

Explanatory Statement

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 (2017 Measures No. 1) Regulations 2017

The *Charter of the United Nations Act 1945* provides legislative approval for the Charter of the United Nations in Australian law. Section 6 of the *Charter of the United Nations Act 1945* (the Act) provides that the Governor-General may make regulations to give effect to decisions of the United Nations Security Council (UNSC) under Chapter VII of the Charter of the United Nations (the Charter) that Australia is required to carry out under Article 25 of the Charter, in so far as those decisions require Australia to apply measures not involving the use of armed force.

The *Charter of the United Nations (Sanctions-Democratic People's Republic of Korea) Amendment (2017 Measures No. 1) Regulations 2017* (the Regulation) amends the *Charter of the United Nations (Sanctions-Democratic People's Republic of Korea) Regulations 2008* (the 2008 Regulation) in order to give effect to certain provisions of United Nations Security Council Resolution 2321 (2016) (UNSCR 2321), to align the 2008 Regulation with certain provisions of United Nations Security Council Resolution 2270 (2016) (UNSCR 2270) and UNSCR 2321, and to clarify some of the provisions in the 2008 Regulation.

UNSCR 2321 was adopted by the Security Council on 30 November 2016. UNSCR 2270 was adopted by the Security Council on 2 March 2016. Both intensified sanctions on the DPRK in an attempt to modify the behaviour of the DPRK and to illustrate the international community's condemnation of the DPRK's actions. Both were decisions by the UNSC under Chapter VII of the Charter and Australia is required to carry them out under Article 25 of the Charter.

UNSCR 2321 intensified sanctions on the DPRK. The Regulation implements certain of those intensified sanctions into Australian law, including by:

1. prohibiting the export of new helicopters and vessels to the DPRK;
2. prohibiting the import of copper, nickel, silver, zinc and statues from the DPRK;
3. prohibiting the procurement of vessel and aircraft crewing services from the DPRK; and
4. prohibiting certain scientific and technical cooperation involving persons or groups officially sponsored by or representing the DPRK.

The Regulation also establishes certain exceptions to the sanctions measures and a power to issue permits to allow certain activities that would otherwise be prohibited.

No public consultation was undertaken in relation to the Regulation under section 17 of the *Legislation Act 2003* as the instrument implements Australia's international legal obligations arising from the decisions of the UN Security Council. The Attorney-General's Department was consulted during the drafting of the Regulation. The Department of Foreign Affairs and Trade conducts regular outreach to the Australian business community to explain Australian sanctions laws implementing UNSC sanctions.

Subsection 6(3) of the *Charter of the United Nations Act 1945* provides that, despite subsection 14(2) of the *Legislation Act 2003*, regulations made for the purposes of subsection 6(1) of the *Charter of the United Nations Act 1945* may make provision in relation to a matter by applying, adopting or incorporating any matter contained in an instrument or other writing in force or existing from time to time.

United Nations Security Council Resolutions, including those referred to in the Regulation, can be accessed free of charge at <http://www.un.org/en/sc/documents/resolutions/>.

United Nations Security Council Resolutions do not operate in the same manner as Acts and legislative instruments. That is, subsequent resolutions in respect of a matter or issue do not always state that they are amending or replacing previous resolutions on that matter or issue. Rather, the resolutions need to be read in conjunction with one another.

The references to United Nations Security Council Resolutions in the Regulations are further discussed in the Attachment.

The Regulation provides for strict liability in new Regulation 13AA. However, in effect, this means that strict liability applies only to the existence or otherwise of a permit (under new Regulation 14HB) from the Minister for Foreign Affairs. This is appropriate because either the permit exists or it does not exist.

The Attorney-General's Department publication entitled *A Guide to Framing Commonwealth Offences, Infringement Notices and Enforcement Powers* states that: "Applying strict ... liability to a particular physical element of an offence may be justified where ... [r]equiring proof of fault of the particular element ... would undermine deterrence, and there are legitimate grounds for penalising persons lacking 'fault' in respect of that element".

