EXPLANATORY MEMORANDUM TO

THE NORTH KOREA (UNITED NATIONS MEASURES)

(OVERSEAS TERRITORIES)(AMENDMENT) ORDER 2007

2007 No.1347

1. This explanatory memorandum has been prepared by the Foreign and Commonwealth Office (FCO) and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Description

This instrument, The North Korea (United Nations Measures) (Overseas Territories)(Amendment) Order 2007 ("the Order"), amends The North Korea (United Nations Measures) (Overseas Territories) Order 2006 ("the principal Order") which gave effect in the Overseas Territories to restrictive measures imposed on North Korea by the United Nations Security Council in resolution 1718 adopted on 14th October 2006. The amendments in the present Order principally concern the treatment of the ban on luxury goods to North Korea in the principal Order. Amendments are also made to the definitions of "procurement" and "prohibited luxury goods", and certain other definitions omitted from the principal Order are added.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 The treatment of luxury goods in the principal Order was the subject of criticism in the Joint Committee's Tenth Report of 6 March 2007. With two exceptions, all the Committee's suggestions have been followed. The provision of guidance to exporters as to whether particular goods need a licence is considered to be more appropriately undertaken by the customs and excise authority, rather than the Governor, as the customs and excise authority is responsible for the enforcement of export controls in the Territories. This emulates the approach to be taken by the export control authorities in the United Kingdom to the problem of vague definitions. In addition, the principal Order as amended defines "prohibited luxury goods" as the goods listed in the list published by the Governor, who requires to publish the list set out in Annex III of Council Regulation (EC) No.329/2007 and a revised list upon any amendments to Annex III. To retain Schedule 4 to the principal Order for information only would be unnecessary and potentially confusing. By deleting Schedule 4, the treatment of "prohibited luxury goods" is assimilated with the treatment of "restricted goods" in the principal Order. The Order will be made at the Privy Council meeting on 2nd May 2007 and laid before Parliament on the following day. The Order will

come into force the day after it is laid so that the amended sanctions provisions can be utilised immediately.

4. Legislative Background

4.1 The measures in UN Security Council Resolution 1718 have been reflected within the European Union in a Common Position, and the delayed EC Regulation covering the ban on related assistance and luxury goods has now been adopted. The need for this amending Order arises mainly due to the absence of any definition of luxury goods in Resolution 1718, and certain imprecise definitions relating to such goods in the principal Order, which replicated the proposed EC Regulation list of luxury goods now incorporated in Council Regulation (EC) No. 329/2007, adopted by the Council of the European Union on 27 March 2007 in implementation of Resolution 1718, and having direct effect in the UK.

4.2 To deal with the lack of precision in certain definitions relating to such luxury goods in the EC Regulation, the Export Control Organisation of the DTI has arranged to provide guidance to UK exporters as to whether particular goods are considered to be prohibited luxury goods, the export of which would require to be licensed. The FCO considers that it would be undesirable to have a different list of prohibited luxury goods in the Overseas Territories from that obtaining in the UK.

4.3 The present amending Order therefore introduces a means, equivalent to that available in the UK, for persons in a Territory to obtain an opinion from the customs and excise authority in the Territory giving guidance as to whether a licence is required to be obtained from the Governor for the supply or export of the goods in question. The Export Control Organisation of the DTI has agreed to provide necessary assistance to the customs and excise authorities of the Territories. A draft of the notice to exporters in the Territories proposed to be issued by Governors is attached to this Memorandum for information.

5. Extent

This instrument applies to the following territories: Anguilla, Bermuda, British Antarctic Territory, British Indian Ocean Territory, Cayman Islands, Falkland Islands, Montserrat, Pitcairn, Henderson, Ducie and Oeno Islands, St Helena and Dependencies, South Georgia and the South Sandwich Islands, the Sovereign Base Areas of Akrotiri and Dhekelia in the island of Cyprus, Turks and Caicos Islands and the Virgin Islands. All the territories were consulted. The EC Regulation is directly applicable in Gibraltar.

