STATUTORY INSTRUMENTS

2006 No. 3327

UNITED NATIONS

The North Korea (United Nations Measures) (Overseas Territories) Order 2006

Made - - - -	*14th December 2006*
Laid before Parliament	*15th December 2006*
Coming into force - -	*16th December 2006*

At the Court at Buckingham Palace, the 14th December 2006

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 1718(2006) adopted on 14th October 2006, 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(**a**), is pleased, by and with the advice of Her Privy Council, to order, and it is ordered as follows:

Citation, commencement and extent

1.—(1) This Order may be cited as the North Korea (United Nations Measures) (Overseas Territories) Order 2006 and shall come into force on 16th December 2006.

(2) This Order shall extend to the territories listed in Schedule 1.

(3) Articles 23 and 24 shall apply to the Sovereign Base Areas of Akrotiri and Dhekelia as set out in Schedule 2.

(4) In the application of this Order to any of the said territories:

(a) the expression "the Territory" in this Order means that territory;

(b) references to the official gazette of a Territory include a reference to any form in which official information is normally made available in that Territory.

(5) An offence may be committed under article 4(1), 5(3), 6, 7(3), 8(3), 9(2), 10(2), 12 or 15 by any person in the Territory or by any person elsewhere who is—

(**a**) 1946 c.45.

(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 and is ordinarily resident in the Territory; or

(b) a body incorporated or constituted under the law of any part of the Territory.

Interpretation

2.—(1) In this Order—

"aircraft" means a fixed wing, swivel wing, rotary wing, tilt rotor or tilt wing airborne vehicle or helicopter;

"assistance" means any form of assistance including technical assistance, services, financing and financial assistance;

"commander", in relation to an "aircraft", means the member of the flight crew designated as commander of the "aircraft" by the operator thereof, or, failing such a person, the person who is for the time being the pilot in command of the "aircraft";

"designated person" means any person or entity for the time being designated by the Committee or the Security Council pursuant to subparagraph 8(d) of the Security Council Resolution;

"document" includes information recorded in any form and, in relation to information recorded otherwise than in legible form, references to its production include references to producing a copy of the information in legible form;

"economic resources" means assets of every kind, whether tangible or intangible, movable or immovable, which are not funds but can be used to obtain funds, goods or services;

"export" includes "shipment" as "stores";

"exportation" in relation to any "ship", submersible vehicle or "aircraft", includes the taking out of the Territory of the "ship", submersible vehicle or "aircraft" notwithstanding that it is conveying goods or passengers and whether or not it is moving under its own power; and cognate expressions shall be construed accordingly;

"funds" means financial assets and benefits of every kind, including (but not limited to)—

(a) cash, cheques, claims on money, drafts, money orders and other payment instruments;

(b) deposits with relevant institutions or other persons, balances on accounts, debts and debt obligations;

(c) publicly and privately traded securities and debt instruments, including stocks and shares, certificates representing securities, bonds, notes, warrants, debentures and derivative products;

(d) interest, dividends or other income on or value accruing from or generated by assets;

(e) credit, right of set-off, guarantees, performance bonds or other financial commitments;

(f) letters of credit, bills of lading, bills of sale;

(g) documents providing evidence of an interest in funds or financial resources; and

(h) any other instrument of export financing;

"Governor" means the Governor or other officer administering the Government of the Territory;

"prohibited luxury goods" means the goods listed in Schedule 4 as amended from time to time;

"master", in relation to a "ship", includes any person (other than a pilot) for the time being in charge of the "ship";

"North Korea" means the Democratic People's Republic of Korea;

"officer", in relation to a body corporate, means a director, manager, secretary or other similar officer of the body corporate or any person who has purported to act in any such capacity;

"operator", in relation to an "aircraft" or "vehicle", means the person for the time being having the management of the "aircraft" or "vehicle";

"owner", in relation to a "ship", where the owner is not the "operator", means the "operator" and any person to whom it is chartered;

"procurement" means procurement by any person or body to whom this Order applies by whatever means, including but not limited to by purchase, import or transport, and including by using any ship, aircraft or vehicle to which article 7 of this Order applies;

"relevant institution" means—

(i) the person or body responsible for carrying out in the Territory the functions of a monetary authority;

(j) any person who may lawfully accept deposits in or from within the Territory by way of business;

(k) any society established lawfully in the Territory whose principal purpose is the making of loans secured on residential property where such loans are funded substantially by its members;

"restricted goods" means the goods specified in Part I of Schedule 1 to the Export of Goods, Transfer of Technology and Provision of Technical Assistance (Control) Order 2003(**a**) made under the Export Control Act 2002(**b**), as extended to the territories listed in Schedule 1 thereto by the Export of Goods, Transfer of Technology and Provision of Technical Assistance (Control) (Overseas Territories) Order 2004(**c**) and all items, materials, equipment, goods and technology, including software, which are dual-use items as defined in Council Regulation (EC) No 1334/2000(**d**) and which could contribute to North Korea's nuclear-related, ballistic missile-related or other weapons of mass destruction-related programmes, as determined by the Committee or the Security Council pursuant to subparagraph 8(a) of the Security Council Resolution;

"the Security Council Resolution" means resolution 1718(2006) adopted by the Security Council of the United Nations on 14th October 2006;

"Supreme Court" means the court of the Territory having unlimited jurisdiction in civil proceedings.

