

2004 No. 1498

UNITED NATIONS

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

<i>Made</i>	- - - -	<i>10th June 2004</i>
<i>Laid before Parliament</i>		<i>22th June 2004</i>
<i>Coming into force</i>		<i>13th July 2004</i>

At the Court at Buckingham Palace, the 10th day of June 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 decisions of that Council in relation to Iraq;

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

(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) Order 2000, as amended by the Iraq (United Nations Sanctions) Order 2003, to take account of the resolution referred to in paragraph (3) and also to improve the operation of that Order;

^(a) S.I. 2003/1519
^(b) S.I. 2000/3241

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, interpretation and extent

1. This Order may be cited as the Iraq (United Nations Sanctions)(Amendment) Order 2004 and comes into force on 13th July 2004.
2. In this Order, “the 2000 Order” means the Iraq (United Nations Sanctions) Order 2000.
3. This Order extends to the United Kingdom.

Revocation

4. The following provisions of Schedule 1 to the Iraq (United Nations Sanctions) Order 2003 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)(d);
 - (d) paragraph 3; and
 - (e) paragraph 7(2).

Amendment of the Iraq (United Nations Sanctions) Order 2000

- 5.—(1) The Iraq (United Nations Sanctions) Order 2000 is amended as follows.
 - (2) After article 1(3), insert—

“(4) This Order extends to the United Kingdom.”.
 - (3) In article 2—
 - (a) in paragraph (1)—
 - (i) after the definition of “the 2003 resolution”(b), insert—

““the 2004 Order” means the Iraq (United Nations Sanctions)(Amendment) Order 2004;”;
 - (ii) omit the definition of “designated funds”(c);
 - (iii) for the definition of “designated person”(d), substitute—

““designated person” 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 him or on his behalf) are subject to a direction given by the Treasury 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 Treasury under article 4A(2);”;
 - (iv) for the definition of “immediate family member”(e), substitute—

(a) 1946 c.45.

(b) The definition of “the 2003 resolution” was inserted by S.I. 2003/1519, article 3 and paragraph 1(1)(a) of Schedule 1.

(c) The definition of “designated funds” was inserted by S.I. 2003/1519, article 3 and paragraph 1(1)(b) of Schedule 1.

(d) The definition of “designated person” was inserted by S.I. 2003/1519, article 3 and paragraph 1(1)(b) of Schedule 1.

(e) The definition of “immediate family member” was inserted by S.I. 2003/1519, article 3 and paragraph 1(1)(c) of Schedule 1.

““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”(a), 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”(b), 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

(f) 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)(c)—

(i) for “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;

(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.”

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

(a) The definition of “Sanctions Committee” was inserted by S.I. 2003/1519, article 3 and paragraph 1(1)(d) of Schedule 1.

(b) The definition of “senior official” was inserted by S.I. 2003/1519, article 3 and paragraph 1(1)(d) of Schedule 1.

(c) Article 2(3) was inserted by S.I. 2003/1519, article 3 and paragraph 1(2) of Schedule 1.

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

(6) After article 3, insert—

“Freezing funds of listed persons

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

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

(7) Article 4(b) is revoked.

(8) Before article 5(c), insert—

“Freezing of funds on suspicion

4A.—(1) Where the Treasury have 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 Treasury 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 Treasury under article 5.

(2) Where the Treasury have 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),

the Treasury 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 Treasury 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 Treasury must publish a notice given under paragraph (1) or (2) in the way appearing to them to be best calculated to bring it to the attention of the public.

(a) Article 3 was substituted by S.I. 2003/1519, article 3 and paragraph 2 of Schedule 1.

(b) Article 4 was substituted by S.I. 2003/1519, article 3 and paragraph 3 of Schedule 1.

(c) Article 5 was amended by S.I. 2003/1519, article 3 and paragraph 4 of Schedule 1.

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

(6) The Treasury 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 High Court or, in Scotland, to the Court of Session, 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 Treasury (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.”.

