STATUTORY INSTRUMENTS

2016 No. 634

CRIMINAL LAW

The Democratic People's Republic of Korea (European Union Financial Sanctions) (Amendment) (No. 2) Regulations 2016

Made - - - -	*9th June 2016*
Laid before Parliament	*10th June 2016*
Coming into force - -	*11th June 2016*

The Treasury are designated(**a**) for the purposes of section 2(2) of the European Communities Act 1972(**b**) in relation to restrictive measures against persons or bodies listed by an international organisation.

The Treasury, in exercise of the powers conferred by section 2(2) of the European Communities Act 1972, make the following Regulations:

PART 1

General

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Democratic People's Republic of Korea (European Union Financial Sanctions) (Amendment) (No. 2) Regulations 2016, and shall come into force on 11th June 2016.

(2) In these Regulations, "the 2013 Regulations" means the Democratic People's Republic of Korea (European Union Financial Sanctions) Regulations 2013(**c**).

PART 2

Amendment of the 2013 Regulations

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2. The 2013 Regulations are amended in accordance with regulations 3 to 6.

3. Replace regulation 13D of the 2013 Regulations (financial support for trade) with–

(**a**) S.I. 2010/1834.
(**b**) 1972 c.68. Section 2(2) was amended by the Legislative and Regulatory Reform Act 2006 (c.51), section 27(1)(a) and the European Union (Amendment) Act 2008 (c.7), Schedule, Part 1.
(**c**) S.I. 2013/1877, as amended by S.I. 2016/578

"**Financial support for trade**

13D.—(1) A person may not provide any financial support for trade which may contribute to–

(a) nuclear-related programmes;

(b) other weapons of mass destruction-related programmes;

(c) ballistic missile-related programmes, or

(d) other activities prohibited by the Council Regulation.

(2) In paragraph (1), financial support for trade includes, but is not limited to–

(a) finance;

(b) financial assistance;

(c) export credits;

(d) guarantees; and

(e) insurance.

(3) The prohibition in paragraph (1) does not apply to–

(a) contracts and agreements for the provision of financial support entered into prior to [date]; and

(b) contracts and agreements for the provision of financial support for trade in food, agricultural, medical or humanitarian purposes.".

4. After regulation 13D (as substituted by regulation 3 of these Regulations), insert–

"Investment and commercial activities

13E.—(1) A person must not accept or approve investment in a commercial activity made by a person listed in paragraph (6).

(2) A person must not grant financing or financial assistance to any legal person listed in paragraph (6)(d) to (f) or for the documented purpose of financing such legal persons.

(3) A person must not establish a joint venture with a legal person listed in paragraph (6) if that person is engaged in any activities listed in paragraph (7).

(4) A person may not acquire or extend any ownership interest in a legal person listed in paragraph (6) if that person is engaged in any activities listed in paragraph (7).

(5) A person must not provide investment services directly related to any activity that is prohibited by paragraphs (2) to (4).

(6) The persons listed in this paragraph are—

(a) a person associated with the Government of the Democratic People's Republic of Korea;

(b) a person associated with the Worker's Party of Korea;

(c) a national of the Democratic People's Republic of Korea;

(d) a legal person, entity or body incorporated or constituted under the law of the Democratic People's Republic of Korea;

(e) a person, entity or body acting on behalf of or at the direction of a person, entity or body falling within sub-paragraphs (a) to (d); or

(f) a legal person, entity or body owned or controlled by a person, entity or body falling within sub-paragraphs (a) to (d).

(7) The activities listed in this paragraph are–

(a) the nuclear-related, other weapons of mass destructions-related, or ballistic missile-related programmes of the Democratic People's Republic of Korea;

(b) mining industry;

(c) refining industry; and

(d) chemical industry.

Transfers of funds

13F.—(1) Subject to paragraph (3) a person ("P") must not make a transfer of funds to, or receive a transfer of funds from, the Democratic People's Republic of Korea.

(2) Subject to paragraph (3) a credit and financial institution falling within the scope of Article 16 of the Council Regulation must not enter into, or continue to participate in, any transaction with–

(a) credit and financial institutions domiciled in the Democratic People's Republic of Korea;

(b) branches or subsidiaries falling within the scope of Article 16 of the Council Regulation of credit and financial institutions domiciled in the Democratic People's Republic of Korea, as listed in Annex VI to the Council Regulation;

(c) branches or subsidiaries falling outside of the scope of Article 16 of the Council Regulation of credit and financial institutions domiciled in the Democratic People's Republic of Korea, as listed in Annex VI to the Council Regulation;

(d) credit and financial institutions that are neither domiciled in the Democratic People's Republic of Korea nor fall within the scope of Article 16 of the Council Regulation, but are controlled by persons listed in Annex VI of the Council Regulation.