(2) For the purpose of the definition of "relevant institution" in paragraph (1)—

(a) the activity of accepting deposits has the meaning given in any relevant order made under section 22 of the Financial Services and Markets Act 2000(**e**); and

(b) a person is not regarded as accepting deposits by way of business if—

(i) he does not hold himself out as accepting deposits on a day to day basis, and

(ii) any deposits which he accepts are accepted only on particular occasions, whether or not involving the issue of any securities.

(3) In determining for the purposes of paragraph (2)(b)(ii) whether deposits are accepted only on particular occasions, regard is to be had to the frequency of those occasions and to any characteristics distinguishing them from each other.

Publicly available list of designated persons, restricted goods and prohibited luxury goods

3. The Governor must—

(a) maintain a list of designated persons; and

(b) cause the list to be published in the official gazette of the Territory as necessary from time to time;

(**a**) S.I. 2003/2764 as amended by S.I . 2004/1050, 2004/2561 and 2004/2741.
(**b**) 2002 c. 28.
(**c**) S.I. 2004/3101.
(**d**) OJ No L 159, 30.06.00, p.1.
(**e**) 2002 c.8.

(c) cause a list of restricted goods to be published in the gazette of the Territory as necessary from time to time; and

(d) cause a list of prohibited luxury goods to be published in the gazette of the Territory as necessary from time to time;

Declaring that the Governor may by notice published in the gazette amend the list of prohibited luxury goods in Schedule 4 in accordance with any European Community Regulation giving effect to the Security Council Resolution.

RESTRICTED GOODS, PROHIBITED LUXURY GOODS, ASSISTANCE AND TRAINING AND PROCUREMENT

Supply of restricted goods and prohibited luxury goods

4.—(1) Any person who, except under the authority of a licence granted by the Governor under this article or article 5 —

(a) supplies or delivers;

(b) agrees to supply or deliver; or

(c) does any act calculated to promote the supply or delivery of,

restricted goods or prohibited luxury goods to any person or destination in North Korea shall be guilty of an offence under this Order, unless he proves that he did not know and had no reason to suppose that the goods in question were to be supplied or delivered to a person in North Korea.

(2) Nothing in paragraph (1)(b) or (c) shall apply where the supply or delivery of the goods to the person concerned is authorised by a licence granted by the Governor under this article.

Exportation of restricted goods and prohibited luxury goods to North Korea

5.—(1) Except under the authority of a licence granted by the Governor under this article, restricted goods or prohibited luxury goods must not be exported from the Territory to any destination in North Korea or to any destination for the purpose of delivery, directly or indirectly, to or to the order of any person in North Korea.

(2) Any restricted goods or prohibited luxury goods which are exported or attempted to be exported shall be liable to forfeiture.

(3) Any person knowingly concerned in the exportation or attempted exportation of such goods shall be guilty of an offence under this Order.

(4) In any case where a person would, apart from this paragraph, be guilty of an offence under paragraph (3) above and of an offence under article 4(1), he shall not be guilty of the offence under paragraph (3) above.

Provision of assistance, advice or training related to military activities and provision, manufacture, maintenance or use of restricted goods

6. Any person who, except under the authority of a licence granted by the Governor under this article, directly or indirectly provides to any person, entity or body in, or for use in, North Korea any assistance, advice or training related to the provision, manufacture, maintenance or use of restricted goods shall be guilty of an offence under this Order, unless he proves that he did not know and had no reason to suppose that the assistance, advice or training in question was to be provided to a person, entity or body in, or for use in, North Korea.

Use of ships, aircraft and vehicles: restricted goods and prohibited luxury goods

7.—(1) Without prejudice to the generality of article 4, and except under the authority of a licence granted by the Governor under article 4 or 5, no ship or aircraft to which this article applies, and no vehicle within the Territory, shall be used for the carriage of restricted goods or prohibited luxury goods if the carriage is, or forms part of, carriage from any place outside North Korea to any destination therein.

(2) This article applies to ships registered in the Territory, to aircraft so registered and to any other ship or aircraft that is for the time being chartered to any person 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 and is ordinarily resident in the Territory; or

(b) a body incorporated or constituted under the law of the Territory.