In the case of the circumstance of a “sanctioned scientific or technical cooperation” not being an “authorised scientific or technical cooperation”, it would not be appropriate to have to prove:

- Intention i.e. that the person believed that the “sanctioned scientific or technical cooperation” was not an “authorised scientific or technical cooperation” - this would be very difficult to show unless the person accused of the offence confessed to believing that the “sanctioned scientific or technical cooperation” was not an “authorised scientific or technical cooperation” (i.e. that no relevant permit existed) at the relevant time;
- Knowledge i.e. that the person was aware that the “sanctioned scientific or technical cooperation” was not an “authorised scientific or technical cooperation” - again, this would be very difficult to show unless the person accused of the offence confessed to being aware that the “sanctioned scientific or technical cooperation” was not an “authorised scientific or technical cooperation” (i.e. that no relevant permit existed) at the relevant time;
- Recklessness i.e. that the person was aware of a substantial risk that the “sanctioned scientific or technical cooperation” was not an “authorised scientific or technical cooperation” and, having regard to the circumstances known to him or her, it was unjustifiable to take the risk - in the context of this offence, there is no justification for undertaking a “sanctioned scientific or technical cooperation” without a permit. Rather, if there is no relevant permit then the “sanctioned scientific or technical cooperation” should not occur; or
- Negligence i.e. such a great falling short of the standard of care that a reasonable person would exercise in the circumstances and such a high risk that the “sanctioned scientific or technical cooperation” was not an “authorised scientific or technical cooperation”, that the conduct merits criminal punishment – again, in the context of this offence, there is no justification (or “standard of care”) for undertaking a “sanctioned scientific or technical cooperation” without a relevant permit. Rather, if there is no relevant permit then the “sanctioned scientific or technical cooperation” should not occur.

There are thus legitimate grounds for penalising persons lacking “fault” in respect of the element of a “sanctioned scientific or technical cooperation” not being an “authorised scientific or technical cooperation” i.e. that no relevant permit existed. The relevant question is only whether or not a permit exists. Requiring the additional proof of a “fault” element would be very difficult in the absence of a confession (in the cases of “intention” and “knowledge”) or would be inappropriate (in the cases of “recklessness” and “negligence”).

The Office of Best Practice Regulation has advised that a Regulation Impact Statement is not required (OBPR reference: 21407).

Full details of the Regulation are set out in the [Attachment](#).

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*

Charter of the United Nations (Sanctions-Democratic People's Republic of Korea) Amendment (2017 Measures No. 1) Regulations 2017

The *Charter of the United Nations (Sanctions-Democratic People's Republic of Korea) Amendment (2017 Measures No. 1) Regulations 2017* (the Regulation) is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

The Regulation amends the *Charter of the United Nations (Sanctions-Democratic People's Republic of Korea) Regulations 2008* (the 2008 Regulation) in order to give effect to certain provisions of United Nations Security Council Resolution 2321 (2016) (UNSCR 2321), to align the 2008 Regulation with certain provisions of United Nations Security Council Resolution 2270 (2016) (UNSCR 2270) and UNSCR 2321, and to clarify some of the provisions in the 2008 Regulation.

UNSCR 2321 was adopted by the Security Council on 30 November 2016. UNSCR 2270 was adopted by the Security Council on 2 March 2016. Both intensified sanctions on the DPRK in an attempt to modify the behaviour of the DPRK and to illustrate the international community's condemnation of the DPRK's actions. Both were decisions by the UNSC under Chapter VII of the Charter and Australia is required to carry them out under Article 25 of the Charter.

The Regulation provides for strict liability in new Regulation 13AA. However, in effect, this means that strict liability applies only to the existence or otherwise of a permit (under new Regulation 14HB) from the Minister for Foreign Affairs. This is appropriate because either the permit exists or it does not exist. Further explanation is provided in the Explanatory Statement.

While those intensified sanctions, and thus the Regulation, impose additional obligations on Australian citizens, those obligations are required for the operation of the intensified sanctions.

