

SECOND SUPPLEMENT TO THE GIBRALTAR GAZETTE

No. 3,360 of 28 August, 2003

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UNITED NATIONS

The Iraq (United Nations Sanctions) (Overseas Territories) Order 2003

<i>Made</i>	<i>12th June 2003</i>
<i>Laid before Parliament</i>	<i>13th June 2003</i>
<i>Coming into force</i>	<i>14th June 2003</i>

At the Court at Buckingham Palace, the 12th day of June 2003

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 has, 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:

Now, therefore, Her Majesty, in exercise of the powers conferred on Her by section 1 of the United Nations Act 1946, 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) (Overseas Territories) Order 2003 and shall come into force on 14th June 2003.

(2) If the Security Council of the United Nations takes any decision which has the effect of canceling or suspending the operation of the resolution adopted by it on 22nd May 2003, in whole or in part, this Order shall cease to have effect 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 Governor in a notice in the office gazette of the Territory.

(3)

- (a) This Order shall extend to the territories listed in Schedule 1.
- (b) Article 19 of this Order shall apply to the Sovereign Base Areas of Akrotiri and Dhekelia as set out in Schedule 2.
- (c) In the application of this Order to any of the said territories the expression “the Territory” in this Order means that territory.

(4) Articles 5, 6 and 8 shall apply to any person within the Territory and to any person elsewhere who is-

- (a) a British citizen, a British overseas territories citizen, a British Overseas citizen, a British subject, a British National (Overseas) or a British protected person and is ordinarily resident in the Territory; or
- (b) a body incorporated or constituted under the law of any part of the Territory.

Revocation.

2. The Iraq and Kuwait (United Nations Sanctions) (Dependent Territories) Order 1990, the Iraq and Kuwait (United Nations Sanctions) (Dependent Territories) (No. 2) Order 1990 and the Iraq (United Nations) (Sequestration of Assets) (Dependent Territories) Order 1993 are hereby revoked.

Amendment.

3. The Iraq (United Nations Sanctions) (Overseas Territories) Order 2000 continues in effect and is amended as set out in Schedule 3 with effect from the date on which the committee referred to in paragraph 19 or resolution 1483 adopted by the Security Council of the United Nations on 22nd May 2003 identifies any person as an individual or entity falling within paragraph 23 of that resolution, which date shall be notified by the Governor in the official gazette of the Territory.

Interpretation.

4. In this Order the following expressions have the meanings hereby respectively assigned to them, that is to say-

“commander”, in relation to an aircraft, means the member of the flight crew designated as commander of the aircraft by the operator thereof, or, failing such a person, the person who is for the time being the pilot in command of the aircraft;

“Development Fund for Iraq” means the Development Fund for Iraq referred to in resolution 1483 of the Security Council of the United Nations adopted on 22nd May 2003;

“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;

“export” includes shipment as stores;

“exportation” in relation to any ship, submersible vehicle or aircraft, includes the taking out of the Territory of the ship, submersible vehicle or aircraft notwithstanding that it is conveying goods or passengers and whether or not it is moving under its own power; and cognate expressions shall be construed accordingly;

“Governor” means the Governor or other officer administering the Government of the Territory;

“master”, in relation to a ship, includes any person (other than a pilot) for the time being in charge of the ship;

“operator”, in relation to an aircraft or vehicle, means the person for the time being having the management of the aircraft or vehicle;

“owner”, in relation to a ship, where the owner of a ship is not the operator, means the operator and any person to whom it is chartered;

“restricted goods” means the goods specified in Part III of Schedule 1 to the Export of Goods (Control) Order 1994 made under the Import, Export and Customs Powers (Defence) Act 1939;

“ship” includes every description of a vessel used in navigation;

“shipment” includes loading into an aircraft;

“stores” means goods for use in a ship or aircraft and includes fuel and spare parts and other articles of equipment, whether or not for immediate fitting, but excludes any goods for use in a ship or aircraft as merchandise for sale by retail to persons carried therein;

“vehicle” means a land transport vehicle.

