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STATUTORY INSTRUMENTS

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**2004 No. 2671**

**UNITED NATIONS**

**The Iraq (United Nations Sanctions) (Overseas Territories) (Amendment) (No. 2) Order 2004**

<i>Made</i>	- - - -	<i>13th October 2004</i>
<i>Laid before Parliament</i>		<i>14th October 2004</i>
<i>Coming into force</i>	- -	<i>15th October 2004</i>

At the Court at Buckingham Palace, the 13th day of October 2004

Present,

The Queen's Most Excellent Majesty in Council

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

**Citation, commencement, construction and extent**

1.—(1) This Order may be cited as the Iraq (United Nations Sanctions) (Overseas Territories) (Amendment)(No.2) Order 2004 and shall come into force on 15th October 2004.

(2) In this Order, “the principal Order” means the Iraq (United Nations Sanctions) (Overseas Territories) Order 2003(2).

(3) This Order shall extend to the territories listed in Schedule 1 to the principal Order.

**Exportation of restricted goods to Iraq**

2. Article 6 of the principal Order is replaced by the following article:

**“Exportation of restricted goods to Iraq**

6.—(1) Except under the authority of a licence granted by the Governor under this article, restricted goods are prohibited to be exported from the Territory to any destination in Iraq

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(1) 1946, c. 45.

(2) S.I. 2003/1516, amended by S.I.s 2004/1983 and 2004/2036.

or to any destination for the purpose of delivery, directly or indirectly, to or to the order of any person in Iraq.

(2) Any restricted goods which are exported or attempted to be exported shall be liable to forfeiture.

(3) Any person knowingly concerned in the exportation or attempted exportation of such goods shall be guilty of an offence under this Order.

(4) In any case where a person would, apart from this paragraph, be guilty of an offence under paragraph (3) and of an offence under article 5, he shall not be guilty of the offence under paragraph (3).”.

### **Declaration as to goods: power of search**

3. In Article 13(1) of the principal Order, before “the Governor”, insert the words “an officer authorised for the purpose by”.

### **Investigation, etc, of suspect ships**

4. After Article 14(4) of the principal Order, insert the following:

“(5) Before or on exercising any power conferred by this article, an authorised person shall, if requested to do so, produce evidence of his authority.”.

### **Amendment of the 2000 Order**

5. The Iraq (United Nations Sanctions)(Overseas Territories) Order 2000 (“the 2000 Order”)(3) continues in force and is amended as set out in the Schedule to this Order.

### **Transitional provisions**

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

(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.

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(3) S.I. 2000/3242, amended by S.I.s 2001/3649, 2003/1347 and 2003/1516.

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*A. K. Galloway*  
Clerk of the Privy Council

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SCHEDULE

Article 5

AMENDMENT OF THE IRAQ (UNITED NATIONS  
SANCTIONS) (OVERSEAS TERRITORIES) ORDER 2000

**Interpretation**

1.—(1) In article 2(1) of the Iraq (United Nations Sanctions)(Overseas Territories) Order 2000(4) (“the Order”):

- (a) after the definition of “the 2003 resolution”, insert—

““the 2004 Order” means the Iraq (United Nations Sanctions) (Amendment) Order 2004(5);”;
- (b) delete the definition of “designated funds”;
- (c) for the definition of “designated person”, substitute:

““designated person” means a person who is not a listed person but is a designated 23a person or a designated 23b person;”;
- (d) for the definition of “immediate family member”, 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;”;
- (e) for the definition of “Sanctions Committee”, 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;”;
- (f) for the definition of “senior official”, substitute:

““senior official” includes any individual who immediately before 20th March 2003 was –

  - (i) a cabinet official of the former government of the Republic of Iraq;
  - (ii) a member of the former Iraqi Parliament;
  - (iii) 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;
  - (iv) 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;
  - (v) a senior member of the Iraqi Ba'ath Party who was of a rank at least equivalent to a listed 23b person; or
  - (vi) an official of a lower rank who performed crucial functions at least equivalent to those performed by a listed 23b person.; and”
- (g) insert alphabetically the following new definitions:

““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 Governor under article 4A(1);

(4) S.I. 2000/3242, amended by S.I.s 2001/3649, 2003/1347 and 2003/1516.

(5) S.I. 2004/2036.

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“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 Governor under article 4A(2);

“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;

“Supreme Court” means the court of the Territory having unlimited jurisdiction in civil proceedings;”.

(2) In article 2(3) of the Order:

- (a) 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”;
- (b) in sub-paragraph (a), delete “or” in the last place it appears; and
- (c) 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.”.