The Regulation is compatible with human rights because to the extent that it may limit human rights, those limitations are reasonable, necessary and proportionate.

ATTACHMENT

Details of the Charter of the United Nations (Sanctions-Democratic People's Republic of Korea) Amendment (2017 Measures No. 1) Regulations 2017 (the Regulation)

Section 1

Section 1 provides that the title of the instrument is the *Charter of the United Nations (Sanctions-Democratic People's Republic of Korea) Amendment (2017 Measures No. 1) Regulations 2017*.

Section 2

Section 2 provides that the provisions in sections 1 to 4 (and anything in the instrument not covered elsewhere in the table in section 2(1)) commence on the day after the instrument is registered; that the provisions in Part 1 of Schedule 1 commence on the day after the instrument is registered; and that the provisions in Part 2 of Schedule 1 commence the day after the end of the period of 1 month beginning on the day the instrument is registered.

Section 3

Section 3 provides that the instrument is made under the *Charter of the United Nations Act 1945*.

Section 4

Section 4 provides that each instrument that is specified in a Schedule to the instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to the instrument has effect according to its terms.

Schedule 1

Schedule 1 sets out the changes that the Regulation makes to the Charter of the *United Nations (Sanctions - Democratic People's Republic of Korea) Regulations 2008* ("2008 Regulation")

Item 1

Item 1 adds another asset to the definition of "controlled asset", being a vessel designated by the Committee established by paragraph 12 of United Nations Security Council Resolution 1718 ("Committee") for the purposes of paragraph 12(d) of UNSCR 2321. This effectively brings any such vessels within the operation of Regulation 13 of the 2008 Regulations.

The Committee will publicise any such vessels it so designates and details will be provided on DFAT's sanctions website (accessible from <http://dfat.gov.au/international-relations/security/sanctions/pages/sanctions.aspx>).

Item 2

Item 2 replaces the definition of “designated person or entity” to confirm that it covers all persons and entities designated by the Minister for Foreign Affairs under regulation 4A and all persons and entities that the Security Council or the Committee wishes to be subject to targeted financial sanctions.

Paragraph (b) covers persons and entities designated by the Security Council or the Committee for the purposes of paragraph 8(d) of United Nations Security Council Resolution 1718 (UNSCR 1718). Paragraph (c) covers persons and entities to whom the measures mentioned in paragraph 8(d) of UNSCR 1718 apply under a decision of the Security Council or the Committee.

The note to the definition states that the list of persons and entities mentioned in paragraphs (b) and (c) could in 2017 be viewed on the United Nations’ website (<http://www.un.org>).

The intention of paragraphs (b) and (c) is to cover persons and entities in respect of which, from time to time, UN Member States are obligated to impose the actions mentioned in paragraph 8(d) of UNSCR 1718 (e.g. the asset freeze and the prohibition on making funds available). As of 26 May 2017, a list of such persons and entities can be found at <https://www.un.org/sc/suborg/en/sanctions/1718/materials>. Such persons and entities are also included on the DFAT Consolidated List – as at 26 May 2017, that list is available at <http://dfat.gov.au/international-relations/security/sanctions/Pages/consolidated-list.aspx>.

Item 3

Item 3 inserts a definition of “Resolution 2321”.

Item 4

Item 4 replaces paragraph 5(1)(d) to confirm that it covers certain goods that the Security Council or the Committee wish to be subject to the measures set out in paragraphs 8(a), (b) and (c) of UNSCR 1718 (which can be summarised as an export ban, an import ban, and a training/advice/services/assistance ban, respectively).

It effectively states that “export sanctioned goods” include goods determined by the Security Council or the Committee for the purposes of subparagraph 8(a)(i) or (ii) of UNSCR 1718 or to which the measures mentioned in paragraphs 8(a), (b) and (c) of UNSCR 1718 apply under a decision of the Security Council or the Committee.

