

2016 No. 630

OVERSEAS TERRITORIES

**The Democratic People's Republic of Korea (Sanctions)
(Overseas Territories) (Amendment) Order 2016**

Made - - - - - *8th June 2016*

Laid before Parliament *9th June 2016*

Coming into force - - - *10th June 2016*

At the Court at Buckingham Palace, the 8th day of June 2016

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 2nd March 2016^(a), called upon Her Majesty's Government in the United Kingdom to apply certain measures to give effect to decisions of the Council in relation to the Democratic People's Republic of Korea:

Her Majesty, in exercise of the powers conferred on Her by section 1 of the United Nations Act 1946^(b), section 112 of the Saint Helena Act 1833^(c), the British Settlements Acts 1887 and 1945^(d), and all of the other powers enabling Her to do so, is pleased, by and with the advice of Her Privy Council, to order as follows:

Citation, commencement, interpretation and extent

1.—(1) This Order may be cited as the Democratic People's Republic of Korea (Sanctions) (Overseas Territories) (Amendment) Order 2016 and comes into force on 10th June 2016.

(2) In this Order, "the principal Order" means the Democratic People's Republic of Korea (Sanctions) (Overseas Territories) Order 2012^(e).

(3) This Order extends to the territories listed in Schedule 1 to the principal Order.

Amendment of the principal Order

2. The principal Order is amended in accordance with articles 3 to 16.

3. In article 2—

(a) S/RES/2270 (2016).
(b) 1946 c.45.
(c) 1833 c.85.
(d) 1887 c.54 and 1945 c.7.
(e) S.I. 2012/3066, amended by S.I. 2013/1718.

- (a) for paragraphs (2) to (4) substitute—

“(2) Article 17 applies to the Sovereign Base Areas of Akrotiri and Dhekelia in the Island of Cyprus, the Falkland Islands, South Georgia and the South Sandwich Islands, and St Helena, Ascension and Tristan da Cunha as set out in Schedule 3.”; and
- (b) re-number paragraph (5) as paragraph (3).

4. In article 3(1)—

- (a) in the appropriate places, insert—
 - ““aviation fuel” means items listed in Annex Ie to the Council Regulation;”,
 - ““coal, iron and iron ore” means items listed in Annex Id to the Council Regulation;”,
 - ““gold and ores” means items listed in Annex Ic to the Council Regulation;”, and
 - ““relevant person”—
- (a) in relation to a ship, aircraft or vehicle falling within article 7(7)(a) or (b) means—
 - (i) the owner, charterer or master of the ship,
 - (ii) the owner, charterer, operator or commander of the aircraft, or
 - (iii) the owner, driver or operator of the vehicle;
- (b) in relation to a ship or aircraft falling within article 7(7)(c) means—
 - (i) the charterer of the ship or aircraft, or
 - (ii) the master of the ship, or operator of the aircraft;”;
- (b) for the entry relating to “designated person”, substitute—

““designated person” means any person listed in Annex IV, V or Va to the Council Regulation and any person subject to a direction made by the Treasury under regulation 7A of the Democratic People’s Republic of Korea (European Union Financial Sanctions) Regulations 2013(a);”;
- (c) for the entry relating to “economic resources”, substitute—

““economic resources” means assets of every kind, whether tangible or intangible, movable or immovable, actual or potential which are not funds but can be used to obtain funds, goods or services, including vessels, such as maritime vessels;”;
- (d) in the entry relating to “insurance”, omit “natural or legal”; and
- (e) omit the entry relating to “person”.

5. For article 7 substitute—

“Offences related to the movement of restricted goods, luxury goods, aviation fuel, coal, iron and iron ore, and gold and ores

7.—(1) It is an offence for a person to knowingly sell, supply, transfer or export (directly or indirectly) restricted goods—

- (a) to any person in North Korea; or
- (b) for use in North Korea.

(2) It is an offence for a person to knowingly sell, supply or transfer or export (directly or indirectly) luxury goods or aviation fuel—

- (a) to any person in North Korea; or
- (b) for use in North Korea.

(a) S.I. 2013/1877. Regulation 7A was inserted by S.I. 2016/578.

(3) It is an offence for a person to knowingly obtain restricted goods, coal, iron and iron ore, or gold and ores from North Korea, regardless of whether the goods originated in North Korea.

