STATUTORY INSTRUMENTS

2004 No. 1978

UNITED NATIONS

The Iraq (United Nations Sanctions) (Channel Islands) (Amendment) Order 2004

Made - - - -	*27th July 2004*
Laid before Parliament	*28th July 2004*
Coming into force - -	*29th July 2004*

At the Court at Buckingham Palace, the 27th day of July 2004

Present,

The Queen's Most Excellent Majesty in Council

Whereas:

(1) under Article 41 of the Charter of the United Nations the Security Council of the United Nations, by a resolution adopted on 22nd May 2003, called upon Her Majesty's Government in the United Kingdom and all other States to apply certain measures to give effect to a decision of that Council in relation to Iraq;

(2) provision was made in the Iraq (United Nations Sanctions) (Channel Islands) Order 2003(**a**) which amended the Iraq (United Nations Sanctions) Order (Channel Islands) Order 2000(**b**) to give effect to those decisions in the Channel Islands;

(3) the United Nations adopted a further resolution on 24th November 2003 establishing a new committee for the purposes of identifying persons for the purposes of certain provisions of the resolution adopted on 22nd May 2003;

(4) it now appears necessary to make provision further varying the Iraq (United Nations Sanctions) (Channel Islands) Order 2000, as amended by the Iraq (United Nations Sanctions) (Channel Islands) Order 2003, to take account of the resolution referred to in paragraph (3) and also to improve the operation of that Order;

And whereas Under Article 41 of the Charter of the United Nations the Security Council of the United Nations, by a resolution adopted on 8th June 2004, called upon Her Majesty's Government in the United Kingdom and all other States to apply certain measures to give effect to a decision of that Council in relation to Iraq:

Now, therefore, Her Majesty, in exercise of the powers conferred upon Her by section 1 of the United Nations Act 1946(**c**), is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:

(**a**) S.I. 2003/1521.
(**b**) S.I. 2000/3244.
(**c**) 1946 c. 45.

Citation, commencement, operation and extent

1. This Order may be cited as the Iraq (United Nations Sanctions) (Channel Islands) (Amendment) Order 2004 and comes into force on 29th July 2004.

2. In this Order—

(a) "the 2000 Order" means the Iraq (United Nations Sanctions) (Channel Islands) Order 2000; and

(b) "the 2003 Order" means the Iraq (United Nations Sanctions) (Channel Islands) Order 2003.

3. This Order extends to the Channel Islands so as to be law, as the case may be, in the Bailiwick of Guernsey and the Bailiwick of Jersey.

Amendment

4. The 2003 Order is amended in accordance with Part 1 of the Schedule to this Order.

5. The 2000 Order is amended in accordance with Part 2 of the Schedule to this Order.

Transitional Provisions

6.—(1) Notwithstanding the revocation of article 4 of the 2000 Order by this Order, any direction which was given by the relevant enforcement authority under that article and was still in effect immediately before this Order came into force remains in effect until it is revoked by a notice given under this article.

(2) Where a notice was published under article 4 of the 2000 Order immediately before the revocation of that article by this Order, article 5(4) and article 5A shall continue to apply in relation to funds to which that notice applied notwithstanding the revocation of article 4, and the amendments made to article 5(4) and 5A, by this Order.

(3) Any person who contravenes a direction given under article 4 of the 2000 Order is guilty of an offence and shall be liable in the Bailiwick of Guernsey—

(a) on conviction on indictment to imprisonment for a term not exceeding seven years, or a fine, or both; or

(b) on summary conviction, to imprisonment for a term not exceeding six months, or a fine not exceeding level 5 on the standard scale, or both;

and in the Bailiwick of Jersey, on conviction to imprisonment for a term not exceeding seven years, or to a fine, or both.

(4) Articles 9, 10 and 11(4) to (6) of the 2000 Order, and article 12 of the 2000 Order so far as it concerns those provisions, apply in relation to paragraph (3) of this article (and the provisions of the 2000 Order that refer to it) as they apply in relation to the 2000 Order.