RESTRICTED GOODS

Supply of restricted goods.

5.(1) Any person who, except under the authority of a licence granted by the Governor under this article or article 6-

- (a) supplies or delivers;
- (b) agrees to supply or deliver; or
- (c) does any act calculated to promote the supply or delivery or,

restricted goods to any person in Iraq shall be guilty of an offence under this Order, unless he proves that he did not know and had no reason to suppose that the goods in question were to be supplied or delivered to a person in Iraq.

(2) Nothing in paragraph (1)(b) or (c) shall apply where the supply or delivery of the goods to the person concerned is authorised by a licence granted by the Governor under this article.

Exportation of restricted goods to Iraq.

6. Any person who, except under the authority of a licence granted by the Governor under this article, knowingly exports any restricted goods from the Territory to any destination in Iraq or to any destination for the purpose of delivery, directly or indirectly, to or to the order of any person in Iraq, shall be guilty of an offence under this Order.

Use of ships, aircraft and vehicles: restricted goods.

7.(1) Without prejudice to the generality of article 5, and except under the authority of a licence granted by the Governor under this article, no ship or aircraft to which this article applies, and no vehicle within the Territory, shall be used for the carriage of restricted goods if the carriage is, or forms part of, carriage from any place outside Iraq to any destination therein.

(2) This article applies to ships registered in the Territory, to aircraft so registered and to any other ship or aircraft that is for the time being chartered to any person who is—

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

(3) If any ship, aircraft or vehicle is used in contravention of paragraph (1) then—

- (a) in the case of a ship registered in the Territory or any aircraft so registered, the owner and the master of the ship or, as the case may be, the operator and the commander of the aircraft; or
- (b) in the case of any other ship or aircraft, the person to whom the ship or aircraft is for the time being chartered and, if he is such a person as is referred to in paragraph (2)(a) or (b), the master of the ship or, as the case may be, the operator and the commander of the aircraft; or
- (c) in the case of a vehicle, the operator of the vehicle,

shall be guilty of an offence under this Order, unless he proves that he did not know and had no reason to suppose that the carriage of the goods in question was, or formed part of, carriage from any place outside Iraq to any destination therein.

(4) Nothing in paragraph (1) shall apply where the supply or delivery or exportation from the Territory of the goods concerned to Iraq was authorised by a licence granted by the Governor under article 5 or 6.

(5) Nothing in this article shall be construed so as to prejudice any other provision of law prohibiting or restricting the use of ships, aircraft or vehicles.

ILLEGALLY REMOVED IRAQI CULTURAL PROPERTY

Illegally removed Iraqi cultural property.

8.(1) The importation into or exportation from the Territory of any item of illegally removed Iraqi cultural property is prohibited.

(2) Any person who holds or controls any item of illegally removed Iraqi cultural property must cause the transfer of that item to a police officer or constable. Any person who fails to do so shall be guilty of an offence under this Order, unless he proves that he did not know and had no reason to suppose that the item in question was illegally removed Iraqi cultural property.

(3) Any person who deals in any item of illegally removed Iraqi cultural property shall be guilty of an offence under this Order, unless he proves that he did not know and had no reason to suppose that the item in question was illegally removed Iraqi cultural property.

(4) “illegally removed Iraqi cultural property” means Iraqi cultural property and any other item of archaeological, historical, cultural, rare scientific or religious importance illegally removed from any location in Iraq since 6th August 1990. It is immaterial whether the removal was illegal under the law of a part of the Territory or of any other country or territory.

(5) A person deals in an item if (and only if) he—

- (a) acquires, disposes of, imports or exports it,
- (b) agrees with another to do an act mentioned in paragraph (a), or
- (c) makes arrangements under which another person does such an act or under which another person agrees with a third person to do such an act.