6. European Convention on Human Rights

This Order is made under the United Nations Act 1946 and although laid is not subject to any Parliamentary procedure. There are no human rights implications.

7. Policy Background

7.1 The UK fully supports the UN measures against North Korea.

7.2 This Order augments the UK's compliance with its obligation to implement the UN restrictive measures in respect of the applicable Overseas Territories, by providing for assistance in the interpretation of the UN and EU measures akin to that available in the UK.

8. Impact

8.1 A Regulatory Impact Assessment has not been prepared for this instrument, as it has no impact on business, charities or voluntary bodies.

8.2 The impact on the public sector is negligible.

9. Contact

David Ballantyne at the Foreign and Commonwealth Office, Tel: 020 7008 2131 or e-mail: david.ballantyne@fco.gov.uk, can answer queries regarding the instrument.

DRAFT

NOTICE TO EXPORTERS

SANCTIONS ON NORTH KOREA – PROHIBITED LUXURY GOODS

1. United Nations Security Council Resolution 1718 (2006) introduced a ban on the supply of "luxury goods" to North Korea. No definition of "luxury goods" is provided within the Resolution.

2. The European Union, through Council Regulation (EC) 329/2007 adopted on 27 March 2007, has interpreted "luxury goods" to mean the items set out in the list at Annex A. To supply, deliver, transfer or export, directly or indirectly such items from the Territory to North Korea requires a licence issued under the provisions of The North Korea(United Nations Measures)(Overseas Territories) Order 2006 (SI 2006/3327) as amended by The North Korea (United Nations Measures)(Overseas Territories)(Amendment) Order 2007 (S.I. 2007/xxx) (together referred to as "the North Korea Order"). The North Korea Order permits licences to be issued for prohibited luxury goods if the authorities in a Territory consider that such supply would be justified.

3. Some of the descriptions used in the EU list of luxury goods are subjective. The terms "high quality", "high end", "luxury" and "pure-bred" precede the description of certain sanctioned items. If you are clear that the items are "prohibited luxury goods" as listed you will need to complete the standard licence application form which may be obtained from (insert details of the customs and excise authority for the Territory).

4. However, if you wish to argue that the items would not be caught by sanctions you may wish to contact the competent authority, whose details are given below, for an opinion. To do this you will need to supply information on the quantity, a description of the items (including brand names/manufacturer etc where applicable), the value of individual items and total contract value and the end-user. If you wish to argue that the items are not for instance "high quality" when such a term is used you will need to include an explanation as to why, in your opinion, the items cannot be so considered. The competent authority will then let you know, based on the information you have supplied, whether it is of the opinion that a licence would or would not be required. Letters requesting such determinations should be sent to:-

(insert the contact details for the customs and excise authority in the Territory)

Prohibited luxury goods **ANNEX A**

(1) Pure-bred horses

(2) Caviar and caviar substitutes

(3) Truffles and preparations thereof

(4) High quality wines (including sparkling wines), spirits and spirituous beverages

(5) High quality cigars and cigarillos

(6) Luxury perfumes, toilet waters and cosmetics, including beauty and make-up products

(7) High quality leather, saddlery and travel goods, hand bags and similar articles

(8) High quality garments, clothing accessories and shoes (regardless of their material)

(9) Hand-knotted carpets, handwoven rugs and tapestries

(10) Pearls, precious and semi-precious stones, articles of pearls, jewellery, gold- or silversmith articles

(11) Coins and banknotes, not being legal tender

(12) Cutlery of precious metal or plated or clad with precious metal

(13) High quality tableware of porcelain, china, stone- or earthenware or fine pottery

(14) High quality lead crystal glassware

(15) High end electronic items for domestic use

(16) High end electrical/electronic or optical apparatus for recording and reproducing sound and images

(17) Luxury vehicles for the transport of persons on earth, air or sea, as well as their accessories and spare parts

(18) Luxury clocks and watches and their parts

(19) High quality musical instruments

(20) Works of art, collectors' pieces and antiques

(21) Articles and equipment for skiing, golf, diving and water sports

(22) Articles and equipment for billiard, automatic bowling, casino games and games operated by coins or banknotes