

Island of



Guernsey

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The North Korea (Restrictive Measures) (Guernsey) Ordinance, 2007

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THE STATES LEGISLATION SELECT COMMITTEE, in exercise of the powers conferred on the States by sections 1 and 4 of the European Communities (Implementation) (Bailiwick of Guernsey) Law, 1994^a and on the Committee by Article 66(3) of the Reform (Guernsey) Law, 1948^b, and all other powers enabling the States in that behalf, hereby orders:

Application of EC Regulation.

1. Council Regulation (EC) No. 329/2007 of the 27th March, 2007 concerning restrictive measures against the Democratic People's Republic of Korea^c in view of the situation in North Korea ("**the EC Regulation**") is applicable in Guernsey in all respects as if Guernsey, subject to the modifications in section 7, were a Member State.

Prohibition of certain transactions etc.

2. (1) Any person who, except under the authority of a licence granted by the Policy Council under this Ordinance, directly or indirectly infringes any of the following prohibitions in the EC Regulation -

- (a) Article 2(1)(a), prohibiting the sale, supply, transfer or export, directly or indirectly, of the goods and technology, including software, listed in Annex 1 to the EC Regulation, whether or not originating in the Community, to any natural or legal person, entity or body in, or for use in North Korea,

^a Order in Council No. III of 1994.

^b Ordres en Conseil Vol. XIII, p. 288 (there are amendments not material to this Ordinance).

^c OJ L 88, 29.03.2007, p.1.

- (b) Article 2(1)(b), prohibiting the participation, knowingly and intentionally in activities the object or effect of which is to circumvent the prohibition in Article 2(1)(a),
- (c) Article 2(3), prohibiting the purchase, import or transport of goods and technology listed in Annex 1 to the EC Regulation, from North Korea, whether the item concerned originates or not in North Korea,
- (d) Article 3(1)(a), prohibiting the provision, directly or indirectly, of technical assistance related to the goods and technology listed in the EU Common List of Military Equipment^d or in Annex I to the EC Regulation, and to the provision, manufacture, maintenance and use of any goods so listed, to any person, entity or body in, or for use in North Korea,
- (e) Article 3(1)(b), prohibiting the provision, directly or indirectly, of financing or financial assistance related to goods and technology listed in the EU Common List of Military Equipment or Annex I to the EC Regulation, including in particular grants, loans and export credit insurance, for any sale, supply, transfer or export of such items or for any provision of related technical assistance to any natural or legal person, entity or body in, or for use in, North Korea,
- (f) Article 3(1)(c), prohibiting the participation,

^d The current version of the list is set out in O.J. L88, 29.03.2007, p.58

knowingly and intentionally, in activities, the object or effect of which is to circumvent the prohibitions of Article 3(1)(a) or (b),

- (g) Article 4(a), prohibiting the sale, supply, transfer or export, directly or indirectly, of luxury goods as listed in Annex III to the EC Regulation to North Korea,
- (h) Article 4(b), prohibiting the participation, knowingly and intentionally, in activities the object of which is to circumvent the prohibition in Article 4(a),

is guilty of an offence.

(2) Any person who infringes, or causes or permits any infringement of Article 6(2) or 6(3), or 10(1) of the EC Regulation is guilty of an offence.

Licences.

3. (1) Authorisation for the transactions or other activities set out in section 2, as provided for in Article 5 of the EC Regulation, shall in Guernsey be by way of a licence in writing granted by the Policy Council, in accordance with the provisions of Article 5(3) of that EC Regulation.

- (2) If, for the purpose of obtaining a licence, any person -
 - (a) makes any statement or furnishes any document or information which to his knowledge is false in a material particular, or
 - (b) recklessly makes any statement or furnishes a document or information which is false in a material

particular,

he is guilty of an offence; and any licence granted in connection with the application for which the false statement was made or the false document or information furnished is void as from the time it was granted.

(3) Any person who, having acted under the authority of a licence granted under this section, fails to comply with any of the requirements or conditions to which the licence is subject is guilty of an offence, unless -

- (a) the licence had been previously modified by the Policy Council without that person's consent, and
- (b) the alleged failure to comply would not have been a failure had the licence not been so modified.

