it is not determined during that period.

(7) The arrested person may be detained after the end of the 48 hour period but only for so long as is necessary to enable an application for authorisation to be made (if it has not already been made) and determined.

(8) In subparagraph (1) any reference to an authorised officer includes a reference to a person taken with an authorised officer under paragraph 5.

(9) In this paragraph and paragraph 13, “judicial authority” means any of the following—

- (a) a judge entitled to exercise the jurisdiction of the Crown Court in England and Wales or in Northern Ireland;
- (b) a District Judge (Magistrates’ Courts) in England and Wales or in Northern Ireland;
- (c) a justice of the peace in England and Wales;
- (d) a sheriff in Scotland;
- (e) a lay magistrate in Northern Ireland.

13.—(1) This paragraph applies where a judicial authority authorises the continued detention of an arrested person under paragraph 12 (whether the authorisation is the first given in relation to the person or, by virtue of sub-paragraph (2) below, the second or subsequent).

(2) Sub-paragraphs (2) to (8) of paragraph 12 apply in relation to the arrested person as if the references in sub-paragraphs (2), (6)(a) and (b) and (7) to the 48 hour period were references to the further period of detention authorised by the judicial authority.

14.—(1) An application made, or an authorisation given, under paragraph 12 may be made or given orally or in writing.

(2) An application under that paragraph may be made and determined without notice to the arrested person.

(3) Nothing in paragraph 12 applies in relation to the detention of a person at any time after that person’s entry into the United Kingdom to be dealt with in respect of the offence.

(4) Nothing in paragraph 12 prevents an authorised officer exercising the powers conferred by paragraph 1(5) or 6 in relation to a person who is released from detention by virtue of paragraph 12.

PART 3

OFFENCES

15.—(1) It is an offence for a person intentionally to obstruct an authorised officer in the performance of any of the authorised officer’s functions under this Schedule.

(2) It is an offence for a person to fail without reasonable excuse to comply with a requirement made by an authorised officer in the performance of those functions.

(3) It is an offence for a person, in purporting to give information required by an authorised officer for the performance of those functions, to:

- (a) make a statement which that person knows to be false in a material particular or recklessly to make a statement which is false in a material particular, or
- (b) intentionally to fail to disclose any material particular.

(4) In this paragraph any reference to an authorised officer includes a person taken with an authorised officer under paragraph 5.”

14. After Schedule 3 insert—

“SCHEDULE 4

Lists of WMD goods prohibited from being supplied to or procured from North Korea pursuant to Security Council Resolution 1718 (2006) and Security Council Resolution 1874 (2009)

S/2009/364	16 July 2009	Report of the Security Council Committee established pursuant to resolution 1718 (2006) (“the Committee”) in accordance with paragraph 24 of resolution 1874 (2009) containing additional items subject to the provisions of paragraph 8(a), 8(b) and 8(c) of resolution 1718 (2006)
S/2009/205	15 April 2009	List of items, materials, equipment, goods and technology related to ballistic missile programmes, as approved by the Committee pursuant to its decision of 24 April 2009 (S/2009/222)
INFCIRC/254/Rev.9/ Part.1 (IAEA)	7 November 2007	Pursuant to paragraph 23 of resolution 1874 (2009), the items contained in this document are subject to the provisions of paragraph 8(a), 8(b) and 8(c) of resolution 1718 (2006)
S/2006/853/CORR.1	14 November 2006	Corrigendum to the List of chemical and biological items, materials, equipment, goods and technologies related to other weapons of mass destruction programmes, as approved by the Committee pursuant to paragraph 8(a)(ii) of resolution 1718 (2006) (S/2006/853)
S/2006/853	1 November 2006	List of chemical and biological items, materials, equipment, goods and technologies related to other weapons of mass destruction programmes, as approved by the Committee pursuant to paragraph 8(a)(ii) of resolution 1718 (2006). (Supersedes S/2006/816)
S/2006/816	13 October 2006	Chemical and biological programmes list pursuant to resolution 1718 (2006) (Superseded by S/2006/853)
S/2006/815	13 October 2006	Ballistic missile programmes list pursuant to resolution 1718 (2006)
S/2006/814	13 October 2006	Nuclear programmes list pursuant to resolution 1718 (2006)

INFCIRC/254/Rev.7/ Part.2a (IAEA)	20 March 2006	Pursuant to paragraph 23 of resolution 1874 (2009), the items contained in this document are subject to the provisions of paragraph 8(a), 8(b) and 8(c) of resolution 1718 (2006)”
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Judith Simpson
Clerk of the Privy Council

EXPLANATORY NOTE

(This note is not part of the Order)

This Order, made under the United Nations Act 1946, amends the North Korea (United Nations Sanctions) Order 2009 (S.I. 2009/1749) (“the principal Order”) to give further effect to United Nations sanctions against North Korea under resolution 1874(2009) of the Security Council adopted on 12th June 2009.

This amending Order provides enhanced powers of law enforcement in relation to the maritime interdiction of UK flag vessels.

The principal Order is amended by this Order as follows:

Article 3 of this Order amends Article 1(3) of the principal Order such that any offence under the principal Order may be committed by UK persons outside the UK.

Article 4 inserts a definition of WMD (weapons of mass destruction) goods which are prohibited to be supplied to or procured from North Korea under Security Council resolutions 1718(2006) and 1874 (2009).

Article 5 amends the relevant articles of the principal Order so that it prohibits the carriage of either military goods or WMD goods on UK flag vessels to or from North Korea, and the procurement of such goods from North Korea. The inclusion of WMD goods is to ensure that the enforcement powers now introduced may be used in relation to military goods or WMD goods.

Article 6 omits the provision in the principal Order regarding forfeiture of military goods, as the enforcement powers in Schedule 3 include the power in paragraph 4 to seize and dispose of military goods or WMD goods as required by resolution 1874 (2009).

Article 7 corrects a reference to article 4.

Article 8 substitutes a new article 8 in the principal Order empowering an authorised officer to use the enforcement powers set out in Schedule 3 where there are grounds to suspect that a ship contains military goods or WMD goods. The powers are exercisable in relation to UK registered ships. The new article 8(4) defines who are authorised officers and article 8(5) defines the conduct included in “the commission of an offence”.

Article 9 inserts new articles 8A and 8B. Article 8A enables the Secretary of State to authorise another State to exercise the powers in Schedule 3 in relation to a UK flag vessel suspected of committing the offences in article 3(3) (carriage of prohibited goods to North Korea) or article 5(3) (carriage of prohibited goods from North Korea). Article 8B provides that the powers in Schedule 3 must not be used in the territorial waters of another State without the authority of the Secretary of State.

Article 10 substitutes a revised article 11 in the principal Order consequent upon the introduction of Schedule 3.

Article 11 substitutes a revised article 13, expanding on the provisions of the Customs and Excise Management Act 1979 which apply to facilitate the investigation and prosecution of offences under the principal Order.

Article 12 contains consequential amendments to article 14 to provide separate penalties for the offences in paragraph 15 of Schedule 3.

Article 13 inserts the new Schedule 3 containing the enforcement powers in relation to ships. It consists of three parts. Part 1 sets out the powers. Part 2 makes provision for judicial oversight of

the exercise of the powers of arrest or detention. Part 3 provides offences relating to the obstruction of authorised officers in the exercise of their functions.

Article 14 inserts the new Schedule 4 listing the United Nations Security Council and International Atomic Energy Agency documents which contain the lists of prohibited WMD goods. These documents can be accessed on the website of the UN Sanctions Committee set up under resolution 1718 (2006) at the following web address: www.un.org/sc/committees/1718/xportimport_list.shtml.

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