(3) If any ship, aircraft or vehicle is used in contravention of paragraph (1) then —

(a) in the case of a ship registered in the Territory or any aircraft so registered, the owner and the master of the ship or, as the case may be, the operator and the commander of the aircraft; or

(b) in the case of any other ship or aircraft, the person to whom the ship or aircraft is for the time being chartered and, if he is such a person as is referred to in paragraph (2)(a) or (b), the master of the ship or, as the case may be, the operator and the commander of the aircraft; or

(c) in the case of a vehicle, the operator of the vehicle,

shall be guilty of an offence under this Order, unless he proves that he did not know and had no reason to suppose that the carriage of the goods in question was, or formed part of, carriage from any place outside North Korea to any destination therein.

(4) Nothing in paragraph (1) shall apply where the supply or delivery or exportation from the Territory of the goods concerned to North Korea was authorised by a licence granted by the Governor under article 4 or 5.

(5) Nothing in this article shall be construed so as to prejudice any other provision of law prohibiting or restricting the use of ships, aircraft or vehicles.

Procurement of restricted goods from North Korea

8.—(1) Except under the authority of a licence granted by the Governor under this article, the procurement of restricted goods from North Korea is prohibited.

(2) Any restricted goods which are procured or attempted to be procured shall be liable to forfeiture.

(3) Any person knowingly concerned in the procurement or attempted procurement of such goods shall be guilty of an offence under this Order.

FREEZING FUNDS AND MAKING FUNDS AVAILABLE

Freezing funds and economic resources

9.—(1) A person (including the designated person) must not deal with funds or economic resources owned, held or controlled, directly or indirectly, by a designated person unless he does so under the authority of a licence granted under article 14.

(2) A person who contravenes the prohibition in paragraph (1) is guilty of an offence.

(3) In proceedings for an offence under this article, it is a defence for a person to show that he did not know and had no reasonable cause to suspect that he was dealing with funds or economic resources owned, held or controlled by a designated person.

(4) In this article, "to deal with" means—

(a) in respect of funds—

(i) to use, alter, move, allow access to or transfer;

(ii) to deal with in any other way that would result in any change in volume, amount, location, ownership, possession, character or destination; or

(iii) to make any other change that would enable use, including portfolio management; and

(b) in respect of economic resources, to use to obtain funds, goods or services in any way, including (but not limited to) by selling, hiring or mortgaging the resources.

Making funds and economic resources available

10.—(1) A person must not make funds or economic resources available, directly or indirectly, to or for the benefit of a designated person unless he does so under the authority of a licence granted under article 14.

(2) A person who contravenes the prohibition in paragraph (1) is guilty of an offence.

(3) In proceedings for an offence under this article, it is a defence for a person to show that he did not know and had no reasonable cause to suspect that he was making funds or economic resources available, directly or indirectly, to or for the benefit of a designated person.

Exceptions

11.—(1) A relevant institution is not guilty of an offence under article 9 or 10 if the institution credits a frozen account with:

(a) interest or other earnings due on the account;

(b) payments due under contracts, agreements or obligations that were concluded or arose prior to 14th October 2006; or

(c) funds received from a third party, provided that the institution informs the Governor without delay.

(2) For the avoidance of doubt, article 9 applies to any funds credited to a frozen account in accordance with this article.

(3) In this article—

"frozen account" means an account of a designated person;

"third party" means a person other than the account-holder or the relevant institution with which the account is maintained.

Circumventing prohibitions etc

12. A person is guilty of an offence if he participates, knowingly and intentionally, in activities the object or effect of which is, directly or indirectly, to—

(a) circumvent a prohibition in article 9(1) or 10(1); or

(b) enable or facilitate the commission of an offence under article 9(2) or 10(2).

Acting on behalf of a designated person etc

13.—(1) Where the condition in paragraph (2) is satisfied, the Governor may direct that articles 9 to 12 are to apply in respect of a person or entity identified in the direction as if he or it were a designated person.

(2) The condition in this paragraph is that the Governor has reasonable grounds for suspecting that the person or entity identified in the direction is or may be—

(a) controlled or directed, or in the case of an entity, owned, controlled or directed, by a designated person, or

(b) acting on behalf of or at the direction of a designated person.

(3) A direction under paragraph (1) has effect—

(a) for such period as the Governor may specify in the direction, or

(b) until the direction is revoked or set aside.

(4) The Governor may revoke a direction at any time.

(5) The Governor, where he issues or revokes a direction, must—

(a) give written notice of the direction or revocation to the person or entity identified in the direction, and

(b) make information as to the direction or revocation publicly available.

(6) The Supreme Court may set aside a direction on the application of—

(a) the person or entity identified in the direction, or

(b) any other person or entity affected by the direction.