The intention is to indicate that paragraph 5(1)(d) covers certain goods in respect of which, from time to time, UN Member States are obligated to impose the measures mentioned in paragraphs 8(a), (b) and (c) of Resolution 1718. As at 26 May 2017, <https://www.un.org/sc/suborg/en/sanctions/1718/prohibited-items> contains details of such goods. The goods include, but are not limited to, those listed in Annex III to UNSCR 2321 and goods listed by the Committee pursuant to Operative Paragraph 7 of UNSCR 2321.

Item 5

Item 5 provides that a person will not make a “sanctioned supply” in respect of “aviation fuel” (being an “export sanctioned good”) merely because that person supplies, sells or transfers aviation fuel for certain civil passenger aircraft flights.

This reflects Operative Paragraph 31 of United Nations Security Council Resolution 2270 (2016) (UNSCR 2270) and Operative Paragraph 20 of UNSCR 2321.

Item 6

Item 6 replaces paragraph 7(1)(c) to confirm that it covers certain goods that the Security Council or the Committee wish to be subject to the measures set out in paragraphs 8(a), (b) and (c) of UNSCR 1718 (which can be summarised as an export ban, an import ban, and a training/advice/services/assistance ban, respectively).

It effectively states that “import sanctioned goods” include goods determined by the Security Council or the Committee for the purposes of subparagraph 8(a)(i) or (ii) of UNSCR 1718 or to which the measures mentioned in paragraphs 8(a), (b) and (c) of UNSCR 1718 apply under a decision of the Security Council or the Committee.

The intention is to indicate that paragraph 7(1)(c) covers certain goods in respect of which, from time to time, UN Member States are obligated to impose the measures mentioned in paragraphs 8(a), (b) and (c) of Resolution 1718. As at 26 May 2017, <https://www.un.org/sc/suborg/en/sanctions/1718/prohibited-items> contains details of such goods. The goods include those listed in Annex III to UNSCR 2321 and goods listed by the Committee pursuant to Operative Paragraph 7 of UNSCR 2321.

Item 7

Item 7 clarifies subparagraph 8(1)(b)(ii) by replacing the reference to “the proliferation of sensitive nuclear activities” with a reference to “proliferation sensitive nuclear activities”. A “sanctioned service” therefore now includes the provision to any person of technical training, advice, services or assistance, if it could contribute to proliferation sensitive nuclear activities or the development of nuclear weapons delivery systems in the DPRK.

This reflects Operative Paragraph 17 of UNSCR 2270 and Operative Paragraph 10 of UNSCR 2321.

Item 8

Item 8 replaces the note to subregulation 8(1) of the 2008 Regulation and describes the kind of technical training that could contribute to the activities and systems referred to in paragraph 8(1)(b)(ii).

This reflects Operative Paragraph 17 of UNSCR 2270 and Operative Paragraph 10 of UNSCR 2321.

Item 9

Item 9 repeals subregulation 8B(2), thus removing the limitation on the Minister for Foreign Affairs' power to give notice to persons to close certain bank accounts that was contained in subregulation 8B(2).

This reflects Operative Paragraph 31 of UNSCR 2321.

Item 10

Item 10 replaces the text "Resolution 1718, Resolution 1874, Resolution 2087, Resolution 2094 or Resolution 2270" with the text "Resolution 2321" in paragraph 8B(3)(d) of the 2008 Regulation.

This reflects Operative Paragraph 31 of UNSCR 2321.

Paragraph 8B(3)(d) of the 2008 Regulation, which contains the reference to UNSCR 2321, is a description of the circumstances under which the Minister for Foreign Affairs need not give a person a notice to close a bank account. A person who receives such a notice will be aware of the obligation to close the account.

Item 11

Item 11 replaces the heading to Regulation 11F.

Items 12 to 21

Items 12 to 21 make amendments to Regulations 11F and 11G to align the 2008 Regulation with Operative Paragraph 22 of UNSCR 2270 and Operative Paragraph 12 of UNSCR 2321.