(6) In this article—

- (a) “acquires” means buys, hires, borrows or accepts,

- (b) “disposes of” means sells, lets on hire, lends or gives,
- (c) in relation to agreeing or arranging to do an act, it is immaterial whether the act is agreed or arranged to take place in the Territory or elsewhere.

PRIVILEGES AND IMMUNITIES

Development Fund for Iraq.

9.(1) Except as provided in paragraph (2), the Development Fund for Iraq, its property and assets wherever located and by whomsoever held (including any rights or obligations owed by or to the Development Fund for Iraq), shall have the like privileges and immunities as the United Nations under Part II of the United Nations and International Court of Justice (Privileges and Immunities) Order 1974.

(2) The Development Fund for Iraq shall not have immunity from suit and legal process concerning liability for damages in connection with an ecological accident, including an oil spill, which occurs after 22nd May 2003.

Petroleum, petroleum products and natural gas.

10. All petroleum, petroleum products and natural gas originating in Iraq shall have immunity from suit and legal process. Such immunity shall cease once title has passed to a purchaser.

GENERAL

Customs powers to demand evidence of destination which goods reach.

11. Any exporter or any shipper of restricted goods which have been exported from the Territory shall, if so required by the Governor, furnish within such time as the Governor may allow proof to the Governor’s satisfaction that the goods have reached either–

- (a) a destination to which they were authorised to be exported by a licence granted under this Order; or
- (b) a destination to which their exportation was not prohibited by this Order,

and, if he fails to do so, he shall be guilty of an offence under this Order, unless he proves that he did not consent to or connive at the goods reaching any destination other than such a destination as aforesaid.

Offences in connection with applications for licences, conditions attaching to licences, etc.

12.(1) If for the purpose of obtaining any licence under this Order any person makes any statement or furnishes any document or information which to his knowledge is false in a material particular, or recklessly makes any statement or furnishes any document or information which is false in a material particular, he shall be guilty of an offence under this Order.

(2) Any person who has done any act under the authority of a licence granted by the Governor under this Order and who fails to comply with any conditions attaching to that licence shall be guilty of an offence under this Order:

Provided that no person shall be guilty of an offence under this paragraph where he proves that the condition with which he failed to comply was modified, otherwise than with his consent, by the Governor after the doing of the act authorised by the licence.

Declaration as to goods: powers of search.

13.(1) Any person who is about to leave the Territory shall, if he is required to do so by the Governor—

- (a) declare whether or not he has with him any restricted goods which are destined for Iraq or for delivery, directly or indirectly, to or to the order of any person in Iraq; and
- (b) produce such goods as aforesaid which he has with him.

Any such officer, and any person acting under his direction, may search that person for the purpose of ascertaining whether he has with him any such goods as aforesaid:

Provided that no person shall be searched in pursuance of this paragraph except by a person of the same sex.

(2) Any person who without reasonable excuse refuses to make a declaration, or fails to produce any goods, or refuses to allow himself to be searched in accordance with the foregoing provisions of this article shall be guilty of an offence under this Order.

(3) Any person who under the provisions of this article makes a declaration which to his knowledge is false in a material particular, or recklessly makes any declaration which is false in a material particular, shall be guilty of an offence under this Order.

Investigation, etc. of suspected ships.

14.(1) Where any authorised officer has reason to suspect that any ship to which article 7 applies has been or is being or is about to be used in contravention of paragraph (1) of that article—

- (a) he may (either alone or accompanied and assisted by persons under his authority) board the ship and search her and, for that purpose, may use or authorise the use of reasonable force;
- (b) he may request the master of the ship to furnish such information relating to the ship and her cargo and produce for his inspection such documents so relating and such cargo as he may specify; and

- (c) in the case of a ship that is reasonably suspected of being or of being about to be used in contravention of paragraph (1) of article 7, any authorised officer (either there and then or upon consideration of any information furnished or document or cargo produced in pursuance of a request made under sub-paragraph (b)), with a view to preventing the commission (or the continued commission) of any such contravention, or in order that enquiries into the matter may be pursued, may take the further action specified in paragraph (2).