(7) A person or entity who makes an application under paragraph (6) must give a copy of the application and any witness statement or affidavit in support to the Governor not later than seven days before the date fixed for the hearing of the application.

Licences

14.—(1) The Governor may grant a licence to exempt dealings or activities specified in the licence from the prohibition in article 9(1) or 10(1).

(2) A licence may relate to—

(a) 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;

(b) payment of reasonable professional fees and expenses associated with the provision of legal services;

(c) payment of fees or service charges for the routine holding or maintenance of frozen funds or economic resources; or

(d) payment of necessary extraordinary expenses as determined by the Governor and approved by the Committee established pursuant to paragraph 12 of the Security Council resolution.

(3) A licence 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.

(4) The Governor may vary or revoke a licence at any time.

(5) The Governor, where he grants, varies or revokes a licence, must—

(a) in the case of a licence granted to a particular person, give written notice of the licence, variation or revocation to that person, and

(b) in the case of a general licence, or of a licence granted to a category of persons, take such steps as the Governor considers appropriate to publicise the licence, variation or revocation.

(6) Any person who, for the purpose of obtaining a licence, knowingly or recklessly makes any statement or furnishes any document or information which is false in a material particular is guilty of an offence.

(7) Any person who has done any act under the authority of a licence and who fails to comply with any conditions attaching to that licence is guilty of an offence.

CUSTOMS POWERS AND INVESTIGATIONS

Customs powers to demand evidence of destination which goods reach

15. Any exporter or any shipper of restricted goods or prohibited luxury goods which have been exported from the Territory shall, if so required by the Governor, furnish within such time as the Governor may allow proof to the Governor's satisfaction that the goods have reached either —

(a) a destination to which they were authorised to be exported by a licence granted under this Order; or

(b) a destination to which their exportation was not prohibited by this Order,

and, if he fails to do so, he shall be guilty of an offence under this Order, unless he proves that he did not consent to or connive at the goods reaching any destination other than such a destination as aforesaid.

Declaration as to goods: powers of search

16.—(1) Any person who is about to leave the Territory shall, if he is required to do so by an officer authorised for the purpose by the Governor —

(a) declare whether or not he has with him any restricted goods or prohibited luxury goods which are destined for North Korea or for delivery, directly or indirectly, to or to the order of any person in North Korea; and

(b) produce any such goods as aforesaid which he has with him.

(2) Any such officer, and any person acting under his direction, may search that person for the purpose of ascertaining whether he has with him any such goods as aforesaid, provided that no person shall be searched in pursuance of this paragraph except by a person of the same sex.

(3) Any person who without reasonable excuse refuses to make a declaration, or fails to produce any goods, or refuses to allow himself to be searched in accordance with the foregoing provisions of this article, shall be guilty of an offence under this Order.

(4) Any person who under the provisions of this article makes a declaration which to his knowledge is false in a material particular, or recklessly makes any declaration which is false in a material particular, shall be guilty of an offence under this Order.

Investigation, etc. of suspected ships

17.—(1) Where any authorised officer has reason to suspect that any ship to which article 7 applies has been or is being or is about to be used in contravention of paragraph (1) of that article —

(a) he may (either alone or accompanied and assisted by persons under his authority) board the ship and search her and, for that purpose, may use or authorise the use of reasonable force;

(b) he may request the master of the ship to furnish such information relating to the ship and her cargo and produce for his inspection such documents so relating and such cargo as he may specify; and

(c) in the case of a ship that is reasonably suspected of being or of being about to be used in contravention of paragraph (1) of article 7, any authorised officer (either there and then or upon consideration of any information furnished or document or cargo produced in pursuance of a request made under sub-paragraph (b)), with a view to preventing the commission (or the continued commission) of any such contravention, or in order that

enquiries into the matter may be pursued, may take the further action specified in paragraph (2).

(2) The further action referred to in paragraph (1)(c) is either —

(a) to direct the master of the ship to refrain, except with the consent of any authorised officer, from landing at any port specified by the officer any part of the ship's cargo that is so specified; or

(b) to request the master of the ship to take any one or more of the following steps —

(i) to cause the ship not to proceed with the voyage on which she is then engaged or about to engage until the master is notified by an authorised officer that the ship may so proceed;

(ii) if the ship is then in port in the Territory, to cause her to remain there until the master is notified by an authorised officer that the ship may depart;

(iii) if the ship is then in any other place, to take her to any such port specified by the officer and to cause her to remain there until the master is notified as mentioned in sub-paragraph (ii); and

(iv) to take her to any other destination that may be specified by the officer in agreement with the master.

