

2000 No. 3245

UNITED NATIONS

**The Iraq (United Nations Sanctions) (Isle of Man)
Order 2000**

Made - - - - - 13th December 2000

Laid before Parliament 13th December 2000

Coming into force - - 14th December 2000

At the Court at Buckingham Palace, the 13th day of December 2000

Present,

The Queen's Most Excellent Majesty in Council

Whereas under article 41 of the Charter of the United Nations the Security Council of the United Nations have, by a resolution adopted on 6th August 1990, 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 on Her by section 1 of the United Nations Act 1946(a), is pleased, by and with the advice of Her Privy Council to order, and it is hereby ordered, as follows:—

Citation, commencement, operation and extent

1.—(1) This Order may be cited as the Iraq (United Nations Sanctions) (Isle of Man) Order 2000, and shall come into force on 14th December 2000.

(2) If, after the making of this Order, the Security Council of the United Nations take a decision which has the effect of cancelling, amending or suspending the operation of the resolution adopted by it on 6th August 1990 in whole or in part, this Order shall cease to have effect or be deemed to be amended, or its operation shall be suspended, in whole or in part, as the case may be, in accordance with that decision; and particulars of that decision shall be published by the Secretary of State in a notice in the London, Edinburgh and Belfast Gazettes.

(3) Articles 2 to 7 and 9 of this Order apply to any person within the Isle of Man, and to any person elsewhere who—

- (a) is a British citizen, a British Dependent Territories citizen, a British overseas citizen, a British National (Overseas), a British subject or a British protected person and is ordinarily resident in the Isle of Man; or
- (b) is a body corporate incorporated or constituted under the law of the Isle of Man.

(4) This Order extends to the Isle of Man, as part of its law.

(a) 1946 c. 45.

Interpretation

2. In this Order—

“body corporate” includes a limited liability company constituted under the Limited Liability Companies Act 1996 (an Act of Tynwald) and, in relation to such a company, any reference to a director or other officer of a body corporate is a reference to a member and to the company’s manager and registered agent;

“custody” means custody within the meaning of the Custody Act 1995 (an Act of Tynwald);

“document” includes information recorded in any form, and in relation to information recorded otherwise than in legible form, references to its production include references to producing a copy of the information in legible form;

“funds” means financial assets and economic benefits of any kind, including (but not limited to) gold coin, gold bullion, cash, cheques, claims on money, drafts, money orders and other payment instruments; deposits with financial institutions or other entities, balances on accounts, debts and debt obligations; securities and debt instruments (including stocks and shares, certificates representing securities, bonds, notes, warrants, debentures, debenture stock and derivatives contracts); interest, dividends or other income on or value accruing from or generated by assets; credit, rights of set-off, guarantees, performance bonds or other financial commitments; letters of credit, bills of lading, bills of sale; documents evidencing an interest in funds or financial resources, and any other instrument of export financing;

“relevant institution” means—

- (a) a body corporate wherever incorporated;
- (b) a partnership formed under the law of the Isle of Man;
- (c) a partnership or other unincorporated association of two or more persons formed under the law of a member State of the European Community;
- (d) a European authorised institution within the meaning of the Banking Co-ordination (Second Council Directive) Regulations 1992^(a) which has lawfully established a branch in the Isle of Man for the purposes of accepting deposits or other repayable funds from the public;
- (e) a building society within the meaning of section 7 of the Industrial and Building Societies Act 1892 (an Act of Tynwald);

“the Treasury” means the Isle of Man Treasury, a department of the Government of the Isle of Man.

Making funds available to Iraq

3. Except under the authority of a licence granted under article 5 by the Treasury, any person who—

- (a) makes any funds available to the Government of the Republic of Iraq or any person who is resident in the Republic of Iraq, or
- (b) otherwise remits or removes any funds from the Isle of Man to a destination in the Republic of Iraq,

is guilty of an offence.

Freezing of funds on suspicion

4.—(1) Where the Treasury has reasonable grounds for suspecting that any funds held by any person are or may be—

- (a) funds of the Government of the Republic of Iraq, or of a person who is resident in the Republic of Iraq, or
- (b) held on behalf of that Government or any such person,

it may by notice direct that those funds are not to be made available to that Government or that person, except under the authority of a licence granted under article 5.

(2) A notice given under paragraph (1) above shall specify the period for which it is to have effect, which shall be not longer than 5 working days.

^(a) S.I. 1992/3218, amended by S.I.s 1993/3225, 1995/1442, 1996/1669 and 1999/2094 and Chapter II of Part I of Schedule to the Bank of England Act 1998 (c. 11).

(3) In paragraph (2) above, “working day” means any day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday under the Bank Holidays Act 1989 (an Act of Tynwald).

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

(5) The expiry or revocation of a direction shall not affect the application of article 3 in respect of the funds in question.