Furnishing of false information etc.

4. A person who in purported compliance with Article 10 of the EC Regulation intentionally furnishes any false information, document or explanation, or recklessly furnishes any information, document or explanation which is false, is guilty of an offence.

Penalties and proceedings.

5. (1) A person guilty of an offence under section 2, 3, 4 or paragraph 2(b) or 2(c) of the Schedule,

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 three months or to a fine not exceeding level 5 on the uniform scale or to both.

(2) A person guilty of an offence under paragraph 2(a) or 3(2) of the Schedule is liable on summary conviction to imprisonment for a term not exceeding three months, to a fine not exceeding level 5 on the uniform scale, or to both.

(3) Where a body corporate is guilty of an offence under this Ordinance, and the offence is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate, or any person purporting to act in any such capacity, he as well as the body corporate is guilty of the offence and may be proceeded against and punished accordingly.

(4) Where the affairs of a body corporate are managed by its members, subsection (3) applies in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.

Certain provisions of customs and excise Law applicable.

6. (1) Section 55 of the Customs and Excise (General Provisions) (Bailiwick of Guernsey) Law, 1972^e applies to the detention of a person for an offence under section 2 or 3 as it applies to the detention of a person for an offence under the customs Laws or excise Laws.

(2) Sections 61 to 65 of the Customs and Excise (General Provisions) (Bailiwick of Guernsey) Law, 1972 apply in relation to offences, penalties and proceedings for offences under this Ordinance as they apply to offences, penalties and proceedings for offences under the customs Laws or excise

^e Ordres en Conseil Vol. XXIII, p. 573; Vol. XXIV, p. 87; Vol. XXXI, p. 278; No. XIII of 1991; No. X of 2004 and Ordinance No. XXXII of 2005.

Laws.

Information.

7. The Schedule has effect in order to facilitate the obtaining, by or on behalf of the Policy Council, of information for the purpose of ensuring compliance with the EC Regulation.

Modification of Regulation.

8. The EC Regulation in its application to Guernsey shall be modified as follows -

- (a) in Article 5(1), for the words "the competent authorities of a Member State as indicated in the websites listed in Annex II" substitute "the Policy Council", and for "The Member States that received the request" substitute "The Policy Council",
- (b) in Article 5(2), for the words "The Member State concerned" substitute "The Policy Council",
- (c) in Article 5(3), for the words "The competent authorities of the Member States as indicated in the websites listed in Annex II" substitute "The Policy Council",
- (d) in Article 7(1) -
 - (i) for the words "the competent authorities of the Member States, as indicated in the websites listed in Annex II" substitute "the Policy Council", and
 - (ii) for the words "the Member State concerned" substitute "the Policy Council",

- (e) in Article 7(2) -
 - (i) for the words "the competent authorities of the Member States, as indicated in the websites listed in Annex II" substitute "the Policy Council", and
 - (ii) for the words "the Member State" substitute "the Policy Council",
- (f) in Article 7(3), for the words "The Member States concerned" substitute "The Policy Council",
- (g) in Article 8, for the words "the competent authorities of the Member States, as indicated in the websites listed in Annex II" substitute "the Policy Council",
- (h) in Article 8(d), for the words "the Member State concerned" substitute "Guernsey",
- (i) in Article 8(e), for the words "by the Member State" substitute "by the Policy Council",
- (j) in Articles 2(1)(a) and 9(1) for the words "the Community" substitute "Guernsey",
- (k) in Article 10(1)(a), for the words "the competent authorities of the Member States, as indicated in the websites listed in Annex II where they are resident or located" substitute "the Policy Council" and for "the relevant Member States" substitute "the Policy Council",
- (l) in Article 10(1)(b), after the words "cooperate with" insert

“the Policy Council and”, and

- (m) in Article 10(2), for the words "the Member States concerned" substitute "the Policy Council".

Interpretation.

