

ORDINANCE OF THE STATES OF ALDERNEY

ENTITLED

The North Korea (Restrictive Measures) (Alderney) Ordinance, 2007 *

[CONSOLIDATED TEXT]

NOTE

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* Alderney Ordinance No. IX of 2007; as amended by the North Korea (Restrictive Measures) (Alderney) (Amendment) Ordinance, 2013 (Alderney Ordinance No. VI of 2013); the North Korea (Restrictive Measures) (Alderney) (Amendment) Ordinance, 2014 (Alderney Ordinance No. IX of 2014); the Sanctions Ordinances (Amendment) (Alderney) Ordinance, 2016 (Alderney Ordinance No. VIII of 2016). This Ordinance has been repealed by the North Korea (Restrictive Measures) (Alderney) Ordinance, 2017 (Alderney Ordinance No. VIII of 2007).

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(Made on 19th September, 2007.)

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

THE STATES OF ALDERNEY, in exercise of the powers conferred on them by sections 1 and 4 of the European Communities (Implementation) (Bailiwick of Guernsey) Law, 1994^a and all other powers enabling them in that behalf, hereby order: –

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^b in view of the situation in North Korea ("**the EC Regulation**") is applicable in Alderney in all respects as if Alderney, subject to the modifications in section 7, were a Member State.

[Infringement of EC Regulation.

2. A person who infringes, or causes or permits any infringement of, any prohibition in, or requirement of, the EC Regulation is guilty of an offence.]

NOTE

Section 2 was substituted by the North Korea (Restrictive Measures) (Alderney) (Amendment) Ordinance, 2013, section 1(2), with effect from 19th June, 2013.

Licences.

a Order in Council No. III of 1994.

b OJ L 88, 29.03.2007, p. 1.

3. [(1) Authorisation for any of the derogations provided for under the EC Regulation shall in Alderney be by way of a licence in writing granted by the [Committee] in accordance with the relevant provisions of the EC Regulation in question.]

- (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 [Committee] 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.

NOTES

In section 3,

subsection (1) was substituted by the North Korea (Restrictive Measures) (Alderney) (Amendment) Ordinance, 2013, section 1(3), with effect from 19th June, 2013.

the word "Committee" in square brackets, wherever occurring, was substituted by the Sanctions Ordinances (Amendment) (Alderney) Ordinance, 2016, section 1(2), Schedule, paragraph 11, with effect from 1st May, 2016.

[Appeals against decisions of [Committee].

3A. (1) A person aggrieved by a decision of the [Committee] made under the EC Regulation in its application to Alderney, or a decision of the [Committee] not to exercise any of its powers under the EC Regulation, may appeal to the Ordinary Court against that decision on the grounds that –

- (a) the decision was *ultra vires* or there was some other error of law,
- (b) the decision was unreasonable,
- (c) the decision was made in bad faith,
- (d) there was a lack of proportionality, or
- (e) there was a material error as to the facts or as to the procedure.

(2) On an appeal under this section the Court may –

- (a) set the decision of the [Committee] aside and, if the Court considers it appropriate to do so, remit the matter to the [Committee] with such directions as the Court thinks fit, or

(b) confirm the decision, in whole or in part.

(3) On an appeal under this section the Court may, upon the application of the appellant, and on such terms as the Court thinks just, suspend or modify the operation of the decision in question, pending the determination of the appeal.]

NOTES

Section 3A was inserted by the North Korea (Restrictive Measures) (Alderney) (Amendment) Ordinance, 2013, section 1(4), with effect from 19th June, 2013.

In section 3A, the word "Committee" in square brackets, wherever occurring, was substituted by the Sanctions Ordinances (Amendment) (Alderney) Ordinance, 2016, section 1(2), Schedule, paragraph 11, with effect from 1st May, 2016.

Furnishing of false information etc.

4. A person who in purported compliance with [any article] 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.

NOTE

In section 4, the words in square brackets were substituted by the North Korea (Restrictive Measures) (Alderney) (Amendment) Ordinance, 2013, section 1(5), with effect from 19th June, 2013.

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^d 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 Laws.

Information.

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

NOTE

In section 7, the word in square brackets was substituted by the Sanctions Ordinances (Amendment) (Alderney) Ordinance, 2016, section 1(2), Schedule, paragraph 11, with effect from 1st May, 2016.

^d 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.

[Modification of Regulation.]

8. The EC Regulation in its application to Alderney is modified as follows –

- (a) Articles 1.8 and 15 shall not apply,
- (b) references to the competent authorities of or in the Member States shall be construed as references to the [Committee],
- [(c) references to the obligation of a Member State to inform, notify, consult or present a request shall be construed as references to the obligation of the [Committee] to inform, notify, consult or present a request to one of Her Majesty's Principal Secretaries of State, and any reference to the giving or receipt of views shall be construed as the giving of views by or the receipt of views from one of Her Majesty's Principal Secretaries of State],
- (d) subject to paragraph (e), references to the Member State or the Member State concerned shall be construed as references to the [Committee],
- (e) references to the Member State concerned shall be construed as including Alderney where such references concern the enforcement of decisions or public policy,
- (f) references to the Union shall be construed as including Alderney,