(3) Without prejudice to the provisions of article 20(3), where —

(a) a master refuses or fails to comply with a request made under paragraph (2)(b); or

(b) an authorised officer otherwise has reason to suspect that such a request that has been so made may not be complied with,

any authorised officer may take such steps as appear to him to be necessary to secure compliance with that request and, without prejudice to the generality of the foregoing, may for that purpose enter upon, or authorise entry upon, that ship and use, or authorise the use of, reasonable force.

(4) Before or on exercising any power conferred by this article, an authorised officer shall, if requested to do so, produce evidence of his authority.

(5) In this article "authorised officer" means —

(a) any commissioned naval or military officer;

(b) any British consular officer;

(c) any person authorised by the Governor for the purpose of this article either generally or in a particular case.

Investigation, etc. of suspected aircraft

18.—(1) Where any authorised person has reason to suspect that any aircraft to which article 7 applies has been or is being or is about to be used in contravention of paragraph (1) of that article —

(a) he may (either alone or accompanied and assisted by persons under his authority) board the aircraft and search it and, for that purpose, may use or authorise the use of reasonable force;

(b) he may request the charterer, the operator and the commander of the aircraft or any of them to furnish such information relating to the aircraft and its cargo and produce for his inspection such documents so relating and such cargo as he may specify; and

(c) if the aircraft is then in the Territory, any authorised person may (either there and then or upon consideration of any information furnished or document or cargo produced in pursuance of a request made under sub-paragraph (b)) further request the charterer, the operator and the commander or any of them to cause the aircraft and any of its cargo to remain in the Territory until notified that the aircraft and its cargo may depart.

(2) Without prejudice to the provisions of article 20(3), where an authorised person has reason to suspect that any request that has been made under paragraph (1)(c) may not be complied with, he may take such steps as appear to him to be necessary to secure compliance with that request and, without prejudice to the generality of the foregoing, may for that purpose —

(a) enter, or authorise entry, upon any land and upon that aircraft;

(b) detain, or authorise the detention of, that aircraft and any of its cargo; and

(c) use, or authorise the use of, reasonable force.

(3) Before or on exercising any power conferred by this article, an authorised person shall, if requested to do so, produce evidence of his authority.

(4) In this article, "authorised person" means any person authorised by the Governor for the purpose of this article either generally or in a particular case.

Investigation, etc. of suspected vehicles

19.—(1) Where any authorised person has reason to suspect that any vehicle in the Territory has been or is being or is about to be used in contravention of paragraph (1) of article 7 —

(a) he may (either alone or accompanied and assisted by persons under his authority) enter the vehicle and search it and, for that purpose, may use or authorise the use of reasonable force;

(b) he may request the operator and the driver of the vehicle or either of them to furnish such information relating to the vehicle and any goods contained in it and produce for his inspection such documents so relating and such goods as he may specify;

(c) any authorised person may (either there and then or upon consideration of any information furnished or document or goods produced in pursuance of a request made under sub-paragraph (b)) further request the operator or the driver to cause the vehicle and any goods contained in it to remain in the Territory until notified that the vehicle may depart.

(2) Without prejudice to the provisions of article 20(3), where any authorised person has reason to suspect that any request that has been made under paragraph (1)(c) may not be complied with, he may take such steps as appear to him to be necessary to secure compliance with that request and, without prejudice to the generality of the foregoing, may for that purpose —

(a) enter, or authorise entry, upon any land and enter, or authorise entry of, that vehicle;

(b) detain, or authorise the detention of, that vehicle and any goods contained in it; and

(c) use, or authorise the use of, reasonable force.

(3) Before or on exercising any power conferred by this article, an authorised person shall, if requested to do so, produce evidence of his authority.

(4) In this article, "authorised person" means any person authorised by the Governor for the purpose of this article either generally or in a particular case.

Provisions supplementary to articles 17 to 19

20.—(1) No information furnished or document produced by any person in pursuance of a request made under article 17, 18 or 19 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 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 own right;

(b) to any person who would have been empowered under article 17, 18 or 19 to request 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 State of Jersey; or

(v) the Government of any British overseas territory;

(c) on the authority of the Governor, 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 the Council of the European Union; or

(d) with a view to the institution of, or otherwise for the purposes of, any proceedings —

(i) in the Territory, 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 the United Kingdom, any of the Channel Islands, the Isle of Man or any British overseas territory.

(2) Any power conferred by article 17, 18 or 19 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 master of a ship who disobeys any direction given under article 17(2)(a);

(b) a master of a ship or 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 17, 18 or 19 by any person empowered to make it, or

(ii) furnishes any document or information which to his 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;

(c) a master or a member of a crew of a ship or a charterer or an operator or a commander or a member of a crew of an aircraft or an operator or a driver of a vehicle who wilfully obstructs any such person (or any person acting under the authority of any such person) in the exercise of his powers under article 17, 18 or 19.

