

EXPLANATORY STATEMENT

Select Legislative Instrument 2009 No. 182

Issued by the Authority of the Minister for Foreign Affairs

Charter of the United Nations Act 1945

*Charter of the United Nations (Sanctions – Democratic People’s Republic of Korea)
Amendment Regulations 2009 (No. 1)*

The purpose of the Regulations is to update the *Charter of the United Nations (Sanctions – Democratic People’s Republic of Korea) Regulations 2008* (the Principal Regulations) in order to bring them into conformity with decisions of the United Nations Security Council (UNSC).

Section 6 of the *Charter of the United Nations Act 1945* (the Act) provides that the Governor-General may make regulations for, in relation to, and giving effect to decisions that the United Nations Security Council has made under Chapter VII of the Charter of the United Nations which Article 25 of the Charter requires Australia to carry out, in so far as those decisions require Australia to apply measures not involving the use of armed force.

Paragraph 9 of Resolution 1874 extends the prohibition contained in UNSC Resolution 1718 on the *procurement from the DPRK* of certain specified military goods, as well as the procurement from the DPRK of technical training, advice, services or assistance related to the provision, manufacture, maintenance or use of such goods, to all arms and related matériel. It also requires States to prohibit financial transactions related to the provision, manufacture, maintenance or use of such goods.

Paragraph 10 of Resolution 1874 extends the prohibition contained in Resolution 1718 on the *sale, supply or transfer to the DPRK* of certain specified military goods, as well as the provision to the DPRK of technical training, advice, services or assistance related to the provision, manufacture, maintenance or use of such goods, to arms and related matériel, except for small arms and light weapons and their related matériel. It also requires States to prohibit financial transactions related to the provision, manufacture, maintenance or use of the prohibited goods and to notify the Committee established by Resolution 1718 at least five days prior to the sale, supply or transfer of small arms or light weapons to the DPRK.

The Regulations give effect to the obligations in paragraphs 9 and 10 firstly by replacing the term “military goods”, defined in the Principal Regulations to correspond to the military goods specified in Resolution 1718, with “arms and related matériel”. For the avoidance of doubt, the term “arms and related matériel” encompasses all goods included in the definition of “military goods” in the Principal Regulations.

This has the effect of expanding the scope of export sanctioned goods and import sanctioned goods defined respectively in regulations 5 and 7 of the Principal

Regulations to correspond with the scope required respectively by paragraphs 10 and 9 of Resolution 1874. Financial transactions related to the provision, manufacture, maintenance or use of arms and related matériel are included as a “sanctioned service” in Regulation 8. Finally, the Regulations provide for the supply, sale or transfer to the DPRK of small arms or light weapons, or the provision to the DPRK of sanctioned services related to small arms or light weapons, to be permissible upon the authorisation of the Minister for Foreign Affairs. The Minister must, prior to granting a permit, notify the Committee established under Resolution 1718 of his or her intention to do so and wait five working days from the date of this notification before granting the permit.

Paragraph 17 of Resolution 1874 prohibits the provision of bunkering services (such as provision of fuel or supplies) to DPRK vessels where there is a reasonable ground to believe they are carrying items subject to sanctions prohibitions, unless the provision of such services is necessary for humanitarian purposes or after the cargo has been inspected, and seized and disposed of if necessary.

The Regulations give effect to this obligation by prohibiting the provision of bunkering services to DPRK vessels in Regulation 11A. The Regulations then provide for the provision of bunkering services to be permissible either by the granting of a permit by the Minister for Foreign Affairs under Regulation 14A or by the exceptions contained in Regulation 11A(3). The Minister must not authorise the provision of such services if he or she had reasonable grounds for believing that the vessel was carrying items subject to sanctions prohibitions, except on the grounds provided for in Paragraph 17 of Resolution 1874.

Paragraph 23 of Resolution 1874 obliges States to prohibit the supply, sale or transfer to the DPRK, and procurement from the DPRK, of goods listed in specified Information Circulars of the International Atomic Energy Agency (INFCIRC/254/Rev.9/Part 1a, dated 7 November 2007, titled “Communication Received from the Permanent Mission of Brazil regarding Certain Member States’ Guidelines for the Export of Nuclear Material, Equipment and Technology” and INFCIRC/254/Rev.7/Part 2a, dated 20 March 2006, titled “Communications Received from Certain Member States Regarding Guidelines for Transfers of Nuclear-related Dual-use Equipment, Materials, Software and Related Technology”). The Regulations give effect to this obligation by providing that goods mentioned in these documents are export sanctioned goods in Regulation 5 and import sanctioned goods in Regulation 7.

The Regulations ensure that those aspects of the sanctions imposed by Resolution 1874 which cannot be implemented under existing regulations are adequately implemented into domestic law.

This Resolution was adopted under Article 41 of Chapter VII of the Charter of the United Nations and the measures are binding on Australia pursuant to Article 25 of that Charter.

The Act specifies no conditions that need to be satisfied before the power to make the proposed Regulations may be exercised.

Interdepartmental consultation was undertaken during the preparation of the proposed Regulations. No public consultation was undertaken under section 17 of the *Legislative Instruments Act 2003* before this instrument was made as the instrument was required as a matter of urgency, in accordance with section 18 of the *Legislative Instruments Act 2003*, to comply with reporting requirements mandated by the United Nations Security Council.