(4) It is an offence for a relevant person to knowingly use a ship, aircraft or vehicle falling within paragraph (7) for the carriage of restricted goods, coal, iron and iron ore, gold and ores, luxury goods or aviation fuel if the carriage is, or forms part of, carriage from any place outside North Korea to any destination in North Korea.

(5) It is an offence for a relevant person to knowingly use a ship, aircraft or vehicle falling within paragraph (7) for the carriage of restricted goods if the carriage is, or forms part of, carriage from any place in North Korea to any destination outside North Korea.

(6) Paragraphs (2) and (4) do not apply in relation to the sale or supply of aviation fuel to civilian passenger aircraft outside North Korea exclusively for consumption during its flight to North Korea and its return to the airport of origin.

(7) The following fall within this paragraph—

- (a) a ship, aircraft or vehicle within the Territory;
- (b) a ship or aircraft registered in the Territory; or
- (c) any other ship or aircraft that is for the time being chartered to a person mentioned in article 2(1)(a) or (b).

(8) Paragraphs (4) and (5) are without prejudice to any other provision of law prohibiting or restricting the use of ships, aircraft or vehicles.

(9) Schedule 2 (which contains provision about customs powers and investigations in relation to offences under this article and article 7A) has effect.

(10) This article is subject to articles 11 and 12.

Providing, obtaining or carrying goods destined for North Korea's armed forces

7A.—(1) It is an offence for a person (“P”) to knowingly sell, supply, transfer or export (directly or indirectly) to North Korea goods, except food or medicine, which P knows or has reasonable cause to suspect—

- (a) are destined directly or indirectly for North Korea's armed forces; or
- (b) could support or enhance the operational capabilities of the armed forces of a State other than North Korea.

(2) It is an offence for a person (“P”) to knowingly obtain goods from North Korea, except food or medicine, which P knows or has reasonable cause to suspect—

- (a) are destined directly or indirectly for North Korea's armed forces; or
- (b) could support or enhance the operational capabilities of the armed forces of a State other than North Korea.

(3) It is an offence for a relevant person (“P”) to knowingly use a ship, aircraft or vehicle falling within article 7(7) for the carriage of goods, except food or medicine, if—

- (a) the carriage is, or forms part of, carriage—
 - (i) from any place outside North Korea to any destination in North Korea, or
 - (ii) from any place in North Korea to any destination outside North Korea; and
- (b) P knows or has reasonable cause to suspect that—
 - (i) the goods are destined directly or indirectly for North Korea's armed forces, or
 - (ii) the goods could support or enhance the operational capabilities of the armed forces of a State other than North Korea.

(4) Paragraph (3) is without prejudice to any other provision of law prohibiting or restricting the use of ships, aircraft or vehicles.

(5) This article is subject to articles 11 and 12.”.

6. In article 10A—

- (a) in paragraphs (1) to (3), omit the words “, entity or body” wherever they appear;
- (b) in paragraph (4)—
 - (i) in the chapeau, omit the words “, entities or bodies”,
 - (ii) in sub-paragraph (d), omit the words “or entity”,
 - (iii) in sub-paragraph (e), omit the words “, entity or body” and “legal”.

7. In article 10B, omit the words “, entity or body”.

8. For articles 10C to 10F, substitute—

“North Korean credit and financial institutions: branches, subsidiaries, and representative offices

10C.—(1) A credit or financial institution (“P”) commits an offence if P—

- (a) opens a new bank account with;
- (b) establishes a new correspondent banking relationship with;
- (c) establishes a new joint venture with; or
- (d) takes an ownership interest in,

a person who P knows or has reasonable cause to suspect falls within article 10A(4).

(2) A credit or financial institution (“P”) commits an offence if P—

- (a) opens a new representative office in North Korea; or
- (b) establishes a new branch or subsidiary in North Korea.

Acquisition or extension of ownership interest

10D. A credit or financial institution (“P”) commits an offence if P allows a person falling within article 10A(4) to acquire or extend a participation, or acquire any other ownership interest, in P.

Severance of existing financial relationships

10E.—(1) A credit or financial institution (“P”) commits an offence if, by 24th June 2016, P fails to—

- (a) terminate any joint venture with;
- (b) relinquish any ownership interest in; or
- (c) terminate any correspondent banking relationship with,

a person who P knows or has reasonable cause to suspect falls within article 10(A)(4).