(4) Nothing in articles 17, 18, 19 or this article 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.

GENERAL

Offences in connection with applications for licences, conditions attaching to licences, etc

21.—(1) If, for the purposes of obtaining any licence under this Order other than under Article 14, any person makes any statement or furnishes any document or information which to his knowledge is false in a material particular, or recklessly makes any statement or furnishes any

document or information which is false in a material particular, he shall be guilty of an offence under this Order.

(2) Any person who has done any act under the authority of a licence granted by the Governor under this Order other than under Article 14 and who fails to comply with any conditions attaching to that licence shall be guilty of an offence under this Order.

Evidence and information

22. Schedule 3 (which contains further provisions about evidence and information) has effect.

Penalties

23.—(1) A person guilty of an offence under article 4(1), 5(3), 6, 7(3), 8(3), 9(2), 10(2), 12, or 15 is liable—

(a) on conviction on indictment, to imprisonment for a term not exceeding seven years or to a fine or to both; or

(b) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding £5,000 or its equivalent or to both.

(2) A person guilty of an offence under article 14(6) or (7), 20(3)(b)(ii), or paragraph 4(b) or (d) of Schedule 3 is liable—

(a) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both; or

(b) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding £5,000 or its equivalent or to both.

(3) A person guilty of an offence under article 16(4), 21(1) or (2), or paragraph 2(3) of Schedule 3 is liable:

(a) on conviction on indictment to imprisonment for a term not exceeding two years or to a fine of any amount or to both;

(b) on summary conviction to a fine not exceeding £5,000 or its equivalent or to both.

(4) A person guilty of an offence under article 20(3)(a), 20(3)(b)(i), 20(3)(c) or paragraph 4(a) or (c) of Schedule 3 shall be liable on summary 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 article 16(3) shall be liable on summary 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.

Proceedings

24.—(1) Proceedings against any person for an offence may be taken before the appropriate court in the Territory having jurisdiction in the place where that person is for the time being.

(2) Summary proceedings for an offence, alleged to have been committed outside the Territory, may be instituted at any time not later than 12 months from the date on which the person charged first enters the Territory after committing the offence.

(3) No proceedings for an offence shall be instituted in the Territory except by or with the consent of the principal public officer of the Territory having responsibility for criminal prosecutions.

(4) Irrespective of whether such consent has been obtained, paragraph (3) does not prevent

(a) the arrest of any person in respect of such an offence, or

(b) the remand in custody or on bail of any person charged with such an offence.

(5) In this article, "offence" means an offence under this Order.

Notices

25.—(1) This article has effect in relation to any notice to be given to a person by the Governor under article 13(5)(a) or 14(5)(a).

(2) Any such notice may be given—

(a) by posting it to his last known address; or

(b) where the person is a body corporate, by posting it to the registered or principal office of the body corporate in the Territory.

(3) Where the Governor does not have an address in the Territory for the person, he must make arrangements for the notice to be given to him at the first available opportunity.

Functions of the Governor

26.—(1) The Governor may, to such extent and subject to such restrictions and conditions as he may think proper, delegate or authorise the delegation of any of his functions under this Order to any person or class or description of persons.

(2) References in this Order to the Governor are to be construed accordingly.

(3) The Governor may by regulations specify in the currency of the Territory the amount which is to be taken as equivalent to sums expressed in sterling in this Order.

Postponement etc of the operation of the Security Council Resolution

27.—(1) If the Security Council of the United Nations takes any decision which has the effect of postponing, suspending or cancelling the operation of the Security Council Resolution, in whole or in part, this Order shall cease to have effect or its operation shall be postponed or suspended, in whole or in part as the case may be, in accordance with that decision.

(2) The Governor must publish particulars of the decision in a notice in the official gazette of the Territory.

Miscellaneous

28.—(1) Any provision of this Order which prohibits the doing of a thing except under the authority of a licence granted by the Governor shall not have effect in relation to any such thing if—

(a) it is done anywhere other than the Territory; and

(b) it is duly authorised.

(2) A thing is duly authorised for the purpose of paragraph (1) if—

(a) it is done under the authority of a licence granted in accordance with any law in force in the place where it is done (and that law substantially corresponds to the relevant provisions of this Order) and

(b) that licence is granted by the authority competent in that behalf under that law.

Meriel McCullagh
Deputy Clerk of the Privy Council

SCHEDULE 1

Article 1(2)

TERRITORIES TO WHICH THIS ORDER EXTENDS

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

Virgin Islands

SCHEDULE 2

Article 1(3)

APPLICATION OF ARTICLES 23 AND 24 TO THE SOVEREIGN BASE AREAS OF AKROTIRI AND DHEKELIA IN THE ISLAND OF CYPRUS

1. Any person who commits an offence under article 4(1), 5(3), 6, 7(3), 8(3), 9(2), 10(2), 12, or 15 shall be liable on conviction—

(a) if tried on information before the Senior Judge's Court, to imprisonment for a term not exceeding seven years, or to a fine, or to both;

(b) if tried before the Judge's Court, to imprisonment for a term not exceeding six months, or to a fine not exceeding £5,000 or its equivalent, or to both.