(2) The further action referred to in paragraph (1)(c) is either–

- (a) to direct the master of the ship to refrain, except with the consent of any authorised officer, from landing at any port specified by the officer any part of the ship's cargo that is so specified; or
- (b) to request the master of the ship to take any one or more of the following steps:
 - (i) to cause the ship not to proceed with the voyage on which she is then engaged or about to engage until the master is notified by an authorised officer that the ship may so proceed;
 - (ii) if the ship is then in port in the Territory, to cause her to remain there until the master is notified by an authorised officer that the ship may depart;
 - (iii) if the ship is then in any other place, to take her to any such port specified by the officer and to cause her to remain there until the master is notified as mentioned in sub-paragraph (ii); and
 - (iv) to take her to any other destination that may be specified by the officer in agreement with the master.

(3) Without prejudice to the provisions of article 17(3), where–

- (a) a master refuses or fails to comply with a request made under paragraph (2)(b); or

- (b) an authorised officer otherwise has reason to suspect that such a request that has been so made may not be complied with,

any such officer may take such steps as appear to him to be necessary to secure compliance with that request and, without prejudice to the generality of the foregoing, may for that purpose enter upon, or authorise entry upon, that ship and use, or authorise the use of, reasonable force.

(4) In this article “authorised officer” means-

- (a) any commissioned naval or military officer;
- (b) any British consular officer;

any person authorised by the Governor for the purpose of this article either generally or in a particular case.

Investigation, etc. of suspected aircraft.

15.(1) Where any authorised person has reason to suspect that any aircraft to which article 7 applies has been or is being or is about to be used in contravention of paragraph (1) of that article—

- (a) he may (either alone or accompanied and assisted by persons under his authority) board the aircraft and search it and, for that purpose, may use or authorise the use of reasonable force;
- (b) he may request the charterer, the operator and the commander of the aircraft or any of them to furnish such information relating to the aircraft and its cargo and produce for his inspection such documents so relating and such cargo as he may specify; and
- (c) if the aircraft is then in the Territory, any authorised person may (either there and then or upon consideration of any information furnished or document or cargo produced in pursuance of a request made under sub-paragraph (b)) further request the charterer, operator and the commander or any of them to cause the aircraft and any of its cargo to remain in the Territory until notified that the aircraft and its cargo may depart.

(2) Without prejudice to the provisions of article 17(3), where an authorised person has reason to suspect that any request that has been made under paragraph (1)(c) may not be complied with, he may take such steps as appear to him to be necessary to secure compliance with that request and, without prejudice to the generality of the foregoing, may for that purpose—

- (a) enter, or authorise entry, upon any land and enter, or authorise entry of, that vehicle;
- (b) detain, or authorise the detention of, that vehicle and any goods contained in it; and
- (c) use, or authorise the use of, reasonable force.

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

(4) In this article—

“authorised person” means any person authorised by the Governor for the purpose of this article either generally or in a particular case.

Provisions supplementary to articles 14 to 16.

17.(1) No information furnished or document produced by any person in pursuance of a request made under article 14, 15 or 16 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 the possession of that document in his own right;

- (b) to any person who would have been empowered under article 14, 15 or 16 to request that it be furnished or produced or 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 to which this Order extends;
- (c) on the authority of the Governor, to any organ of the United Nations or to any person in the service of the United Nations or of the Government of any other country for the purpose of assisting the United Nations or that Government in securing compliance with or detecting evasion of measures in relation to Iraq decided upon by the Security Council of the United Nations; or
- (d) with a view to the institution of, or otherwise for the purposes of, any proceedings-
- (i) in the Territory, for an offence under this Order or, with respect to any of the matters regulated by this Order, for an offence relating to customs; or
 - (ii) for any offence under any law making provision with respect to such matters that is in force in the United Kingdom, any of the Channel Islands, the Isle of Man or any territory to which this Order extends.

