

EXPLANATORY MEMORANDUM TO
THE NORTH KOREA (UNITED NATIONS SANCTIONS) (AMENDMENT) ORDER
2009

2009 No. 3213

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) (Amendment) Order 2009 (“the Order”) implements aspects of United Nations sanctions against North Korea, to give effect to UN sanctions by amending the North Korea (United Nations Sanctions) Order 2009 (S.I.2009/1749) (“the principal Order”). In particular, the Order provides enhanced powers of law enforcement in relation to maritime interdiction of UK registered ships.

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 9th December 2009 and laid before Parliament on the following day. The Order will come into force the day after it is laid so that the enhanced powers can be exercised immediately if needed.

4. Legislative Background

4.1 The Order, which is made under section 1 of the United Nations Act 1946, further implements aspects of resolution 1874 (2009) adopted by the Security Council of the United Nations on 12th June 2009 in relation to UK ships.

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. The supply to North Korea or the procurement from North Korea of large scale military goods was also prohibited under Resolution 1718 (2006). Resolution 1874 (2009) extended these prohibitions to cover all arms and related materiel.

4.3 The principal Order prohibits the procurement of military goods from North Korea regardless of destination, the supply of such goods being prohibited under UK export control legislation. In addition, the principal 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.

4.4 Enhanced ancillary powers of investigation are provided in relation to suspected breaches of the prohibitions against the carriage on a UK flag vessel of military goods or, as added by this Order, WMD (weapons of mass destruction) goods, to or from North Korea. The powers set out in Part 1 of Schedule 3 to this Order include a power of arrest and seizure of evidence, and a power to seize and dispose of military goods or WMD goods found in an inspection of a suspect ship. The exercise of the powers in Part 1 of Schedule 3 is subject to judicial oversight in accordance with the provisions in Part 2 of Schedule 3.

4.5 The WMD goods covered by this Order are contained in the UN Security Council documents and the International Atomic Energy Agency documents set out in Schedule 4.

4.6 There is some overlap between the principal Order, and as amended by this Order, and the provisions of EC Regulation No 329/2007 in relation to WMD goods. Following consultation with BIS, it is considered this is unavoidable to ensure the effective implementation of UN Security Council resolution 1874(2009).

5. Territorial extent and application

5.1 The principal Order and as amended by this 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 applies to small business as it does to other entities and persons, but the impact is considered negligible.

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

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