

**EXPLANATORY MEMORANDUM TO  
THE EXPORT CONTROL (NORTH KOREA) ORDER 2007  
2007 No. 1334**

1. This explanatory memorandum has been prepared by the Department of Trade and Industry and is laid before Parliament by Command of Her Majesty.

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

**2. Description**

2.1. The Export Control (North Korea) Order 2007 (“the Order”) implements certain European and other international obligations of the UK in respect of trade with the Democratic People’s Republic of Korea (North Korea). To this end it amends the Export of Goods, Transfer of Technology and Provision of Technical Assistance (Control) Order 2003 (“the 2003 Order”) and the Trade in Controlled Goods (Embargoed Destinations) Order 2004 (“the Trade Order”) and makes provision with regard to Council Regulation (EC) No 329/2007 of 27 March 2007 (“the 2007 Regulation”), which imposes certain restrictive measures in respect of North Korea.

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

3.1. The Department is today laying before Parliament the Export Control (North Korea) Order 2007.

3.2. The Department considers that in order to give effect to our European and other international obligations in respect of North Korea, it is necessary for this Order to come into force as soon as possible thereby breaching the “21 day rule”. In particular, the 2007 Regulation, which is directly applicable, came into force immediately on its publication in the Official Journal on 29 March 2007. It needs the offences and licensing provisions created by the Order to make it fully effective in the UK.

3.3. There are two drafting matters likely to be of special interest to the Joint Committee. The first was raised in its Tenth Report of the 2006-2007 session which discussed the North Korea (United Nations Measures) (Overseas Territories) Order 2006 (S.I. 2006/ 3327) (“the 2006 Order”). The 2006 Order implemented the same United Nations Security Council Resolution as this Order but for the Overseas Territories. In doing so, it used a list of luxury goods derived from the draft of the 2007 Regulation that was then circulating.

3.4. The Joint Committee commented that the list lacked “the precision the Committee would expect to see in offence related provisions”. This is no less true of the list in the final version of the Regulation. The issue is how to deal with this imprecision when implementing the Regulation. The Joint Committee will appreciate that Regulations are directly applicable. There is not the same scope as with

Directives for member States to decide how exactly they will implement. Consequently, an approach which set out an alternative, precise list of luxury goods would risk breaching Community law.

3.5. An alternative would be to take a similar approach to that recommended to the Foreign and Commonwealth Office in the Joint Committee's Report: we might empower the Secretary of State to give a ruling in individual cases as to whether particular goods were within the scope of the Regulation or not. We have preferred not to do so. The Department already processes "rating enquiries" – that is enquiries about whether particular goods need an export licence or not. There is no express statutory power in this regard, nor, in our view, is one necessary. We will provide a similar service in respect of luxury goods bound for North Korea. Admittedly, responses to rating enquiries can only be advisory. The final arbiter in these cases is the court. However, our concern is that allowing the Secretary of State to make definitive rulings could well amount to sub-delegation that is not permitted by our enabling powers.

3.6. The second drafting issue to which we wish to draw the Joint Committee's attention arises in article 6(3) of the Order. The general presumption is, of course, that legislation is concerned with conduct taking place in the territory to which it extends. We take the view that Article 16 of the Regulation overrides that presumption in this case. However, as might be expected, the enabling powers in the Export Control Act 2002 are quite limited in the area of extra-territorial offences. In particular, we cannot use the powers in the Export Control Act 2002 to create offences that cover conduct taking place on aircraft or vessels under UK jurisdiction (unless the offences are committed by UK nationals or companies). Consequently we cannot apply the 10 year maximum period of imprisonment available under the Export Control Act 2002 in all circumstances where the Regulation applies and are limited to the maximum sentences provided by the European Communities Act 1972. "United Kingdom person" is defined in section 11(1) of the Export Control Act 2002 and we rely on section 11 of the Interpretation Act 1978.

#### **4. Legislative Background**

4.1. United Nations Security Council Resolution 1718 (2006) ("UNSCR 1718") was adopted on 14th October 2006. Among other things, this imposes certain restrictions on trade with the North Korea in response to its test of a nuclear weapon on 9th October 2006. The response to UNSCR 1718 has been co-ordinated at European level. The Council of the European Union adopted a Common Position (Council Common Position 2006/795/CFSP of 20th November 2006 concerning restrictive measures against the Democratic People's Republic of Korea – "the Common Position"). The 2007 Regulation implements those elements of the Common Position that fall within Community competence.

#### **5. Extent**

5.1. This instrument applies to all of the United Kingdom.

## **6. European Convention on Human Rights**

6.1. As this instrument is subject to negative instrument resolution procedure and does not amend primary legislation, no statement is required.

## **7. Policy Background**

7.1. The government's policy is to make provision for the arms embargo contained in the Common Position and to give full effect to the 2007 Regulation.

7.2. To this end, by amending existing legislation, the Order ensures that the controls on trade in military equipment that apply in respect of North Korea are commensurate with the controls applying in respect of other embargoed destinations.

7.3. The Order also provides for the national offences, penalties and licensing provisions that are required to supplement Articles 2–5 of the 2007 Regulation. These provisions are concerned with prohibiting:

- trade with North Korea in specified dual-use items that could be used in nuclear weapons and similar WMD programmes;
- technical and financial assistance to North Korea regarding such dual-use items as well as military equipment;
- trade with North Korea in specified luxury goods.

7.4. The Order is also in line with the general policy to implement EU Legislation in a timely and appropriate manner.

## **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. There is no impact on the public sector.

## **9. Contact**

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