(2) Any power conferred by article 14, 15 or 16 to request the furnishing of information or the production of a document or of cargo for inspection shall include a power to specify whether the information should be furnished orally or in writing and in what form and to specify the time by which and the place in which the information should be furnished or the document or cargo produced for inspection.

(3) Each of the following persons shall be guilty of an offence under this Order, that is to say-

- (a) a master of a ship who disobeys any direction given under article 14(2)(a);
- (b) a master of a ship or a charterer or an operator or a commander of an aircraft or an operator or a driver of a vehicle who:
 - (i) without reasonable excuse, refuses or fails within a reasonable time to comply with any request made under article 14, 15 or 16 by any person empowered to make it, or
 - (ii) furnishes any document or information which to his knowledge is false in a material particular, or recklessly furnishes any document or information which is false in a material particular to such a person in response to such a request;
- (c) a master or a member of a crew of a ship or a charterer or an operator or a commander or a member of a crew of an aircraft or an operator or a driver of a vehicle who wilfully obstructs any such person (or any person acting under the authority of any such person) in the exercise of his powers under article 14, 15 or 16.

(4) Nothing in articles 14 to 17 shall be construed so as to prejudice any other provision of law conferring powers or imposing restrictions or enabling restrictions to be imposed with respect to ships, aircraft or vehicles.

Obtaining of evidence and information.

18. The provisions of Schedule 4 shall have effect in order to facilitate the obtaining, by or on behalf of the Governor-

- (a) of evidence and information for the purpose of securing compliance with or detecting evasion of—
 - (i) this Order in the Territory; or
 - (ii) any law making provision with respect to any of the matters regulated by this Order that is in force in the United Kingdom, any of the Channel Islands or the

Isle of Man or any territory to which this Order extends; and

- (b) of evidence of the commission of—
 - (i) in the Territory, an offence under this Order or, with respect to any of the matters regulated by this Order, an offence relating to customs; or
 - (ii) with respect to any of those matters, an offence under the law of the United Kingdom, any of the Channel Islands or the Isle of Man or any territory to which this Order extends.

Penalties and proceedings.

19.(1) Any person guilty of an offence under article 5, 6, 7(3), 8(2) or 8(3) shall be liable—

- (a) on conviction on indictment to imprisonment for a term not exceeding seven years or to a fine or to both; or
- (b) on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding £5,000 or its equivalent or to both.

(2) Any person guilty of an offence under article 17(3)(b)(ii) or paragraph 5(b) or (d) of Schedule 4 shall be liable—

- (a) on conviction on indictment to imprisonment for a term not exceeding two years or to a fine or to both;
- (b) on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding £5,000 or its equivalent or to both.

(3) Any person guilty of an offence under article 12(1) or (2) or article 13(3) shall be liable—

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

- (b) on summary conviction to a fine not exceeding £5,000 or its equivalent.

(4) Any person guilty of an offence under article 17(3)(a), (b)(i) or (c), or paragraph 5(a) or (c) of Schedule 4, shall be liable in summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding £5,000 or its equivalent or to both.

(5) Any person guilty of an offence under article 11 or 13(2) shall be liable on summary conviction to a fine not exceeding £5,000 or its equivalent.

(6) Where any 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.

(7) Summary proceedings for an offence under this Order, being an offence alleged to have been committed outside the Territory, may be commenced at any time not later than 12 months from the date on which the person charged first enters the Territory after committing the offence.

(8) Proceedings against any person for an offence under this Order may be taken before the appropriate court in the Territory having jurisdiction in the place where that person is for the time being.

(9) No proceedings for an offence under this Order shall be instituted in the territory except by or with the consent of the principal public officer of the Territory having responsibility for criminal prosecutions:

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 the powers of the Governor.