(3) A transfer of funds may be made if–

(a) the transfer relates to a transaction mentioned in paragraph (4); and

(b) where the value of the transfer is over €15,000, P or the institution has obtained prior authorisation from the Treasury.

(4) The transactions are–

(a) transactions regarding foodstuffs, healthcare or medical equipment;

(b) transactions for agricultural or humanitarian purposes;

(c) transactions regarding personal remittances;

(d) transactions that have been licensed under regulation 9;

(e) transactions that are permitted under an exemption contained in the Council Regulation;

(f) transactions regarding a trade contract that is not prohibited by the Council regulation;

(g) transactions regarding the official purposes of a diplomatic or consular mission of the Democratic People's Republic of Korea;

(h) transactions regarding the official purposes of a diplomatic or consular mission of a state other than the Democratic People's Republic of Korea;

(i) transactions regarding the official purposes of an international organisation enjoying immunities in accordance with international law;

(j) transactions required exclusively for the purposes of implementing projects funded by the European Union or its Member States which address the needs of the civilian population of the Democratic People's Republic of Korea or the promotion of denuclearisation; and

(k) transactions for payments which satisfy claims against–

(i) the Democratic People's Republic of Korea;

(ii) a national of the Democratic People's Republic of Korea;

(iii) a legal person, entity or body incorporated or constituted under the law of the Democratic People's Republic of Korea;

(5) The requirement for prior authorisation in paragraph (3)(b) shall not apply to any transaction which falls within (4)(h) or (i).

(6) In this regulation–

(a) a reference to an amount in euro includes a reference to the equivalent amount in another currency; and

(b) a reference to a transfer of funds of a particular amount includes a transfer executed in several operations which appear to be linked, as well as a transfer executed in a single operation.

13G.—(1) An authorisation granted by the Treasury under regulation 13F may be–

(a) general or granted to a category of persons or to a particular person;

(b) subject to conditions;

(c) of indefinite duration or subject to an expiry date.

(2) The Treasury may vary or revoke an authorisation at any time.

(3) On the grant, variation or revocation of an authorisation, the Treasury must–

(a) in the case of an authorisation granted to a particular person, give written notice of the grant, variation or revocation to that person,

(b) in the case of a general authorisation or an authorisation granted to a category of persons, take such steps as the Treasury consider appropriate to publicise the grant, variation or revocation of the authorisation.

(4) A person commits an offence who, for the purpose of obtaining an authorisation, knowingly or recklessly–

(a) provides information that is false in a material respect, or

(b) provides or produces a document that is not what it purports to be.

(5) A person who purports to act under an authorisation granted by the Treasury but who fails to comply with any conditions included in the authorisation commits an offence.".

5. In regulation 14(1) and 14(2)(a), for "13D" substitute "13F".

6. In regulation 16(1), after "regulation 9" insert ", 13G".

Signed

George Hollingbery
Charlie Elphicke

9th June 2016 — Two of the Lords Commissioners of Her Majesty's Treasury

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision relating to the enforcement of Council Regulation (EC) No 329/2007 dated 27th March 2007 (OJ L 88, 29.3.2007, p1), concerning restrictive measures against the Democratic People's Republic of Korea ("DPRK") ("the Council Regulation").

These measures include the freezing of funds and economic resources of designated persons, ensuring that funds and economic resources are not made available to them, and broader financial sanctions measures.

Enforcement of these measures is provided for by the Democratic People's Republic of Korea (European Union Financial Sanctions) Regulations 2013 ("the 2013 Regulations").

The Council Regulation was amended by Council Regulation (EU) No. 2016/682 (OJ L 117, 3.5.2016, p.1) which changed the asset freezing provisions and imposed additional financial sanctions measures relating to the activities of credit and financial institutions. The 2013 Regulations were accordingly amended by the Democratic People's Republic of Korea (European Union Financial Sanctions) (Amendment) Regulations 2016.

The Council Regulation has been further amended by Council Regulation (EC) No 2016/841 dated 28 May 2016 (OJ L 141, 28.5.2016, p36). The amendments impose additional financial sanctions measures relating DPRK.

These Regulations amend the 2103 Regulations to include these additional financial sanctions measures.

Regulations 3 and 4 provide for the imposition of additional financial sanctions measures in relation to investment in DPRK and with DPRK entities, trade and commerce with DPRK entities, and the transfer of funds to and from DPRK.

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