(5) In this article, "the standard scale" means the standard scale of fines for the time being specified in section 1 of the Uniform Scale of Fines (Bailiwick of Guernsey) law 1989, as amended.

A.K Galloway
Clerk of the Privy Council

SCHEDULE

PART 1

Article 4

Amendments and Revocations of the Iraq (United Nations Sanctions) (Channel Islands) Order 2003

1. In article 4, for the definition of "restricted goods" substitute—

""restricted goods" means the goods specified in Part I of Schedule 1 to the Export of Goods, Transfer of Technology and Provision of Technical Assistance (Control) Order 2003(**a**) made under the Export Control Act 2002(**b**);**"**

2. After article 10 insert—

"Exception

10A. The privileges and immunities provided in articles 9 and 10 above shall not apply with respect to any legal proceedings nor to any resulting final judgement arising out of a contractual obligation entered into by Iraq after 30th June 2004.**"**

3. The following provisions of Schedule 1 are revoked—

(a) the definitions of "designated funds" and "designated person" in paragraph 1(1)(b);

(b) paragraph 1(1)(c);

(c) paragraph 1(1)(f);

(d) paragraph 3;

(e) paragraph 4; and

(f) paragraph 7(2).

PART 2

Article 5

Amendments and Revocations to the Iraq (United Nations Sanctions) (Channel Islands) Order 2000

1. In article 2—

(a) in paragraph (1)—

(i) after the definition of "the 2003 resolution"(**c**), insert—

""the 2004 Order" means the Iraq (United Nations Sanctions) (Channel Islands) (Amendment) Order 2004;**"**;

(ii) omit the definition of "designated funds"(**d**);

(iii) for the definition of "designated person", substitute —

""designated person"(**e**) means a person who is not a listed person, but is a designated 23a person or a designated 23b person;

"designated 23a person" means any person whose funds (including any funds held for

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(**a**) S.I. 2003/2764
(**b**) 2002 c. 28.
(**c**) The definition of "the 2003 resolution" was inserted by S.I. 2003/1521, article 3 and paragraph 1(1)(a) of Schedule 1.
(**d**) The definition of "designated funds" was inserted by S.I. 2003/1521, article 3 and paragraph 1(1)(b) of Schedule 1.
(**e**) The definition of "designated person" was inserted by S.I. 2003/1521, article 3 and paragraph 1(1)(b) of Schedule 1.

him or on his behalf) are subject to a direction given by the relevant enforcement authority under article 4A(1);

"designated 23b person" means any person whose funds (including any funds held for him or on his behalf) are subject to a direction given by the relevant enforcement authority under article 4A(2);**"**;

(iv) for the definition of "immediate family member" (**a**), substitute—

""immediate family member" includes a parent, son (whether or not adopted), daughter (whether or not adopted), spouse, or sibling of the whole or half blood;

"listed person" means a listed 23a person or a listed 23b person;

"listed 23a person" means any person identified by the Sanctions Committee pursuant to paragraph 19 of the 2003 resolution as being an entity referred to in paragraph 23(a) of that resolution;

"listed 23b person" means any person identified by the Sanctions Committee pursuant to paragraph 19 of the 2003 resolution as being an individual or entity referred to in paragraph 23(b) of that resolution;**"**;

(v) for the definition of "Sanctions Committee"(**b**), substitute—

""Sanctions Committee" means such committee as is established by the Security Council of the United Nations with responsibility from time to time for identifying pursuant to paragraph 19 of the 2003 resolution individuals and entities referred to in paragraph 23 of that resolution;**"**;

(vi) for the definition of "senior official"(**c**), substitute—

""senior official" includes any individual who, immediately before 20th March 2003 was—

(a) a cabinet official of the former government of the Republic of Iraq;

(b) a member of the former Iraqi Parliament;

(c) a head or senior member of the Iraqi military or security forces, intelligence services, military police or paramilitary police who was of a rank at least equivalent to a listed 23b person;

(d) a head or senior member of an enterprise that was owned or controlled by the former government of the Republic of Iraq who was of a rank at least equivalent to a listed 23b person;