20.(1) The Governor may, to such extent and subject to such restrictions and conditions as he may think proper, delegate or authorise the delegation of any of his powers under this Order (other than the power to give authority

under Schedule 4 to apply for a search warrant) to any person, or class or description of persons, approved by him, and references in this Order to the Governor shall be construed accordingly.

(2) Any licences granted under this Order shall be in writing and may be either general or special, may be subject to or without conditions, may be limited so as to expire on a specified date unless renewed and may be varied or revoked by the authority that granted them.

Miscellaneous.

21.(1) Any provision of this Order which prohibits the doing of a thing except under the authority of a licence granted by the Governor shall not have effect in relation to any such thing done anywhere other than the Territory provided that it is duly authorised.

(2) A thing is duly authorised for the purpose of paragraph (1) if it is done under the authority of a licence granted in accordance with any law in force in the place where it is done (being a law substantially corresponding to the relevant provisions of this Order) by the authority competent in that behalf under that law.

A. K. Galloway
Clerk of the Privy Council

SCHEDULE 1

Article 1(3)(a)

TERRITORIES TO WHICH THIS ORDER EXTENDS

Anguilla

Bermuda

British Antarctic Territory

British Indian Ocean Territory

Cayman Islands

Falkland Islands

Gibraltar

Montserrat

Pitcairn, Henderson, Ducie and Oeno Islands

St Helena and Dependencies

South Georgia and the South Sandwich Islands

The Sovereign Base Areas of Akrotiri and Dhekelia in the Island of Cyprus

Turks and Caicos Islands

Virgin Islands

SCHEDULE 2

Article 1(3)(b)

APPLICATION OF ARTICLE 19 TO THE SOVEREIGN BASE AREAS
OF AKROTIRI AND DHEKELIA IN THE ISLAND OF CYPRUS

- 1.(1) Any person who commits an offence under article 5, 6, 7(3), 8(2) or 8(3), or paragraph 5(b) of (d) of Schedule 4, shall be liable on conviction—
- (a) if tried on Information before the Senior Judge's Court, to imprisonment for a term not exceeding seven years, or to a fine, or to both;
 - (b) if tried before the Judge's Court, to imprisonment for a term not exceeding six months, or to a fine not exceeding £5,000 or its equivalent, or to both.
2. Any person who commits an offence under article 12(1) or (2), 13(3), or 17(3)(b)(ii), is guilty of a misdemeanour and shall be liable on conviction to imprisonment for a term not exceeding two years, or to a fine, or to both.
3. Any person who commits an offence under article 17(3)(a), (b)(i) or (c), or paragraph (5)(a) or (c) of Schedule 4, is guilty of a misdemeanour and shall be liable on conviction to imprisonment for a term not exceeding six months, or to a fine not exceeding £5,000 or its equivalent or to both.
4. Any person who commits an offence under article 11 or 13(2) is guilty of a misdemeanour and shall be liable on conviction to a fine not exceeding £5,000 or its equivalent.
5. 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.
6. Proceedings for a misdemeanour under this Order, being an offence alleged to have been committed outside the Territory, may be instituted at any time not later than 12 months from the date on which the person charged first enters the Territory after committing the offence.

7. Proceedings against any person for an offence under this Order may be taken before the appropriate court in the Territory having jurisdiction in the place where that person is for the time being.

8. No proceedings for an offence under Order shall be instituted in the Territory except by or with the consent of the principal public officer of the Territory having responsibility for criminal prosecutions:

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.

SCHEDULE 3

Article 3

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 (“the order”)-

(a) before the definition of “document”, insert–

“ “the 2003 resolution” means resolution 1483 (2003) adopted by the Security Council of the United Nations on 22nd May 2003;

“designated funds” means funds subject to 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 Governor under article 4(1);

“Development Fund for Iraq” means the Development Fund for Iraq referred to in the 2003 resolution;”;

(b) after the definition of “funds”, insert–

“ “immediate family member” means a parent, son, daughter, spouse or sibling of the whole or half blood;”;

(c) 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 Baiath 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 falling within paragraph (1); or
- (c) exercised such powers or functions for the purposes of the government of the Republic of Iraq.”.