(6) A notice under paragraph (1) or (4) shall be given in writing to the person holding the funds in question (“the recipient”) and shall require the recipient to send a copy of the notice without delay to the person whose funds they are, or on whose behalf they are held (“the owner”).

(7) A recipient shall be treated as complying with that requirement if, without delay, he sends a copy of the notice to the owner at his last-known address or, if he does not have an address for the owner, he makes arrangements for a copy of the notice to be supplied to the owner at the first available opportunity.

(8) Any person who contravenes a direction under paragraph (1) is guilty of an offence.

(9) A recipient who fails to comply with such a requirement as is mentioned in paragraph (6) is guilty of an offence.

Licences

5.—(1) A licence under this article shall be in writing and may be—

- (a) granted either generally or to one or more particular persons;
- (b) granted either absolutely or subject to compliance with such conditions as are specified in the licence;
- (c) either of indefinite duration or expressed to expire on a specified date.

(2) A licence granted to one or more particular persons may be revoked or varied at any time by written notice given by the Treasury to each of those persons.

(3) The Treasury shall publish a general licence in such manner as it thinks fit. A general licence may be revoked at any time by written notice which shall be published by the Treasury in the same manner as the licence.

(4) Any person who, in doing or having done an act mentioned in article 3(a) or (b) or 4(1) under the authority of a licence, contravenes or fails to comply with a condition specified in the licence, is guilty of an offence, unless the condition is one imposed as a result of a variation of the licence made without his consent after he did the act.

(5) A notice under paragraph (2) may be given by post, and shall be deemed to have been given to a person if it is sent to him at his last-known address.

Facilitation of offences under article 3 or 4(8)

6. Any person who knowingly and intentionally engages in any activities the object or effect of which is to enable or facilitate the commission (by that person or another) of an offence under article 3 or 4(8) is guilty of an offence.

Offences in connection with applications for licences

7. Any person who, for the purposes of obtaining a licence under article 5, knowingly or recklessly makes any statement or furnishes any document or information which is false in a material particular is guilty of an offence.

Failure to disclose knowledge or suspicion of sanctions offences

8.—(1) A relevant institution is guilty of an offence if—

- (a) it knows or suspects that a person is resident in the Republic of Iraq, or has committed an offence under article 3, 4(8) or 5(4);
- (b) the person is, or has been at any time since the coming into force of this Order, a customer of the institution, or is a person with whom the institution has had dealings in the course of its business since that time; and

- (c) it does not disclose to the Treasury the information or other matter on which the knowledge or suspicion is based as soon as is reasonably practicable after that information or other matter comes to its attention.
- (2) Where a relevant institution discloses to the Treasury—
 - (a) its knowledge or suspicion that a person is resident in the Republic of Iraq, or has committed an offence under article 3, 4(8) or 5(4), or
 - (b) any information or matter on which that knowledge or suspicion is based,the disclosure shall not be treated as a breach of any restriction imposed by statute or otherwise.

Obtaining of information

9.—(1) The Treasury may, by notice in writing given to any person to whom this article applies, require that person to—

- (a) furnish any information in his possession or control and specified in the notice, or
 - (b) produce any documents in his possession or control and specified in the notice,
- which the Treasury may require for the purpose of ensuring compliance with, or detecting evasion of, this Order.

(2) Any person to whom such a requirement is given shall comply with it within such time, in such manner and at such place as may be specified in the notice.

(3) A notice under paragraph (1) may be given by post, and shall be deemed to have been given to a person if it is sent to him at his last-known address.

(4) Nothing in this article shall require any person who has acted as advocate for any person to produce or disclose any privileged communication or document in his possession in that capacity.

(5) The furnishing of any information or the production of any document under this article shall not be treated as a breach of any restriction imposed by statute or otherwise.

(6) The power conferred by this article to require any person to produce documents shall include power to take copies of or extracts from any document so produced and to require 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.

(7) Any person who—

- (a) without reasonable excuse, refuses or fails to comply with any requirement under paragraph (1);
- (b) intentionally furnishes false information or a false explanation in purported compliance with a requirement under paragraph (1); or
- (c) with intent to evade the provisions of this article, destroys, mutilates, defaces, secretes or removes any document,

is guilty of an offence.

(8) Where a person is convicted of an offence under this article 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.