(e) a senior member of the Iraqi Ba'ath Party who was of a rank at least equivalent to a listed 23b person; or an official of a lower rank who performed crucial functions at least equivalent to those performed by a listed 23b person.**"**; and

(b) in paragraph (3)(**d**)—

(i) for the words "a body ("B") is controlled by a person or government ("P") if", substitute "the circumstances in which a body ("B") is to be treated as being controlled by a person or government ("P") include, but are not limited to, where";

(ii) in sub-paragraph (a) delete "or" in the last place it appears; and

(iii) after sub-paragraph (b), insert—

"(c) P, by virtue of his or its voting power in B or otherwise, is entitled to make use of any or all of B's assets;

(**a**) The definition of "immediate family member" was inserted by S.I. 2003/1521, article 3 and paragraph 1(1)(c) of Schedule 1.
(**b**) The definition of "Sanctions Committee" was inserted by S.I. 2003/1521, article 3 and paragraph 1(1)(f) of Schedule 1.
(**c**) The definition of "senior official" was inserted by S.I. 2003/1521, article 3 and paragraph 1(1)(f) of Schedule 1.
(**d**) Article 2(3) was inserted by S.I. 2003/1521, article 3 and paragraph 1(2) of Schedule 1.

(d) P manages itself and B, or B and other bodies, together whilst publishing consolidated accounts;

(e) P shares, jointly and severally, the financial liabilities of B; or

(f) P provides any form of guarantee for the financial liabilities of B.”

2. For the side heading before article 3 substitute, “Making funds available to designated 23b persons and listed 23b persons”.

3. In article 3(1), for the words “to a designated person” substitute “directly or indirectly to a designated 23b person or a listed 23b person”.

4. After article 3(**a**), insert—

“**Freezing funds of listed persons**

3A.—(1) Any person who, except under the authority of a licence granted by the relevant enforcement authority under article 5, makes available to any person—

(a) any funds that he held on 22nd May 2003 for or on behalf of a listed 23a person; or

(b) any funds that he holds for or on behalf of a listed 23b person,

is guilty of an offence.

(2) In proceedings for an offence under this article, it is a defence for the accused to show that he took all reasonable precautions and exercised all due diligence to avoid committing the offence.”.

5. Article 4(**b**) is revoked.

6. Before article 5 insert—

“**Freezing of funds on suspicion**

4A.—(1) Where the relevant enforcement authority has reasonable grounds for suspecting that the person by, for or on behalf of whom any funds are held is or may be—

(a) a listed 23a person; or

(b) an entity (wherever incorporated or constituted) that immediately before 20th March 2003 was owned or controlled by the government of the Republic of Iraq,

the relevant enforcement authority may by notice direct that such of those funds as were held by, for or on behalf of that person on 22nd May 2003 are not to be made available to any person except under the authority of a licence granted by the relevant enforcement authority under article 5.

(2) Where the relevant enforcement authority has reasonable grounds for suspecting that the person by, for or on behalf of whom any funds are held is or may be—

(a) a listed 23b person;

(b) a senior official;

(c) an immediate family member of a person referred to in sub-paragraph (a) or (b);

(d) an entity (wherever incorporated or constituted) owned or controlled by a person referred to in sub-paragraph (a), (b) or (c); or

(e) a person acting on behalf, or at the direction, of a person referred to in sub-paragraph (a), (b) or (c),

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(**a**) Article 3 was inserted by S.I. 2003/1521, article 3 and paragraph 2 of Schedule 1.
(**b**) Article 4 was inserted by S.I. 2003/1521, article 3 and paragraph 3 of Schedule 1.

the relevant enforcement authority may by notice direct that those funds are not to be made available to any person except under the authority of a licence granted by the relevant enforcement authority under article 5.

(3) A notice given under paragraph (1) or (2) must specify either—

(a) the period for which the direction is to have effect; or

(b) that the direction is to have effect until it is revoked by notice under paragraph (5).