(2) After article 2(3) 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 Governor under article 5, makes any funds available to a designated 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 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 Governor has reasonable grounds for suspecting that a person (other than a person referred to in paragraph (1)(a)) is or may be—
 - (i) a senior official;
 - (ii) an immediate family member of a senior official; or
 - (iii) an entity (whether 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 Governor 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 Governor may by notice revoke a direction given under paragraph (1) at any time.
 - (4) The Governor must publish a notice issued under paragraph (1) or (3) in the way appearing to him to be best calculated to bring it to the attention of the public.”

Licences.

4. In article 5(4), 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 Governor 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 Governor 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.

(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) (Overseas Territories) Order 2003 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 Governor under article 5 to be paid to a designated individual.

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

SCHEDULE 4

Article 18

EVIDENCE AND INFORMATION

1.(1) Without prejudice to any other provision of this Order, or any provision of any other law, the Governor may request any person in or resident in the Territory to furnish to him any information in his possession or control, or to produce any document in his possession or control, which he may require for the purpose of securing compliance with or detecting evasion of this Order; and any person to whom such a request is made shall comply with it within such time and in such manner as may be specified in the request.

(2) Nothing in sub-paragraph (1) shall be taken to require any person who has acted as counsel or solicitor for any person to furnish or produce any privileged information or document in his possession in that capacity.

(3) Where a person is convicted of failing to furnish information or produce a document when requested so to do under this paragraph, 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.

(4) The power conferred by this paragraph to request any person to produce documents shall include power to take copies of or extracts from any document so produced and to request 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 of them.

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

2.(1) If any justice of the peace is satisfied by information on oath given by any police officer, constable or person authorised by the Governor to act for the purposes of this paragraph either generally or in a particular case—

- (a) that there is reasonable ground for suspecting that an offence under this Order or, with respect to any of the matters regulated by this Order, an offence under any enactment relating to customs has been or is being committed and that evidence of the commission of the offence is to be found on

any premises specified in the information, or in any vehicle, ship or aircraft so specified; or

- (b) that any documents which ought to have been produced under paragraph 1 and have not been produced are to be found on any such premises or in any such vehicle, ship or aircraft,

he may grant a search warrant authorising any police officer or constable, together with any other persons named in the warrant and any other police officers or constables, to enter the premises specified in the information or, as the case may be, any premises upon which the vehicle, ship or aircraft so specified may be, at any time within one month from the date of the warrant and to search the premises, or, as the case may be, the vehicle, ship or aircraft.

(2) Any authorised person who has entered any premises or any vehicle, ship or aircraft in accordance with sub-paragraph (1) may do any or all of the following things-

- (a) inspect and search those premises or the vehicle, ship or aircraft for any material which he has reasonable grounds to believe may be evidence in relation to an offence referred to in this paragraph;
- (b) seize anything on the premises or on the vehicle, ship or aircraft which he has reasonable grounds for believing is evidence in relation to an offence referred to in this paragraph;
- (c) seize anything on the premises or on the vehicle, ship or aircraft which he has reasonable grounds to believe are required to be produced in accordance with paragraph 1; or
- (d) seize anything that is necessary to be seized in order to prevent it being concealed, lost, damaged, altered or destroyed.

(3) Any information required in accordance with sub-paragraph (2) which is contained in a computer and is accessible from the premises or from any vehicle, ship or aircraft must be produced in a form in which it can be taken away and in which it is visible and legible.

(4) A police officer or constable lawfully on the premises or on the vehicle, ship or aircraft by virtue of a warrant issued under sub-paragraph (1) may-

- (a) search any person whom he has reasonable grounds to believe may be in the act of committing an offence referred to in this paragraph; and
- (b) seize anything he finds in a search referred to in paragraph (a), if he has reasonable grounds for believing that it is evidence of an offence referred to in this paragraph:

Provided that no person shall be searched in pursuance of this sub-paragraph except by a person of the same sex.