(2) The Governor may direct that a credit or financial institution must—

- (a) close any bank account with a person falling within article 10(A)(4); or
- (b) close any branch, subsidiary, or representative office in North Korea.

(3) The Governor may make a direction under paragraph (2) only if the Governor is satisfied that any such account, branch, subsidiary, or representative office could contribute to—

- (a) the nuclear-related, other weapons of mass destructions-related, or ballistic missile-related programmes of North Korea; or
- (b) any activities prohibited under this Order.

(4) A credit or financial institution must inform the Governor as soon as practicable if it suspects that any account, branch, subsidiary or representative office described in paragraph (2)(a) or (b) might contribute to any of the activities mentioned in paragraph (3).

(5) It is an offence for a credit or financial institution to knowingly fail to comply with paragraph (4).

(6) Any direction made under paragraph (2) must be—

- (a) published in any form the Governor considers appropriate, including by means of a website;
- (b) sent by the Governor to one or more credit or financial institutions affected by the direction; or
- (c) sent by the Governor to one or more other persons affected by the direction.

(7) A credit or financial institution (“P”) commits an offence if P knowingly fails to comply with any direction of the Governor made under paragraph (2).

(8) Anything done by a credit or financial institution in accordance with this article is not to be treated as a breach of any restriction imposed by statute or otherwise.

Business directly or indirectly with designated persons

10F. A credit or financial institution (“P”) commits an offence if P knowingly participates in any business arrangements, including joint ventures, with—

- (a) a designated person; or
- (b) any other person acting on behalf or at the direction of such a person.

Financial support for trade

10G. A credit or financial institution (“P”) commits an offence if P knowingly provides financial support for trade which may contribute to—

- (a) the nuclear-related, other weapons of mass destructions-related, or ballistic missile-related programmes of North Korea; or
- (b) any activities prohibited under this Order.

Offences related to the movement of North Korean banknotes or coins

10H. A person (“P”) commits an offence if P knowingly sells, supplies, transfers or exports (directly or indirectly) new North Korea denominated banknotes or coinage printed or minted in the Territory to the Central Bank of North Korea.

Offences related to the movement of gold, precious metals or diamonds listed in Annex VII to the Council Regulation

10I.—(1) A person (“P”) commits an offence if P knowingly—

- (a) sells, supplies, transfers or exports (directly or indirectly) gold, precious metals or diamonds listed in Annex VII to the Council Regulation to a person falling within paragraph (2);
- (b) purchases, imports or transports (directly or indirectly) gold, precious metals or diamonds listed in Annex VII to the Council Regulation, regardless of whether the goods originated in North Korea, from a person falling within paragraph (2); or
- (c) provides (directly or indirectly) technical assistance or brokering services, financing or financial assistance, related to gold, precious metals or diamonds listed in Annex VII to the Council Regulation to a person falling within paragraph (2).

(2) The following persons fall within this paragraph—

- (a) the Government of North Korea, its public bodies, corporations and agencies;
- (b) the Central Bank of North Korea; and
- (c) any person acting on behalf or at the direction of, or any legal person owned or controlled by a person falling within sub-paragraph (a) or (b).

Offences related to the provision of access to ports

10J.—(1) It is an offence for a person (“P”) to provide access to ports in the Territory to any vessel that P knows or has reasonable cause to suspect—

- (a) is owned or controlled directly or indirectly by a person listed in Annex IV to the Council Regulation;
- (b) contains restricted goods, luxury goods, aviation fuel, gold and ores, coal, iron and iron ore, or any other goods prohibited under this Order;
- (c) has refused to be inspected after such inspection has been authorised by the vessel’s flag State or state of registration;
- (d) is flying the flag of North Korea; or
- (e) is a stateless vessel which has refused to be inspected.

(2) Paragraph (1) does not apply if—

- (a) access to a port is needed by the vessel in a case of emergency or for humanitarian purposes;
- (b) the vessel is coming into port for inspection; or
- (c) the vessel is returning to its port of origin.

Offences related to the leasing, chartering or provision of crew services

10K.—(1) A person (“P”) commits an offence if P leases or charters a vessel or aircraft, or provides crew services, with knowledge or reasonable cause to suspect that the lease, charter or provision of crew services is to—

- (a) North Korea;
- (b) a person listed in Annex IV to the Council Regulation; or
- (c) any person acting on behalf of, or at the direction of, North Korea or a person listed in Annex IV to the Council Regulation.