### **Making funds available to designated 23b persons and listed 23b persons**

2.—(1) For the heading before article 3 of the Order, substitute “Making funds available to designated 23b persons and listed 23b persons”.

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

### **Freezing funds of listed persons**

3. After article 3 of the Order, insert:

#### **“Freezing funds of listed persons**

3A.—(1) Any person who, except under the authority of a licence granted by the Governor 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.”.

## **Freezing of funds on suspicion**

- 4.—(1) Article 4 of the Order is revoked.  
(2) Before Article 5 of the Order, insert:

### **“Freezing of funds on suspicion**

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

(2) Where the Governor 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),

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

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

(6) The Governor 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 Supreme 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 Governor (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.”.

## **Licences**

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

## **Transfer of designated funds**

6.—(1) In article 5A(1) of the Order:

- (a) for “article 4(1)”, substitute “ article 4A(1) or 4A(2)”; and
- (b) in sub-paragraph (b)(i) –
  - (i) before “notify” insert “shall”; and
  - (ii) for “on whose behalf he held the funds” substitute “on behalf of whom the funds were held”.

(2) In article 5A(2) of the Order :

- (a) for “article 4(1)”, substitute “ article 4A(1) or 4A(2)”; and
- (b) in sub-paragraph (b)(i), for “by, for, or on whose behalf he held the funds;”, substitute “by, for or on behalf of whom the funds were held;”.

(3) After article 5A(2) of the Order, insert –

“(2A) Within 28 days of the publication by the Governor 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 shall –

- (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 Governor 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 Governor 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 shall –

- (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 Governor 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 Governor in writing of –

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- (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.

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

- (4) In article 5A(3) of the Order –
  - (a) for “Neither paragraph (1) nor (2) applies” substitute “Paragraphs (1) to (2C) do not apply”;
  - (b) in sub-paragraph (a) for “that paragraph”, substitute “the appropriate paragraph”;
- (5) In article 5A(4) of the Order, for “(1) or (2)” substitute “(1), (2), (2A), (2B) or (2C)”.
- (6) In article 5A(5) of the Order, for “(1) or (2)” substitute “(1), (2), (2A), (2B) or (2C)”.
- (7) In article 5A(6) of the Order, for “(1) or (2)” substitute “(1), (2), (2A), (2B) or (2C)”.
- (8) In article 5A(7) of the Order, for “(1) or (2)” substitute “(1), (2), (2A), (2B) or (2C)”.

#### **Facilitation of offences**

7. In article 6 of the Order after “article 3” insert “, 3A or 4A(10) or article 6(3) of the 2004 Order”.

#### **Failure to disclose knowledge or suspicion of sanctions offences**

- 8.—(1) In article 8(1)(a) of the Order –
  - (a) after “a designated person”, insert “or a listed person”;
  - (b) after “article 3,” insert “3A, 4A(10),”;
  - (c) after “article 5A” insert “or article 6(3) of the 2004 Order”.
- (2) In article 8(2) of the Order for paragraph (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;”.

#### **Penalties and proceedings**

9. In article 11(1) of the Order, after “article 3,” insert “3A, 4A(10),”.

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### **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) (Overseas Territories) Order 2003 to replace provisions extended to certain territories regarding exportation of restricted goods with provisions equivalent to those in the United Kingdom, and to



make further provision regarding authorisation of persons by the Governor to search persons, and evidence of authorisation in relation to the investigation of suspect ships.

This Order also amends the Iraq (United Nations Sanctions) (Overseas Territories) Order 2000 (the “2000 Order”) which gives effect to certain aspects of the sanctions imposed against Iraq by resolution 661 (1990) adopted by the Security Council of the United Nations on 6th August 1990, to take account of amendments contained in resolution 1483 (2003) and resolution 1518 (2003) adopted by the Security Council of the United Nations on 22nd May 2003 and 24th November 2003 respectively.

Paragraph 1(1)(e) of the Schedule amends the definition of “Sanctions Committee” in the 2000 Order to take account of the new Committee established by resolution 1518 (2003) for the purposes of identifying persons subject to certain measures imposed by resolution 1483 (2003). The remaining provisions of paragraph 1 of the Schedule amend or insert definitions in the 2000 Order reflecting other changes made by the Schedule and 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 the Schedule amend the 2000 Order to make improvements in its operation. In particular, provision has been made for persons listed by the Sanctions Committee automatically to become subject to the sanctions regime without the need for the Governor so to direct. It also clarifies the powers of the Governor to direct freezing of funds. Article 6 of the Order makes transitional provisions in respect of directions given by the Governor, and funds covered by notices published, prior to the coming into force of this Order.

The Order applies to the following 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, and the UK Sovereign Base Areas of Akrotiri and Dhekelia in the island of Cyprus.