(5) Where, by virtue of this paragraph, a person is empowered to enter any premises, vehicle, ship or aircraft he may use such force as is reasonably necessary for that purpose.

(6) Any documents or articles of which possession is taken under this paragraph may be retained for a period of three months or, if within that period there are commenced any proceedings for such an offence as aforesaid to which they are relevant, until the conclusion of those proceedings.

3. A person authorised by the Governor to exercise any power for the purposes of this Schedule shall, if requested to do so, produce evidence of his authority before exercising that power.

4. No information furnished or document produced (including any copy of an extract made of any document produced) by a person in pursuance of a request made under this Schedule and no document seized under paragraph 2(2) shall be disclosed except—

- (a) with the consent of the person by whom the information was furnished or the document was produced or the person from whom the document was seized:

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 the possession of that document in his own right; or

- (b) to any person who would have been empowered under this Schedule to request that it be furnished or produced or 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 to which this Order extends;
- (c) on the authority of the Governor, to any organ of the United Nations or to any person in the service of the United Nations or of the Government of any other country for the purpose of assisting the United Nations or that Government in securing compliance with or detecting evasion of measures in relation to Iraq decided upon by the Security Council of the United Nations; or
- (d) with a view to the institution of, or otherwise for the purposes of, any proceedings—
- (i) in the Territory, for an offence under this Order or, with respect to any of the matters regulated by this Order, for an offence against any enactment relating to customs; or
 - (ii) for any offence under any law making provision with respect to such matters that is in force in the United Kingdom, any of the Channel Islands, the Isle of Man or any territory to which this Order extends.

5. Any person who—

- (a) without reasonable excuse, refuses or fails within the time and in the manner specified (or, if no time has been specified, within a reasonable time) to comply with any request made

under this Schedule by any person who is empowered to make it; or

- (b) furnishes any information or produces any document which to his knowledge is false in a material particular; or recklessly furnishes any document or information which is false in a material particular to such a person in response to such a request; or
- (c) otherwise wilfully obstructs any person in the exercise of his powers under this Schedule; or
- (d) with intent to evade the provisions of this Schedule, destroys, mutilates, defaces, secretes or removes any document,

shall be guilty of an offence under this Order.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order, made under the United Nations Act 1946, applies to each of the territories specified in Schedule 1. It revokes three Orders made to give effect to certain aspects of United Nations sanctions against Iraq, amends the Iraq (United Nations Sanctions) (Overseas Territories) Order 2000, continues the prohibition of the sale or supply of arms and related material to Iraq, prohibits holding or dealing in any item of illegally removed Iraqi cultural property and grants privileges and immunities to the Development Fund for Iraq and petroleum, petroleum products and natural gas originating in Iraq and proceeds and obligations arising from sales thereof, pursuant to decisions of the Security Council of the United Nations in resolution 1483 of 22nd May 2003.

LEGAL NOTICE NO. 90 OF 2003

The following has been printed to correct errors in S.I. 2000/3242, it was published as United Kingdom Statutory Instrument 2001 No. 395 and came into force in Gibraltar on 16th February 2001.

UNITED NATIONS

**The Iraq (United Nations Sanctions) (Overseas Territories)
(Amendment) Order 2001**

Made 14th February 2001

Laid before Parliament 15th February 2001

Coming into force 16th February 2001

At the Court at Buckingham Palace, the 14th day of February 2001

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, 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) (Overseas Territories) (Amendment) Order 2001 and shall come into force on 16th February 2001.

(2) In this Order, "the principal Order" means the Iraq (United Nations Sanctions) (Overseas Territories) Order 2000.

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

2. In article 3(b) of the principal Order, the words "United Kingdom" shall be replaced by "the Territory".

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, corrects an error in the Iraq (United Nations Sanctions) (Overseas Territories) Order 2000.