9. (1) In this Ordinance, unless the context otherwise requires -

"**contravention**" includes failure to comply, and cognate expressions shall be construed accordingly,

"**customs Laws**" and "**excise Laws**" mean those provisions of the Customs and Excise (General Provisions) (Bailiwick of Guernsey) Law 1972 and any other enactment for the time being in force relating to customs or, as the case may be, excise,

"**EU Common List of Military Equipment**" means the EU Common List of Military Equipment as amended from time to time^f.

"**EC Regulation**" has the meaning given by section 1,

"**Guernsey**" means the Bailiwick of Guernsey apart from Alderney and Sark,

"**Policy Council**" means the States of Guernsey Policy Council,

"**Schedule**" means the schedule to this Ordinance, and

"**uniform scale**" means the uniform scale of fines for the time being in force under the Uniform Scale of Fines (Bailiwick of Guernsey) Law,

^f The current version of the list is set out in O.J. L88, 29.03.2007, p.58

1989^g, as amended,

and other terms used in this Ordinance and the EC Regulation shall have the same meaning as in the EC Regulation.

(2) Any reference in this Ordinance to an enactment is a reference thereto as from time to time amended, re-enacted (with or without modification), extended or applied.

(3) References in this Ordinance to the EC Regulation are references to the EC Regulation as amended from time to time in accordance with the procedure set out in Article 13 of the EC Regulation.

Citation and commencement.

10. (1) This Ordinance may be cited as the North Korea (Restrictive Measures) (Guernsey) Ordinance, 2007.

(2) This Ordinance shall come into force on 12th June, 2007.

^g Ordres en Conseil Vol. XXXI, p. 278.

SCHEDULE

Section 7

INFORMATION

1. (1) The Policy Council (or any person authorised by it for that purpose either generally or in a particular case) may request any person in or resident in Guernsey to furnish or produce to it (or, as the case may be, to that authorised person) any information or document in his possession or control which the Policy Council (or, as the case may be, that authorised person) may require for the purpose of ensuring compliance with the EC Regulation; and a person to whom such a request is made shall comply with it within such time and in such manner as may be specified in the request.

(2) No obligation of secrecy or confidence or other restriction on the disclosure of information to which any person may be subject, whether arising by statute, contract or otherwise, is contravened by reason of the disclosure by that person or by any of his officers, servants or agents of any information or document in compliance with this Schedule.

(3) Nothing in this Schedule compels the production by an advocate or other legal adviser of a communication subject to legal professional privilege; but an advocate or other legal adviser may be required to give the name and address of any client.

(4) Where a person is convicted of an offence under this Schedule of failing to furnish any information or produce any document, the court may make an order requiring him, within such period as may be specified in the order, to furnish the information or produce the document.

(5) The power conferred by this paragraph to request any person to produce documents shall include power to take copies of or extracts from any document so produced and to request that person or, where that person is a body

corporate, any other person who is a present or past officer of, or is employed by, the body corporate, to provide an explanation of any such document.

2. A person who -

- (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 a request made under this Schedule,
- (b) intentionally furnishes any false information, document or explanation, or recklessly furnishes any information, document or explanation which is false, to any person exercising his powers under this Schedule, or
- (c) with intent to evade the provisions of this Schedule, destroys, mutilates, defaces, secretes or removes any document,

is guilty of an offence.

3. (1) No information furnished or document produced (including any copy or extract made of any document produced) by any person in pursuance of a request made under this Schedule 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 subparagraph

but such consent may instead be given by any person who is entitled to that information or to possession of that document in his own right,

- (b) to any person who would have been empowered under this Schedule to request that it be furnished or produced or any person holding or acting in any office under or in the service of the Crown in respect of Guernsey,
- (c) on the authority of the Policy Council, to the European Commission or to any of the competent authorities listed in Annex II to the EC Regulation, for the purpose of assisting the Commission or that competent authority to ensure compliance with the EC Regulation, or
- (d) for the purposes of the investigation, prevention or detection of crime or with a view to the instigation of, or otherwise for the purposes of, any criminal proceedings.

(2) A person who without reasonable excuse discloses any information or document in contravention of subparagraph (1) is guilty of an offence.