Regulation 11F now provides that the Minister for Foreign Affairs must direct a vessel not to enter a port in Australia if the Minister has reasonable grounds to believe that: (a) the vessel is owned or controlled, directly or indirectly, by a designated person or entity within paragraph (b) of the definition of "designated person or entity"; or (b) the vessel contains cargo prohibited by relevant United Nations Security Council resolutions. However, the Minister must not give such a direction if: (a) the vessel needs to enter a port in Australia because of an emergency, to return to its port of origination, or for inspection; or (b) the vessel needs to enter a port in Australia for humanitarian purposes or for any purposes consistent with the objectives of UNSCR 2270 and the vessel's entry has been approved in advance by the Committee.

Regulation 11F also now provides that, if a vessel is designated by the Committee for the purposes of paragraph 12(c) of UNSCR 2321 then the Minister for Foreign Affairs must direct, in writing, the vessel not to enter any port in Australia unless the vessel does so because of an emergency, to return to its port of origination, or in accordance with a direction of the Committee under paragraph 12(c) of UNSCR 2321.

Regulation 11G now provides that a person in command or charge of a vessel (who is not the vessel's pilot) will contravene the regulation if a direction relating to the vessel has been given under Regulation 11F and the vessel enters a port in Australia. The Minister for Foreign Affairs is not required to give any of the directions above if the Minister is satisfied that the direction would be inconsistent with Australia's obligations under international law.

The Committee will publicise any such vessels it designates for the purposes of paragraph 12(c) of UNSCR 2321 and details will be provided on DFAT's sanctions website (accessible from <http://dfat.gov.au/international-relations/security/sanctions/pages/sanctions.aspx>). The reference to UNSCR 2321 in paragraph 11F(4)(c) relates to a Committee direction allowing the vessel to enter an Australian port.

Item 22

Item 22 adds a reference to UNSCR 2270 and UNSCR 2321 to subparagraph 14D(2)(a)(iii).

Subparagraph 14D(2)(a)(iii) of the 2008 Regulation, which contains the reference to UNSCR 2270 and UNSCR 2321, is a description of one circumstance under which the Minister for Foreign Affairs may grant a permit for the procurement of coal. A person whose application for such a permit is denied will be aware of the obligation to not procure the coal.

Item 23

Item 23 changes the grounds upon which the Minister for Foreign Affairs can grant a permit authorising the provision of the sanctioned services set out in paragraph 14E(1). The Minister may now grant a permit only if the Committee has approved the proposed service in advance.

This reflects Operative Paragraph 8 of UNSCR 2321.

Item 24

Item 24 sets out that the Minister for Foreign Affairs may grant a permit for a specified activity if the Committee has exempted the activity in advance under paragraph 46 of UNSCR 2321. The provisions of Part 1A, and the provisions of Division 1 of Part 2, do not apply to a person who engages in an activity in accordance with such a permit.

Subregulation 14J(2) of the 2008 Regulation, which contains the reference to UNSCR 2321, is a description of one circumstance under which the Minister for Foreign Affairs may grant a permit for a specified activity. A person whose application for such a permit is denied will be aware of the obligation to not undertake the activity.

Item 25

Item 25 inserts a definition of “authorised scientific or technical cooperation” (see discussion of Item 55 below).

Item 26

Item 26 adds a reference to regulation 14EA to paragraph (a) of the definition of “authorised service”, reflecting a new permit making power in respect of “sanctioned services” (see discussion of Item 62 below).

Item 27

Item 27 inserts a definition of “DPRK flagged or registered vessel” (see discussion of Items 41, 42, 43, 45, 47, 48, 49 and 51 below).

Item 27 also inserts a definition of “import authorised goods” (see discussion of Items 34 to 37 and Item 39 below).

Item 27 also inserts a definition of “sanctioned scientific or technical cooperation” (see discussion of Item 55 below).

Item 28

Item 28 adds new helicopters and new vessels (that are not arms or related materiel) to the list of “export sanctioned goods”.

This reflects Operative Paragraph 30 of UNSCR 2321.