Authority: Section 6 of the
Charter of the United Nations Act 1945

Annex

Charter of the United Nations (Sanctions – Democratic People’s Republic of Korea) Amendment Regulations 2009 (No. 1)

Details of the Regulations are as follows:

Regulation 1 provides that the name of the Regulations is the *Charter of the United Nations (Sanctions — Democratic People’s Republic of Korea) Amendment Regulations 2009 (No. 1)*.

Regulation 2 provides for the commencement of the Regulations on the day after they are registered.

Regulation 3 provides that Schedule 1 amends the *Charter of the United Nations (Sanctions — Democratic People’s Republic of Korea) Regulations 2008*.

Schedule 1 Amendments

Item [1] amends regulation 4 to insert a definition for “arms or related matériel” in order to comply with the extension of sanctions required by Resolution 1874. The term is used in amended paragraphs 5(1)(a) and 7(a).

Item [2] amends Regulation 4 to insert a definition for “authorised service” as the term is used in amended regulation 11; “authorised supply” as the term is used in amended regulations 9 and 11; and “bunkering service” as the term is used in new regulations 11A and 14A.

Item [3] amends regulation 4 to insert a definition for “DPRK” as the term is used throughout the amended Regulations; and “DPRK vessel” as the term is used in new regulations 11A and 14A.

Item [4] amends regulation 4 to delete the definition for “military goods” and insert a definition for “light weapon” as the term is used in amended regulations 8, 14B and 14C; and “paramilitary goods” as the term is used in the new definition of “arms or related matériel” in amended regulation 4.

Item [5] amends regulation 4 to insert a definition for “Resolution 1874” as the term is used in the amended Regulations.

Item [6] amends regulation 4 to insert a definition for “small arm” as the term is used in amended regulations 8, 14B and 14C.

Item [7] amends regulation 5 to replace “military goods” as an export sanctioned good with “arms or related matériel” in accordance with paragraph 10 of Resolution 1874.

Item [8] inserts “INFCIRC/254/Rev.9/Part 1a” and “INSCIRC/254/Rev.7/Part 2a” as new subparagraphs 5(1)(c)(iv) and (v) to include items mentioned in these documents as export sanctioned goods in accordance with paragraph 23 of Resolution 1874.

Item [9] amends paragraph 5(1)(d) to delete “subparagraph 8(a)(ii)” and insert “subparagraph (8)(a)(i) and (ii)” to ensure reference to subparagraph (8)(a)(i) of Resolution 1718 is maintained following the deletion of the definition of “military goods” by Item [4].

Item [10] inserts “INFCIRC/254/Rev.9/Part 1a” and “INSCIRC/254/Rev.7/Part 2a” as new subparagraphs 7(b)(iv) and (v) to include items mentioned in these documents as export sanctioned goods in accordance with paragraph 23 of Resolution 1874.

Item [11] amends paragraph 7(c) to delete “subparagraph (8)(a)(ii)” and insert “subparagraph (8)(a)(i) and (ii)” to ensure reference to subparagraph (8)(a)(i) of Resolution 1718 is maintained following the deletion of the definition of “military goods” by Item [4].

Item [12] replaces “Democratic People’s Republic of Korea.” with “Democratic People’s Republic of Korea;” to accommodate the addition of the new paragraph 8(d) after paragraph 8(c).

Item [13] inserts a new paragraph 8(d) to include “financial transaction related to the supply, manufacture, maintenance or use of arms or related matériel (other than small arms or light weapons)” as a sanctioned service, in accordance with paragraph 10 of Resolution 1874.

Item [14] replaces sub-regulations 9(4) and 9(5) to provide that the regulation is contravened if the sanctioned supply referred to in each sub-regulation is not an authorised supply. This amendment accommodates the ability of a person to obtain a permit under new regulation 14B (or, if the sanctioned supply is being made in a foreign country, a permit legitimately granted by that foreign country) to make a sanctioned supply involving small arms and light weapons, as provided for in paragraph 10 of Resolution 1874.

Item [15] replaces sub-regulation 11(2) to provide that the regulation is contravened if the sanctioned service referred to is not an authorised service. This amendment accommodates the ability of a person to obtain a permit under new regulation 14C (or, if the sanctioned service is being provided in a foreign country, a permit legitimately granted by that foreign country) to provide a sanctioned service involving small arms and light weapons, as provided for in paragraph 10 of Resolution 1874.

Item [16] replaces paragraph 11(5)(b) with new paragraphs (b) and (c) to provide that the regulation is contravened if the sanctioned service referred to is not an authorised service. This amendment accommodates the ability of a person to obtain a permit under new regulation 14C (or, if the sanctioned service is being provided in a foreign country, a permit legitimately granted by that foreign country) to provide a sanctioned service involving small arms and light weapons, as provided for in paragraph 10 of Resolution 1874.

Item [17] inserts regulation 11A to prohibit the provision of bunkering services to a DPRK vessel that is not authorised by a permit under new regulation 14A or, if the bunkering service is being provided in a foreign country, a permit legitimately granted by that foreign country, in accordance with paragraph 17 of Resolution 1874.

Item [18] inserts new regulations 14A, 14B and 14C. Regulation 14A provides for the Minister to grant a permit authorising the provision of bunkering services in circumstances defined in the regulation. Regulation 14B provides for the Minister to grant a permit authorising the making of a sanctioned supply in circumstances defined in the regulation. Regulation 14C provides for the Minister to grant a permit authorising the provision of sanctioned services in circumstances defined in the regulation.