(2) A person (“P”) commits an offence if P owns, leases, insures, operates, or provides vessel classification services or associated services to a vessel which P knows or has reasonable cause to suspect is flagged to North Korea.

(3) A person (“P”) commits an offence if P registers or maintains on a register a vessel which P knows or has reasonable cause to suspect is owned, operated or crewed by North Korea or North Korean nationals or which has been de-registered by another State pursuant to paragraph 19 of United Nations Security Council resolution 2270 of 2nd March 2016(a).

(4) Paragraph (1) is subject to articles 11 and 12.”.

9. In article 11—

- (a) in paragraph (1), for “article 4 or 7 to 9” substitute “article 4, 7, 7A, 8, 9 or 10K(1)”;
- (b) in paragraph (2), for “article 4 or 7 to 9” substitute “article 4, 7, 7A, 8, 9 or 10K(1)”; and
- (c) for paragraph (3), substitute—

“(3) A licence may, in particular, relate to—

(a) S/RES/2270 (2016).

- (a) non-combat vehicles which have been manufactured or fitted with materials to provide ballistic protection, intended solely for protective use of personnel of the European Union and its member States in North Korea;
- (b) payment of basic expenses of designated persons and their dependent family members, including payments for foodstuffs, rent or mortgage, medicines, medical treatment, taxes, insurance premiums and public utility charges;
- (c) payment of reasonable professional fees and expenses associated with the provision of legal services;
- (d) payment of fees or service charges for the routine holding or maintenance of frozen funds or economic resources;
- (e) payment of necessary extraordinary expenses;
- (f) satisfaction of a judicial, administrative or arbitral lien or judgment entered into prior to the date on which the principal Order came into force and not for the benefit of a designated person;
- (g) the purchase, import or transfer of coal provided that the Governor has determined on the basis of credible information that—
 - (i) the shipment originated outside of North Korea and was transported through North Korea solely for export from the Port of Rajin (Rason), and
 - (ii) the transactions are unrelated to generating revenue for North Korea’s nuclear or ballistic missile programme or other activities prohibited by this Order;
- (h) transactions that the Governor has determined to be exclusively for livelihood purposes and unrelated to generating revenue for North Korea’s nuclear or ballistic missile programmes or other activities prohibited by this Order;
- (i) goods which do not relate to the production, development, maintenance or use of military goods, or the maintenance of military personnel, and which the Governor has determined would not directly contribute to the development of the operational capabilities of armed forces of North Korea, or support or enhance the operational capabilities of the armed forces of a State other than North Korea;
- (j) goods which the Governor has determined are exclusively for either humanitarian or livelihood purposes which will not be used by North Korean persons to generate revenue, and are not related to any activity prohibited by this Order;
- (k) aviation fuel which the Governor has determined to be for verified essential humanitarian needs;
- (l) funds and economic resources which the Governor has determined are required for the delivery of humanitarian assistance, denuclearisation or any purpose consistent with the objectives of United Nations Security Council resolution 2270 of 2nd March 2016; or
- (m) the leasing or chartering of vessels or aircraft or the provision of crew services exclusively for livelihood purposes where the activities will not be used by North Korean persons to generate revenue.”.

10. In article 12, for “article 4 or 7 to 10” substitute “article 4, 7, 7A, 8, 9 or 10K(1)”.

11. In article 14, for “Schedule 6” substitute “Schedule 4”.

12. In article 16(a), for “articles 4 or 7 to 10F” substitute “articles 4, 7 or 7A to 10K”.

13. In article 17—

- (a) in paragraph (1), for “article 4, 7, 8, 9, 10, 10E(a), 10F or 16” substitute “article 4, 7, 7A, 8, 9, 10, 10H, 10I(1)(a) or 16”;
- (b) in paragraph (2), for “10E(b), 10E(c)” substitute “10E, 10F, 10G, 10I(1)(b), 10I(1)(c), 10J, 10K”; and
- (c) for “Schedule 6”, substitute “Schedule 4” wherever it appears.