Item 29

Item 29 adds copper, nickel, silver, zinc and statues to the list of “import sanctioned goods”.

This reflects Operative Paragraphs 28 and 29 of UNSCR 2321.

Item 30

Item 30 adds the following as a “sanctioned service”: the provision of vessel or aircraft crewing services to certain DPRK and DPRK-related persons and entities.

Item 31

Item 31 effectively provides that a sanctioned services includes the leasing or chartering of an Australian ship or Australian aircraft, or the provision of vessel or aircraft crewing services, to any entity owned or controlled by a person or entity mentioned in subparagraphs 8(1)(da)(i) to (iv) inclusive.

Item 32

Item 32 deletes paragraph 8(1)(db). The provisions relating to the crewing of ships and aircraft by Australians now appears in paragraph 8(1)(da) (see discussion of Item 30 above).

Item 33

Item 33 provides that the following is a “sanctioned service”: the provision of public or private financial support for the purposes of trade with the DPRK.

Item 33 also provides that the following is a “sanctioned service”: the provision of vessel or aircraft crewing services from the DPRK.

This reflects Operative Paragraphs 32 and 23 of UNSCR 2321.

Items 34, 35, 36, 37 and 39

Items 34, 35, 36, 37 and 39 establish that a person will not contravene the 2008 Regulations in respect of “import sanctioned goods” if the goods are “import authorised goods” (i.e. a relevant permit is in existence – see discussion of Item 63 below).

Items 38 and 40

Items 38 and 40 move the note that was previously after subregulation 10(5) to after subregulation 10(6).

Items 41 and 47

Item 41 effectively provides that a person will now contravene regulation 11D if (without a permit) the person provides a classification or certification service, or related service, in respect of a “DPRK flagged or registered vessel”. Item 47 effectively provides that if a body corporate has effective control over the actions of another body corporate or entity wherever incorporated or situated and that other body corporate or entity provides a classification or certification service, or related service, in respect of a “DPRK flagged or registered vessel” (without a permit) then the body corporate will contravene regulation 11D.

This reflects Operative Paragraph 20 of UNSCR 2270 and Operative Paragraph 9 of UNSCR 2321.

Items 42 and 48

Item 42 effectively provides that a person will now contravene regulation 11D if (without a permit) the person leases or operates a “DPRK flagged or registered vessel”. Item 48 effectively provides that if a body corporate has effective control over the actions of another body corporate or entity wherever incorporated or situated and that other body corporate or entity leases or operates a “DPRK flagged or registered vessel” (without a permit) then the body corporate will contravene regulation 11D.

This reflects Operative Paragraph 20 of UNSCR 2270 and Operative Paragraph 9 of UNSCR 2321.

Items 43 and 49

Item 43 effectively provides that a person will now contravene regulation 11D if (without a permit) the person insures a “DPRK flagged or registered vessel”. Item 49 effectively provides that if a body corporate has effective control over the actions of another body corporate or entity wherever incorporated or situated and that other body corporate or entity insures a “DPRK flagged or registered vessel” (without a permit) then the body corporate will contravene regulation 11D.

This reflects Operative Paragraph 20 of UNSCR 2270 and Operative Paragraph 9 of UNSCR 2321.

Item 43 also effectively provides that a person will contravene regulation 11D if the person provides insurance or reinsurance services to a vessel owned, controlled or operated by the DPRK, or by a person or entity in, or a national of, the DPRK. Item 49 also effectively provides that if a body corporate has effective control over the actions of another body corporate or entity wherever incorporated or situated and that other body corporate or entity provides insurance or reinsurance services to a vessel owned, controlled or operated by the DPRK, or by a person or entity in, or a national of, the DPRK, then the body corporate will contravene regulation 11D.

This reflects Operative Paragraph 22 of UNSCR 2321.

Items 44 and 50

Items 44 and 50 effectively delete paragraph 11D(1)(b)(ii) and paragraph 11D(4)(c)(ii), respectively.