(4) The relevant enforcement authority must publish a notice given under paragraph (1) or (2) in the way appearing to it to be best calculated to bring it to the attention of the public.

(5) The relevant enforcement authority may by notice revoke a direction given under paragraph (1) or (2) at any time.

(6) The relevant enforcement authority must publish a notice given under paragraph (5) in the same manner as the original notice given under paragraph (1) or (2) was published.

(7) The expiry or revocation of a direction given under paragraph (1) or (2) does not affect the application of article 3 or 3A in respect of the funds in question.

(8) Where a direction has been given under paragraph (1) or (2), any person by, for or on behalf of whom those funds are held may apply to the Royal Court for the direction to be set aside; and on such application the court may set aside the direction.

(9) A person who makes an application under paragraph (8) must give a copy of the application and any witness statement or affidavit in support to the relevant enforcement authority (and to any person by, for or on behalf of whom those funds are held) not later than seven days before the date fixed for the hearing of the application.

(10) Any person who contravenes a direction under paragraph (1) or (2) is guilty of an offence.**"**.

7. In article 5(4)(**a**), for the words "article 3(1) or 4(1)" substitute "article 3(1), 3A(1), 4A(1) or 4A(2)".

8. In article 5A(**b**)—

(a) in paragraph (1)—

(i) for the words "article 4(1)" , substitute " article 4A(1) or 4A(2)"; and

(ii) in sub-paragraph (b)(i)—

(aa) before "notify" insert "must"; and

(bb) for "on whose behalf he held the funds" substitute "on behalf of whom the funds were held";

(b) in paragraph (2)—

(i) for the words "article 4(1)", substitute " article 4A(1) or 4A(2)"; and

(ii) in sub-paragraph (b)(i), for the words "by, for, or on whose behalf he held the funds", substitute "by, for or on behalf of whom the funds were held";

(c) after paragraph (2), insert—

"(2A) Within 28 days of the publication by the relevant enforcement authority of notification that the Sanctions Committee has published a list of listed 23a persons, any person included in that list or holding funds for or on behalf of any person included in that list must—

(a) cause the transfer of such funds as were held by, for or on behalf of that person on 22nd May 2003 to the account of the Development Fund for Iraq held at the Federal Reserve Bank of New York; and

(b) notify the relevant enforcement authority in writing of—

(**a**) Article 5(4) was amended by S.I. 2003/1521, article 3 and paragraph 4 of Schedule 1.
(**b**) Article 5A was inserted by S.I. 2003/1521, article 3 and paragraph 5 of Schedule 1.

(i) the identity of the person by, for or on behalf of whom the funds were held;

(ii) the amount transferred; and

(iii) the date the transfer took place.

(2B) Within 28 days of the publication by the relevant enforcement authority of notification that the Sanctions Committee has published a list of listed 23b persons, any person included in that list or holding funds for or on behalf of a person included in that list must—

(a) cause the transfer of any funds held by, for or on behalf of that person to the account of the Development Fund for Iraq held at the Federal Reserve Bank of New York; and

(b) notify the relevant enforcement authority in writing of—

(i) the identity of the person by, for or on behalf of whom the funds were held;

(ii) the amount transferred; and

(iii) the date the transfer took place.

(2C) Any person who holds funds that are required to be transferred to the account of the Development Fund for Iraq by paragraph (2A) or (2B) after the expiry of the period referred to in the appropriate paragraph must, as soon as possible after he becomes aware that he holds such funds—

(a) cause the transfer of those funds to the account of the Development Fund for Iraq held at the Federal Reserve Bank of New York; and

(b) notify the relevant enforcement authority in writing of—

(i) the identity of the person by, for on behalf of whom the funds were held;

(ii) the amount transferred; and

(iii) the date the transfer took place.