(9) In article 5(4), for “article 3(1) or 4(1)” substitute “article 3(1), 3A(1), 4A(1) or 4A(2)”.

(10) In article 5A(a)—

(a) in paragraph (1)—

(i) for “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 “article 4(1)”, substitute “ article 4A(1) or 4A(2)”; and

(ii) in sub-paragraph (b)(i), for “by, for, 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 Treasury 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 Treasury 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.

(2B) Within 28 days of the publication by the Treasury 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 Treasury in writing of—

(a) Article 5A was inserted by S.I. 2003/1519, 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.

(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 Treasury 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 Treasury must publish notification of any list referred to in paragraph (2A) or (2B) in the way appearing to them to be best calculated to bring it to the attention of the public.”;

- (d) in paragraph (3)—
 - (i) for “Neither paragraph (1) nor (2) applies” substitute “Paragraphs (1) to (2C) do not apply”;
 - (ii) in sub-paragraph (a) for “that paragraph”, substitute “the appropriate paragraph”;
 - (iii) in sub-paragraph (c) for “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)”;
 - (h) in paragraph (7) for “(1) or (2)” substitute “(1), (2), (2A), (2B) or (2C)”;
- (11) In article 6 after “article 3” insert “, 3A or 4A(10) or article 6(3) of the 2004 Order”;
- (12) 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
 - (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 article 3, 3A, 4A(10), 5(4) or 5A or article 6(3) of the 2004 Order, or”;
- (13) In article 11(1)(b) after “article 3,” insert “3A, 4A(10),”.

Transitional provisions

6.—(1) Notwithstanding the revocation of article 4 of the 2000 Order by this Order, any direction which was given by the Treasury 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

(a) Article 8(1)(a) was substituted by S.I. 2003/1519, article 3 and paragraph 7(1) of Schedule 1.
 (b) Article 11(1) was amended by S.I. 2003/1519, article 3 and paragraph 8 of Schedule 1.

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—

- (a) on conviction on indictment to imprisonment for a term not exceeding seven years, or a fine, or both;
- (b) on summary conviction to imprisonment for a term not exceeding six months, or a fine not exceeding the statutory maximum, or both.

(4) Articles 9, 10 and 11(4) to (9) 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.

10th June 2004

A.K.Galloway
Clerk of the Privy Council

EXPLANATORY NOTE

(This note is not part of the Order)

This Order, made under the United Nations Act 1946, amends the Iraq (United Nations Sanctions) Order 2000 (the “2000 Order”) which gave effect to certain aspects of the sanctions imposed against Iraq by the United Nations in United Nations Security Council Resolution 1483 (2003) of 22nd May 2003; and revokes various superseded provisions of the Iraq (United Nations Sanctions) Order 2003.

Article 5(2) of the Order clarifies the territorial extent of the 2000 Order.

Article 5(3)(v) amends the definition of “Sanctions Committee” in the 2000 Order to take account of the fact that on 24th November 2003 the United Nations adopted a further resolution which established a new Committee for the purposes of identifying persons for the purposes of certain provisions of the resolutions adopted on 22nd May 2003. The remaining provisions of article 5(3) amend or insert various other definitions in the 2000 Order in consequence of the changes made by the rest of article 5 and to give effect to guidance issued by the United Nations Security Council Committee established pursuant to Resolution 661 (1990) on the meaning of terms used in Resolution 1483 (2003).

The remaining provisions of article 5 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 UK sanctions regime without the need for a direction to be given by the Treasury as well as to clarify the powers that the Treasury have to direct that funds are to be frozen.

Article 6 makes transitional provisions in respect of directions given by the Treasury, and funds covered by notices published, prior to the coming into force of this Order.

STATUTORY INSTRUMENTS

2004 No. 1498

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£3.00

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Printed and published in the UK by The Stationery Office Limited
under the authority and superintendence of Carol Tullo, Controller of Her Majesty's
Stationery Office and Queen's Printer of Acts of Parliament.

E0815 6/2004 140815T 19585

ISBN 0-11-049392-3



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