If a person undertakes the action set out in paragraph 11D(1)(a) then there is a contravention of regulation 11D unless the action was authorised by a permit under regulation 14H.

If a body corporate has effective control over the actions of another body corporate or entity wherever incorporated or situated and that other body corporate or entity undertakes the action set out in paragraph 11D(4)(b) then there is a contravention of regulation 11D unless the action was authorised by a permit under regulation 14H.

This reflects Operative Paragraph 9 of UNSCR 2321.

Items 45 and 51

Item 45 effectively provides that a person will contravene regulation 11D if (without a permit) the person owns a “DPRK flagged or registered vessel”. Item 51 effectively provides that if a body corporate has effective control over the actions of another body corporate or entity wherever incorporated or situated and that other body corporate or entity owns a “DPRK flagged or registered vessel” (without a permit) then the body corporate will contravene regulation 11D.

This reflects Operative Paragraph 20 of UNSCR 2270 and Operative Paragraph 9 of UNSCR 2321.

Items 46 and 52

Items 46 and 52 reflect that the permit granting power in respect of the ownership of a “DPRK flagged or registered vessel” (see discussion of Items 45 and 51 above) is now contained in Regulation 14HA (see discussion of Item 63 below).

This reflects Operative Paragraph 9 of UNSCR 2321.

Item 53

This effectively deletes paragraph 12(2)(b)(ii).

If a person undertakes the conduct set out in paragraph 12(2)(a) then there is a contravention of regulation 12 unless the making available of the asset was authorised by a permit under regulation 14.

Item 54

This effectively deletes paragraph 13(2)(c)(ii).

If a person undertakes the conduct set out in paragraphs 13(2)(a) and 13(2)(b) then there is a contravention of regulation 13 unless the use or dealing was authorised by a permit under regulation 14.

Item 55

Item 55 creates a contravention for persons who engage in “sanctioned scientific or technical cooperation” that is not “authorised scientific or technical cooperation” (see discussion of Item 63 below).

Item 55 creates a contravention for body corporates that have effective control over the actions of another body corporate or entity, wherever incorporated or situated, if the other body corporate or entity engages in “sanctioned scientific or technical cooperation” that is not “authorised scientific or technical cooperation” (see discussion of Item 63 below).

This reflects Operative Paragraph 11 of UNSCR 2321.

Strict liability applies with respect to the circumstance of whether the “sanctioned scientific or technical cooperation” is “authorised scientific or technical cooperation” (i.e. as to whether a relevant permit exists).

As stated in the note to subregulation 13AA(2), the relevant offence has extraterritorial operation. Section 7(1) of the *Charter of the United Nations Act 1945* provides that the regulations may be expressed to have extra-territorial effect.

Item 56

Item 56 sets up an exception to the limits on permit making set out in subregulations 14(2), 14(5), 14(6) and 14(7) in respect of:

- the making available of assets to a person or entity designated by the Minister for Foreign Affairs under regulation 4A (or to a person acting on behalf of or at the direction of such a person or entity, or by an entity owned or controlled by such a person or entity, including through illicit means);
- the use of, or dealing with, assets owned or controlled by a person or entity designated by the Minister for Foreign Affairs under regulation 4A (or by a person acting on behalf of or at the direction of such a person or entity, or by an entity owned or controlled by such a person or entity, including through illicit means); and
- the use of, or dealing with, assets derived from an asset owned or controlled, directly or indirectly, by a person or entity designated by the Minister for Foreign Affairs under regulation 4A (or by a person acting on behalf of or at the direction of such a person or entity, or to an entity owned or controlled by such a person or entity, including through illicit means).

The Minister for Foreign Affairs may grant a permit in the above circumstances if:

- the asset is required to carry out activities of: (1) the DPRK’s missions to the United Nations (or a specialised agency or related organisation of the United Nations); or (2) other diplomatic or consular missions of the DPRK; or
- the Committee has determined in advance that the asset is required for the delivery of humanitarian assistance, denuclearisation or any other purpose consistent with the objectives of UNSCR 2270.