2. Any person who commits an offence under article 14(6) or (7), 20(3)(b)(ii), or paragraph 4(b) or (d) of Schedule 3, shall be liable on conviction:

(a) if tried on information before the Senior Judge's Court, to imprisonment for a term not exceeding two years, or to a fine of any amount, or to both;

(b) if tried before the Judge's Court, to imprisonment for a term not exceeding six months, or to a fine not exceeding £5,000 or its equivalent, or to both.

3. Any person who commits an offence under article 16(4), 21(1) or (2), or paragraph 2(3) of Schedule 3, is guilty of a misdemeanour and shall be liable on conviction on indictment to imprisonment for a term not exceeding two years, or to a fine of any amount or both, and on summary conviction to a fine not exceeding £5,000 or its equivalent, or to both.

4. Any person guilty of an offence under article 20(3)(a), 20(3)(b)(i), 20(3)(c) or paragraph 4(a) or (c) of Schedule 3 shall be liable on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding £5,000 or its equivalent or both.

5. Any person guilty of an offence under article 16(3) shall be liable on summary conviction to a fine not exceeding £5,000 or its equivalent.

6. If a body corporate commits an offence and it is shown that the offence—

(a) was committed with the consent or connivance of an officer of the body corporate, or

(b) was 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 that offence and is liable to be proceeded against and punished accordingly.

7. Proceedings for a misdemeanour, alleged to have been committed outside the Territory, may be instituted at any time not later than 12 months from the date on which the person charged first enters the Territory after committing the offence.

8. Proceedings against any person for an offence may be taken before the appropriate court in the Territory having jurisdiction in the place where that person is for the time being.

9. No proceedings for an offence shall be instituted in the Territory except by or with the consent of the principal public officer of the Territory having responsibility for criminal prosecutions.

10. Irrespective of whether such consent has been obtained, paragraph (7) does not prevent—

(a) the arrest, or the issue or execution of a warrant for the arrest, of any person in respect of such an offence;

(b) the remand in custody or on bail of any person charged with such an offence.

SCHEDULE 3

Article 22

Evidence and Information

1. The Governor must take such steps as he considers appropriate to cooperate with any international investigation relating to the funds, economic resources or financial transactions of—

(a) a designated person;

(b) a person owned or controlled by a designated person; or

(c) a person acting on behalf of or at the direction of a designated person.

2.—(1) A relevant institution must as soon as practicable inform the Governor if it knows or suspects that a relevant person—

(a) is a designated person;

(b) is a person owned or controlled by a designated person;

(c) is a person acting on behalf of or at the direction of a designated person; or

(d) has committed an offence under article 9(2), 10(2), 12 or 14(6) or (7).

(2) A relevant institution, where it informs the Governor under sub-paragraph (1), must state—

(a) the information or other matter on which the knowledge or suspicion is based;

(b) any information it holds about the relevant person by which the person can be identified; and

(c) the nature and amount or quantity of any funds or economic resources held by the relevant institution for the relevant person since this Order came into force.

(3) A relevant institution that fails to comply with a requirement in paragraph (1) or (2) is guilty of an offence.

(4) In this article, "relevant person" means—

(a) a customer of the institution;

(b) a person who has been a customer of the institution since this Order came into force; or

(c) a person with whom the institution has had dealings in the course of its business since then.

3.—(1) The Governor may request any person in or resident in the Territory to give to him any information or to produce to him any document in his possession or control which he may require for the purpose of—

(a) securing compliance with or detecting evasion of this Order;

(b) obtaining evidence of the commission of an offence under this Order;

(c) establishing the nature and amount or quantity of any funds or economic resources owned, held or controlled by—

(i) a designated person; or

(ii) a person who is the subject of a direction under article 13; or

(d) establishing the nature of any financial transactions entered into by any such person.

(2) This includes power to—

(a) take copies of or extracts from any document so produced;

(b) request any person producing a document to give an explanation of it; and

(c) where that person is a body corporate, request any person who is a present or past officer of, or employee of, the body corporate to give such an explanation.

(3) Any person to whom a request is made must comply with it within such time and in such manner as may be specified in the request.

(4) Nothing in this paragraph shall be taken to require any person who has acted as counsel or solicitor for any person to give or produce any privileged information or document in his possession in that capacity.