(2D) The relevant enforcement authority must publish notification of any list referred to in paragraph (2A) or (2B) in the way appearing to it to be best calculated to bring it to the attention of the public.**"**;

(d) in paragraph (3)—

(i) for the words "Neither paragraph (1) nor (2) applies" substitute "Paragraphs (1) to (2C) do not apply";

(ii) in sub-paragraph (a) for the words "that paragraph", substitute "the appropriate paragraph";

(iii) in sub-paragraph (c) for the words "that paragraph", substitute "the appropriate paragraph";

(e) in paragraph (4) for "(1) or (2)" substitute "(1), (2), (2A), (2B) or (2C)";

(f) in paragraph (5) for "(1) or (2)" substitute "(1), (2), (2A), (2B) or (2C)";

(g) in paragraph (6) for "(1) or (2)" substitute "(1), (2), (2A), (2B) or (2C)"; and

(h) in paragraph (7) for "(1) or (2)" substitute "(1), (2), (2A), (2B) or (2C)";

9. In article 6 after "article 3" insert ", 3A or 4A(10) or article 6(3) of the 2004 Order";

10. In article 8—

(a) in paragraph (1)(a)(**a**)—

(i) after "a designated person", insert "or a listed person";

(ii) after "article 3," insert "3A, 4A(10),";

(iii) after "article 5A" insert "or article 6(3) of the 2004 Order"; and

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(**a**) Article 8(1)(a) was substituted by S.I. 2003/1521, article 3 and paragraph 7(1) of Schedule 1.

(b) for paragraph (2)(a) substitute—

"(a) its knowledge or suspicion that a person is a listed person or a designated person or has committed an offence under article3, 3A, 4A(10), 5(4) or 5A or article 6(3) of the 2004 Order, or".

11. In article 11(1)(**a**) after the "article 3," insert "3A, 4A(10),".

EXPLANATORY NOTE

(This note is not part of the Order)

This Order, made under the United Nations Act 1946, amends:

(1) the Iraq (United Nations Sanctions) (Channel Islands) Order 2000 (the "2000 Order"); and

(2) the Iraq (United Nations Sanctions) (Channel Islands) Order 2003 (the "2003 Order").

The 2000 Order, as amended by the 2003 Order, gave effect in the Bailiwicks of Guernsey and Jersey to certain aspects of sanctions imposed against Iraq by the United Nations Security Council Resolution (UNSCR) 1483 of 22nd May 2003.

The amendments in this Order have been made to give effect to UNSCR 1518 of 24th November 2003 and UNSCR 1546 of 8th June 2004.

In respect of UNSCR 1518 (2003), article 5 and paragraph 1(a)(v) of part 2 of the Schedule to this Order amend the definition of "Sanctions Committee" in the 2000 Order. The amendment takes account of the fact that the resolution established a new Committee for the purposes of identifying persons for the purposes of certain provisions of UNSCR 1483 (2003).

The remaining provisions of paragraph 1 of part 2 of the Schedule amend or insert various other definitions in the 2000 Order in consequence of the changes made by this Order and to give effect to guidance issued by the United Nations Security Council Committee, established pursuant to UNSCR 661 (1990), on the meaning of terms used in UNSCR 1483 (2003).

The remaining provisions in part 2 of the Schedule amend the 2000 Order to make improvements in the operation of that Order. In particular, provision has been made for persons listed at UN level to automatically fall within the Channel Islands sanctions regime without the need for a direction to be given by the relevant enforcement authority as well as to clarify the powers that the relevant enforcement authority has to direct that funds are to be frozen. Article 6 of the Order makes transitional provisions in respect of directions given by the relevant enforcement authority, and funds covered by notices published, prior to the coming into force of this Order.

In addition, the Order revokes various superseded provisions of the 2003 Order in light of UNSCR 1518 (2003).

UNSCR 1546 (2004) in particular lifts the privileges and immunities for the Development Fund for Iraq and for proceeds from the sale of petroleum products, with respect to any legal proceedings or any resulting final judgment arising out of a contractual obligation entered into by Iraq after 30 June 2004. This Order amends the 2003 Order to give effect to this amendment and updates the definition of "restricted goods".

(**a**) Article 11(1) was substituted by S.I. 2003/1521, article 3 and paragraph 8 of Schedule 1.

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