Subregulation 14(8) of the 2008 Regulation, which contains the reference to UNSCR 2270, is a description of the circumstance under which the Minister for Foreign Affairs may grant a permit for the activity in question. A person whose application for such a permit is denied will be aware of the obligation to not undertake the activity.

Item 57

Item 57 provides that the Minister for Foreign Affairs may grant a permit in respect of a “sanctioned supply” if it is:

- (1) the supply, sale or transfer of aviation fuel to address essential humanitarian needs; or
- (2) the supply, sale or transfer of a new helicopter or a new vessel (that is not arms or related materiel)

AND

- (3) the Committee has approved the “sanctioned supply” in advance

This reflects Operative Paragraph 31 of UNSCR 2270 and Operative Paragraph 30 of UNSCR 2321.

Item 58

Item 58 effectively provides that the Minister for Foreign Affairs can grant a permit in relation to the procurement of coal if the procurement is in accordance with paragraph 29(b) of UNSCR 2270, as amended by paragraph 26 of UNSCR 2321.

Subparagraph 14D(2)(aa) of the 2008 Regulation, which contains the reference to UNSCR 2270 and UNSCR 2321, is a description of one circumstance under which the Minister for Foreign Affairs may grant a permit for the procurement of coal. A person whose application for such a permit is denied will be aware of the obligation to not procure the coal.

Item 59

Item 59 operates such that the permit making power in paragraph 14D(2)(b) operates only with respect to the procurement of iron or iron ore.

Item 60

Item 60 adds a reference to UNSCR 2270 and UNSCR 2321 to subparagraph 14D(2)(b)(ii).

Subparagraph 14D(2)(b)(ii) of the 2008 Regulation, which contains the reference to UNSCR 2270 and UNSCR 2321, is a description of when the Minister for Foreign Affairs may grant a permit for the procurement of iron or iron ore. A person whose application for such a permit is denied will be aware of the obligation to not procure the iron or iron ore.

Item 61

Item 61 permits the Minister for Foreign Affairs to grant a permit for the provision of vessel or aircraft crewing services (see Item 30 above).

Item 62

Item 62 provides that the Minister for Foreign Affairs may grant a permit authorising the provision of public or private financial support for the purposes of trade with the DPRK, but only if the Committee has approved the provision of the financial support in advance.

This reflects Operative Paragraph 32 of UNSCR 2321.

Item 63

Item 63 (new regulation 14H) sets out the permit making power in respect of the actions set out in paragraph 11D(1)(a) and 11D(4)(b); namely:

- that the Committee must have approved the action in advance if the action is covered by subparagraphs 11D(1)(a)(i) to (v) or 11D(4)(b)(i) to (v); and
- that a determination referred to in paragraph 22 of UNSCR 2321 is in effect in relation to the vessel if the action is covered by subparagraphs 11D(1)(a)(vi) or 11D(4)(b)(vi).

Subregulation 14H(2)(b) of the 2008 Regulation, which contains the reference to UNSCR 2321, is a description of when the Minister for Foreign Affairs may grant a permit authorising the provision of insurance or reinsurance to certain vessels (see discussion of Item 43 above). A person whose application for such a permit is denied will be aware of the obligation to not provide the insurance or reinsurance.

Item 63 (new regulation 14HA) also sets out that the Minister for Foreign Affairs may grant a permit authorising the ownership of a “DPRK flagged or registered vessel”, but only if the Committee has approved the ownership in advance.

Item 63 (new regulation 14HB) also sets out that the circumstances under which the Minister for Foreign Affairs may grant a permit authorising a person to engage in specified sanctioned scientific or technical cooperation.

Item 63 (new Regulation 14HC) also sets out that the Minister for Foreign Affairs may grant a permit authorising the procurement, receiving or transport of a statue, but only if the Committee has approved the procurement, receipt or transport in advance.

The above permit making powers reflect Operative Paragraphs 9, 11, 22 and 29 of UNSCR 2321.