Disclosure of information

10.—(1) No information furnished or document produced (including any copy or extract made of any document produced) by any person in pursuance of this Order 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 sub-paragraph 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 holding or acting in any office under or in the service of—

- (i) the Crown in respect of the Government of the United Kingdom,
 - (ii) the Government of the Isle of Man,
 - (iii) the States of Guernsey or Alderney or the Chief Pleas of Sark,
 - (iv) the States of Jersey, or
 - (v) the Government of any territory listed in the Schedule to this Order;
- (c) on the authority of the Treasury, to—
- (i) any organ of the United Nations or any person in the service of the United Nations, or
 - (ii) the Government of, or any competent authority in, any other country or territory,
- for the purpose of assisting the United Nations or that Government or authority in securing compliance with or detecting evasion of measures in relation to Iraq decided upon by the Security Council of the United Nations;
- (d) with a view to the initiation of, or otherwise for the purposes of, any investigation into the commission or possible commission of an offence under this Order; or
- (e) with a view to the institution of, or otherwise for the purposes of, any proceedings for an offence under this Order.

(2) Any person who, without reasonable excuse, discloses information or a document in contravention of paragraph (1) is guilty of an offence.

Penalties and proceedings

- 11.—(1) Any person guilty of an offence under article 3, 4(8), 5(4) or 6 shall be liable—
- (a) on conviction on information to custody for a term not exceeding seven years, or a fine, or both;
 - (b) on summary conviction to custody for a term not exceeding six months, or a fine not exceeding the statutory maximum, or both.
- (2) Any person guilty of an offence under article 7, 9(7)(b) or (c) or 10(2) shall be liable—
- (a) on conviction on information to custody for a term not exceeding two years, or a fine, or both;
 - (b) on summary conviction to custody for a term not exceeding three months, or a fine not exceeding the statutory maximum, or both.
- (3) Any person guilty of an offence under article 4(9), 8 or 9(7)(a) shall be liable on summary conviction to custody for a term not exceeding three months, or a fine not exceeding the statutory maximum or to both.
- (4) Where a body corporate is guilty of an offence under this Order, and that 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 who was purporting to act in any such capacity, he, as well as the body corporate, shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.
- (5) Notwithstanding anything in section 75(1) of the Summary Jurisdiction Act 1989 (an Act of Tynwald), a complaint relating to an offence under this Order which is triable by a court of summary jurisdiction may be heard if it is made at any time within 3 years after the commission of the offence and within 12 months after the date on which evidence sufficient in the opinion of the prosecutor to justify the proceedings comes to his knowledge.
- (6) For the purposes of this article—
- (a) a certificate signed by or on behalf of the prosecutor as to the date on which such evidence as is referred to in paragraph (5) above came to his knowledge shall be conclusive evidence of that fact; and
 - (b) a certificate purporting to be so signed shall be presumed to be so signed unless the contrary is proved.
- (7) Section 27(2) of the Police Powers and Procedures Act 1998 (an Act of Tynwald) shall apply to the offences under this Order that are not arrestable offences by virtue of the term of custody for which a person may be sentenced in respect of them, as if they were mentioned in that section; and accordingly such offences shall be arrestable offences within the meaning of that Act.

(8) No proceedings for an offence under this Order, other than for a summary offence, shall be instituted except by or with the consent of the Attorney General for the Isle of Man:

Provided that this paragraph shall not prevent the arrest, or the issue or execution of a warrant for the arrest, of any person in respect of such an offence, or the remand in custody or on bail of any person charged with such an offence, notwithstanding that the necessary consent to the institution of proceedings for the offence has not been obtained.

Exercise of functions

12. The Treasury may to such extent and subject to such restrictions and conditions as it may think proper, delegate or authorise the delegation of any of its functions under this Order to any person, or class or description of person, approved by it, and references in this Order to the Treasury shall be construed accordingly.

A. K. Galloway
Clerk of the Privy Council

SCHEDULE

Article 10(1)(b)(v)

DISCLOSURE OF INFORMATION: LISTED TERRITORIES

Anguilla

Bermuda

British Antarctic Territory

British Indian Ocean Territory

British Virgin Islands

Cayman Islands

Falkland Islands

Gibraltar

Montserrat

Pitcairn, Henderson, Ducie and Oeno Islands

St Helena

St Helena Dependencies

South Georgia and the South Sandwich Islands

Turks and Caicos Islands

The UK Sovereign base Areas of Akrotiri and Dhekelia in the island of Cyprus

EXPLANATORY NOTE

(This note is not part of the Order)

This Order makes provision to give effect to a decision of the Security Council of the United Nations in Resolution 661 of 6th August 1990. It prohibits the making of funds available to the Government of the Republic of Iraq or persons resident in Iraq, and the remission or removal of funds to Iraq from the Isle of Man (article 3) without a licence. Provision is also made for the Isle of Man Treasury to require certain suspected Iraqi funds to be frozen (article 4). Article 6 makes it an offence to facilitate the commission of an offence under article 3 or 4(8).

Provision is made with respect to the granting of licences (articles 5 and 7) and for the obtaining of information for the purposes of enforcement (articles 8 to 10). Article 11 provides for penalties and proceedings for offences under the Order.

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