- (g) references to the territory of the Union and its airspace shall be construed as including Alderney, its airspace and the territorial waters adjacent thereto,
- [(h) references to ports of Member States shall be construed as including any port in Alderney, and references to a vessel flying the flag of a Member State as including a Alderney ship and a Alderney fishing vessel,]
- (h) references to ports of Member States shall be construed as including any port in Alderney,
- (i) references to competent customs authorities of Member States shall be construed as including the Chief Officer of Customs and Excise,
- (j) references to nationals of Member States or from the territories of Member States shall be construed as including any person in Alderney or from Alderney, [...]
- (k) references to the law of a Member State shall be construed as including the law of Alderney[, and
- (l) the inclusion of any natural or legal person, group or entity in the lists contained in any Annex to the EC Regulation shall be subject to any annulment of the EC Regulation in its application to that person group or entity by the Court of Justice of the European Union and having effect in the European Union for the time being.]]

NOTES

Section 8 was substituted by the North Korea (Restrictive Measures) (Alderney) (Amendment) Ordinance, 2013, section 1(6), with effect from 19th June, 2013.

In section 8,

the word "Committee" in square brackets, wherever occurring, was substituted by the Sanctions Ordinances (Amendment) (Alderney) Ordinance, 2016, section 1(2), Schedule, paragraph 11, with effect from 1st May, 2016;

first, paragraph (c) and, second, paragraph (h) were substituted, third, the word omitted in square brackets after paragraph (j) was repealed and, fourth, the punctuation in square brackets at the end of paragraph (k) was substituted and paragraph (l) and the word immediately after paragraph (k) were inserted by the North Korea (Restrictive Measures) (Alderney) (Amendment) Ordinance, 2014, section 1(a), respectively sub-paragraph (i), sub-paragraph (ii), sub-paragraph (iii) and sub-paragraph (iv), with effect from 16th April, 2014.

Designation of Financial Intelligence Service.

8A. The Financial Intelligence Service is designated for the purpose of reporting suspicions under Article 11a.1(d) of the EU Regulation.]

NOTE

Section 8A was inserted by the North Korea (Restrictive Measures) (Alderney) (Amendment) Ordinance, 2014, section 1(b), with effect from 16th April, 2014.

Interpretation.

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

["**advocate**" means an advocate of the Royal Court of Guernsey,]

["**Bailiff**" includes the Bailiff, the Deputy Bailiff, a Lieutenant Bailiff,

a Juge-Délegué and a Judge of the Royal Court,]

["**Chief Officer of Customs and Excise**" has the meaning given by section 1(1) of the Customs and Excise (General Provisions) (Bailiwick of Guernsey) Law, 1972,]

["**Committee**" means the States of Guernsey Policy & Resources Committee,]

"**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,

["**enactment**" includes a Law, an Ordinance and any subordinate legislation,]

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

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

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

["**Judge of the Royal Court**" means the office of that name

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

established by section 1 of the Royal Court (Reform) (Guernsey) Law, 2008,]

["**Ordinary Court**" means the Royal Court of Guernsey sitting as an Ordinary Court and for the purposes of this Law the Royal Court is constituted by the Bailiff sitting unaccompanied by the Jurats,]

[...]

"**Schedule**" means the schedule to this Ordinance, [...]

["**subordinate legislation**" means any regulation, rule, order, notice, rule of court, resolution, scheme, warrant, byelaw or other instrument made under any enactment and having legislative effect, and]

"**uniform scale**" means the uniform scale of fines for the time being in force under the Uniform Scale of Fines (Alderney) Law, 1989^f, 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.

^f Ordres en Conseil Vol. XXXI, p. 306.

NOTES

In section 9,

the word omitted in square brackets was repealed, and the definitions in subsection (1) of the expressions "advocate", "Bailiff", "Chief Officer of Customs and Excise", "enactment", "Judge of the Royal Court", "Ordinary Court" and "subordinate legislation" were inserted, by the North Korea (Restrictive Measures) (Alderney) (Amendment) Ordinance, 2013, section 1(7), respectively paragraph (a) and paragraph (b), with effect from 19th June, 2013;

the definition of the expression "Committee" in subsection (1) was inserted and the words omitted in square brackets immediately after the definition of the expression "Ordinary Court" therein were repealed by the Sanctions Ordinances (Amendment) (Alderney) Ordinance, 2016, respectively section 1(1)(a), Schedule, paragraph 11 and section 1(1)(b), Schedule, paragraph 11, with effect from 1st May, 2016.

Citation and commencement.

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

(2) This Ordinance shall come into force on 19th September, 2007.

SCHEDULE
INFORMATION

Section 7

1. (1) The [Committee] (or any person authorised by it for that purpose either generally or in a particular case) may request any person in or resident in Alderney 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 [Committee] (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 Alderney,
- (c) on the authority of the [Committee], 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.

NOTE

In the Schedule, the word "Committee" in square brackets, wherever occurring, was substituted by the Sanctions Ordinances (Amendment) (Alderney) Ordinance, 2016, section 1(2), Schedule, paragraph 11, with effect from 1st May, 2016.
