

SCHEDULE 1

Article 3

AMENDMENT OF THE IRAQ (UNITED NATIONS SANCTIONS) ORDER 2000

Interpretation

- 1.—(1) In article 2(1) of the Iraq (United Nations Sanctions) Order 2000⁽¹⁾ (“the Order”)—
- (a) before the definition of “body corporate”, insert—

““the 2003 resolution” means resolution 1483 (2003) adopted by the Security Council of the United Nations on 22nd May 2003;”;
 - (b) after the definition of “body corporate”, insert—

““designated funds” means funds to which a direction under article 4(1) applies;
“designated person” means a person whose funds (including those held for him or on his behalf) are subject to a direction given by the Treasury under article 4(1);
“Development Fund for Iraq” means the Development Fund for Iraq referred to in paragraph 12 of the 2003 resolution;”;
 - (c) after the definition of “funds”, insert—

““immediate family member” means a parent, son, daughter, spouse or sibling of the whole or half blood;”;
 - (d) after the definition of “relevant institution”, insert—

““Sanctions Committee” means the committee referred to in paragraph 19 of the 2003 resolution;
“senior official” means any individual who, immediately before 20th March 2003—

 - (a) was a member of the Iraqi Ba'ath Party of a rank equivalent to any person identified as mentioned in article 4(1)(a) by the Sanctions Committee; or
 - (b) was entitled to exercise powers or functions equivalent to those of a person mentioned in paragraph (a); or
 - (c) exercised such powers or functions for the purposes of the government of the Republic of Iraq.”.
- (2) After article 2(2) of the Order, add—
- “(3) For the purposes of this Order, a body (“B”) is controlled by a person or government (“P”) if—
- (a) P, by virtue of his or its voting power in B or otherwise, is entitled to exercise determining influence over the management of B; or
 - (b) B carries on activities predominantly for the purposes of P, or subject to P’s direction or approval.”.

Making funds available to designated persons

2. For article 3 of the Order, substitute—

“3.—(1) Any person who, except under the authority of a licence granted by the Treasury under article 5, makes any funds available to a designated person is guilty of an offence.

(1) S.I.2000/3241, as amended by S.I. 2001/3649.

Status: This is the original version (as it was originally made).

(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.”.

Freezing funds

3. For article 4 of the Order, substitute—

“4.—(1) Where—

- (a) a person is identified by the Sanctions Committee in accordance with paragraph 19 of the 2003 resolution as an individual or entity falling within paragraph 23 of that resolution; or
- (b) the Treasury have reasonable grounds for suspecting that a person is or may be—
 - (i) a senior official;
 - (ii) an immediate family member of a senior official; or
 - (iii) an entity (wherever incorporated or constituted) that—
 - (aa) immediately before 20th March 2003 was owned or controlled by the government of the Republic of Iraq; or
 - (bb) is owned or controlled by a person referred to in paragraph (1)(a) or (1)(b)(i) or (ii),

the Treasury may by notice direct that funds held by, for, or on behalf of that person are not to be made available to any person.

(2) A notice under paragraph (1) 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 (3).

(3) The Treasury may by notice revoke a direction given under paragraph (1) at any time.

(4) The Treasury must publish a notice issued under paragraph (1) or (3) in the way appearing to them to be best calculated to bring it to the attention of the public.”.

Licences

4. In article 5(4) of the Order, for “3(a) or (b)”, substitute “3(1)”.

Transfer of designated funds

5. After article 5 of the Order, insert—

“Transfer of designated funds

5A.—(1) Within 28 days of the publication of a notice under article 4(1), any person who holds funds to which the notice applies—

- (a) must 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 Treasury in writing of—
 - (i) the identity of the person by, for, or on whose behalf he held the funds;
 - (ii) the amount transferred; and
 - (iii) the date the transfer took place.

(2) A person who holds funds to which a notice under article 4(1) applies after the expiry of the period referred to in paragraph (1) 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 Treasury in writing of—
 - (i) the identity of the person by, for, on whose behalf he held the funds;
 - (ii) the amount transferred; and
 - (iii) the date the transfer took place.

(3) Neither paragraph (1) nor (2) applies in respect of any funds that—

- (a) are required to be dealt with otherwise than in accordance with that paragraph by—
 - (i) an order or judgment of a court or a final and binding arbitral award made on or before the day on which the amendments to this Order made by the Iraq (United Nations Sanctions) Order 2003(2) came into force; or
 - (ii) a binding determination made on or before that date by a public authority or under an enactment; or
- (b) on or before that date were subject to a lien, charge or other like interest created or imposed as a means of enforcing an order or judgment of a court, a final and binding arbitral award or a binding determination made by a public authority or under an enactment;
- (c) are authorised by a licence granted by the Treasury under article 5 to be dealt with otherwise than in accordance with that paragraph.

(4) An obligation to transfer funds under paragraph (1) or (2) applies notwithstanding any right, obligation, restriction or immunity, whether imposed or conferred by statute or otherwise, in relation to those funds.

(5) No person may be held liable in respect of any action taken for the purpose of complying with an obligation to transfer funds under paragraph (1) or (2).

(6) Funds in respect of which paragraph (1) or (2) applies are immune from any legal process (including any measure of restraint, attachment, execution or detention) requiring them to be dealt with otherwise than in accordance with this Order.

(7) Any person who fails to comply with paragraph (1) or (2) is guilty of an offence.

(8) 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.”.

Facilitation of offences under article 3

6. In article 6 of the Order, and the cross-heading before it, omit “or 4(8)”.

Failure to disclose knowledge or suspicion of sanctions offences

7.—(1) For article 8(1)(a) of the Order, substitute—

- “(a) it knows or suspects that a person is a designated person, or has committed an offence under article 3, 5(4) or 5A;”.

(2) S.I. 2003/.

Status: This is the original version (as it was originally made).

(2) In article 8(2)(a) of the Order, for “, 4(8)”, substitute “or 5A”.

Penalties and proceedings

8.—(1) In article 11(1) of the Order—

- (a) in paragraph (1), omit “, 4(8)”;
- (b) in paragraph (2), before “7”, insert “5A,”;
- (c) in paragraph (3), omit “4(9),”.