14. In Schedule 2—

- (a) for the heading above paragraph 2, substitute “Requirement for declaration as to carriage of restricted goods, luxury goods, gold and ores, coal, iron and iron ore or aviation fuel: power to search persons”;
- (b) for paragraph 2(1), substitute—

“2.—(1) An authorised officer may require a person who is in or about to leave the Territory (“P”) to—

- (a) declare whether P is carrying restricted goods, luxury goods, gold and ores, coal, iron and iron ore or aviation fuel which—
 - (i) has originated in North Korea,
 - (ii) is destined for North Korea, or
 - (iii) is destined for delivery (directly or indirectly) to, or to the order of, any person in North Korea; and
- (b) produce any such goods that P is carrying.”;
- (c) in paragraph 2(3), for “restricted goods or luxury goods” substitute “restricted goods, luxury goods, gold and ores, coal, iron and iron ore or aviation fuel”;
- (d) in paragraph 3(1), for “article 7(3) or (5)” substitute “article 7(4), (5) or 7A(3)”;
- (e) in paragraph 3(4), for “restricted goods or luxury goods” substitute “restricted goods, luxury goods, gold and ores, coal, iron and iron ore or aviation fuel”;
- (f) in paragraph 3(5), for “restricted goods or luxury goods” substitute “restricted goods, luxury goods, gold and ores, coal, iron and iron ore or aviation fuel”; and
- (g) in paragraph 5 omit the entry relating to “relevant person”.

15. For Schedules 3 to 5, substitute—

“SCHEDULE 3

Article 2(2)

Application of Article 17 to particular Territories

Application of article 17

1.—(1) Article 17 applies as follows to the Sovereign Base Areas of Akrotiri and Dhekelia in the Island of Cyprus, the Falkland Islands, South Georgia and the South Sandwich Islands, and St Helena, Ascension and Tristan da Cunha.

(2) A person guilty of an offence under article 4, 7, 7A, 8, 9, 10, 10H, 10I(1)(a) or 16 is liable on conviction to imprisonment for a term not exceeding seven years or to a fine or to both.

(3) A person guilty of an offence under article 6, 10A, 10B, 10C, 10D, 10E, 10F, 10G, 10I(1)(b), 10I(1)(c), 10J, 10K, 11(10), paragraph 2(2)(b) or paragraph 3(6)(b) or (c) of Schedule 2, or paragraph 3(b), (c) or (d) of Schedule 4 is liable on conviction to imprisonment for a term not exceeding two years or to a fine or to both.

(4) A person guilty of an offence under paragraph 3(6)(a) of Schedule 2, or paragraph 3(a) or paragraph 5 of Schedule 4 is liable on conviction to imprisonment for a term not exceeding six months or to a fine not exceeding £5,000 or its equivalent or to both.

(5) A person guilty of an offence under paragraph 1, 2(2)(a) or 2(5) of Schedule 2 is liable on conviction to a fine not exceeding £5,000 or its equivalent.

(6) If an offence under this Order committed by a body corporate is shown—

- (a) to have been committed with the consent or connivance of an officer of the body corporate; or

(b) to be attributable to any neglect on the part of an officer of the body corporate, the officer as well as the body corporate is guilty of the offence and is liable to be proceeded against and punished accordingly.”.

16. Re-number Schedule 6 as Schedule 4.

Richard Tilbrook
Clerk of the Privy Council

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends the Democratic People’s Republic of Korea (Sanctions) (Overseas Territories) Order 2012.

This Order gives effect in specified Overseas Territories to the additional sanctions against North Korea adopted by the United Nations Security Council in resolution 2270 (2016), which are reflected and implemented in Council Regulation (EC) 329/2007.

In particular the Order provides for the imposition of additional asset freezing measures against certain funds and economic resources of the Government of North Korea and the Korean Worker’s Party and makes provision for licences to be granted to enable the dealing of such funds and economic resources in specified circumstances.

The Order also provides for the imposition of additional financial sanctions measures on North Korean credit and financial institutions and UK credit and financial institutions. These include requirements to terminate financial relationships with North Korean credit and financial institutions, prevent new economic activity in North Korea and prohibit financial support for trade that could assist nuclear-related, other weapons of mass destructions-related, or ballistic missile-related programmes, or other activities prohibited by the Council Regulation.

The Order also gives effect to new sectoral prohibitions relating to the export of coal, minerals, iron ore, gold, other metals and an import ban on aviation fuel. It broadens the inspection regime in relation to cargo which may be carrying prohibited goods from or to North Korea and imposes prohibitions relating to the chartering of vessels and aircraft to North Korea and listed persons.

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£6.00

UK201606012 06/2016 19585

<http://www.legislation.gov.uk/id/uksi/2016/630>

ISBN 978-0-11-114741-2



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