4. A person is guilty of an offence if he—

(a) without reasonable excuse refuses or fails within the time and in the manner specified (or, if no time has been specified, within a reasonable time) to comply with any request made under paragraph 3;

(b) knowingly or recklessly gives any information or produces any document which is false in a material particular in response to such a request;

(c) otherwise wilfully obstructs the Governor in the exercise of his powers under this Schedule; or

(d) with intent to evade the provisions of this Schedule, destroys, mutilates, defaces, conceals or removes any document.

5. Where a person is convicted of an offence under paragraph 4(a), the court may make an order requiring him, within such period as may be specified in the order, to give the requested information or to produce the requested document.

6.—(1) The Governor may only disclose any information given or document produced under this Schedule (including any copy or extract made of any such document)—

(a) 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 State of Jersey;

(v) the Government of any British overseas territory;

(b) for the purpose of giving assistance or cooperation, pursuant to the Security Council Resolution, to—

(i) any organ of the United Nations;

(ii) any person in the service of the United Nations, the Council of the European Union, the European Commission or the Government of any country;

(c) with a view to instituting, or otherwise for the purposes of, any proceedings—

(i) in the Territory, for an offence under this Order; or

(ii) in the United Kingdom, any of the Channel Islands, the Isle of Man or any British overseas territory, for an offence under a similar provision in any such jurisdiction; or

(d) to any third party, with the consent of a person who, in his own right, is entitled to the information or to the possession of the document.

(2) In this paragraph, "in his own right" means not merely in the capacity as a servant or agent of another person.

7. In this Schedule, "person" includes an entity.

8. An action done under this Schedule is not to be treated as a breach of any restriction imposed by statute or otherwise.

SCHEDULE 4

Article 2

Prohibited luxury goods referred to in Article 2

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, hand-woven 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

EXPLANATORY NOTE

(This note is not part of the Order)

This Order, made under section 1 of the United Nations Act 1946, gives effect in the territories listed in Schedule 1 to Resolution 1718(2006) adopted by the Security Council of the United Nations on 14th October 2006.

The Security Council has decided that all states are to take certain measures against the Democratic People's Republic of Korea (North Korea) following its conduct of a test of a nuclear weapon. The measures include a ban on supply to North Korea of certain arms and sensitive goods and technologies related to North Korea's nuclear weapon, ballistic missile and other weapons of mass destruction programmes ("restricted goods"), a ban on related assistance, a ban on procurement of restricted goods from North Korea, a ban on supply to North Korea of prohibited luxury goods, and an asset freeze on, and prohibition on making funds available to, designated persons and entities. A Committee of the Security Council, established under the Security Council Resolution, or the Security Council, may designate further banned goods and persons or entities subject to the asset freeze.

The substantive provisions include the following:

Article 3 of this Order requires the Governor of each territory to maintain a list of persons and entities designated by the Committee of the Security Council ("designated persons") as subject to the asset freeze, and to publish the list in the official gazette of the Territory, as well as a list of restricted goods and prohibited luxury goods as necessary.

Article 4 makes it a criminal offence for any person to supply restricted or prohibited luxury goods without a licence.

Article 5 prohibits the exportation of restricted or prohibited luxury goods and makes it a criminal offence to contravene this prohibition.

Article 6 prohibits the provision of technical or financial assistance relating to restricted goods and makes it a criminal offence to contravene this prohibition.

Article 7 prohibits the use of ships, aircraft and vehicles to carry restricted goods or prohibited luxury goods to North Korea, and makes it a criminal offence to contravene this prohibition.

Article 8 prohibits the procurement of restricted goods from North Korea, and makes it a criminal offence to contravene this prohibition.

Article 9 prohibits any dealing with funds, financial assets and economic resources of designated persons, and makes it a criminal offence to contravene this prohibition.

Article 10 prohibits making funds, financial assets and economic resources available to designated persons, and makes it a criminal offence to contravene this prohibition.

Article 12 makes it a criminal offence to circumvent the prohibitions in articles 9 and 10 or to facilitate the commission of an offence relating to these prohibitions.

Article 13 gives the Governor power to direct that a person or entity suspected of being controlled or directed, or in the case of an entity, owned, controlled or directed, by a designated person, or of acting on behalf of or at the direction of a designated person is to be treated for the purposes of the prohibitions and offences as if he or it were a designated person. It also creates an appeal process in respect of any such direction.

Article 14 provides a licensing procedure to enable, for humanitarian purposes, certain dealings or activities to be exempted from the asset freeze prohibitions.

Penalties applying upon conviction for offences under the Order are provided in article 24.

Schedule 3 makes provision about information and evidence.

Schedule 4 contains the list of prohibited luxury goods.

STATUTORY INSTRUMENTS

2006 No. 3327

UNITED NATIONS

The North Korea (United Nations Measures) (Overseas Territories) Order 2006

£3.50