

Statutory Instrument 1993 No. 1244

The Iraq (United Nations) (Sequestration of Assets) Order 1993

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STATUTORY INSTRUMENTS

1993 No. 1244

UNITED NATIONS

The Iraq (United Nations) (Sequestration of Assets) Order 1993

<i>Made</i>	<i>12th May 1993</i>
<i>Laid before Parliament</i>	<i>13th May 1993</i>
<i>Coming into force</i>	<i>24th May 1993</i>

At the Court at Buckingham Palace, the 12th day of May 1993

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 2nd October 1992, 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^[1], is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:

Citation, commencement and extent

1.—(1) This Order may be cited as the Iraq (United Nations) (Sequestration of Assets) Order 1993 and shall come into force on 24th May 1993.

(2) This Order shall extend, as part of the law thereof, to the United Kingdom only.

Interpretation

2.—(1) In this Order the following expressions have, except where otherwise expressly provided, the meanings respectively assigned to them, that is to say—

"the Bank" means the Bank of England;

"the Banking Act" means the Banking Act 1987^[2];

"body corporate" includes a Scottish partnership and, in relation to such a partnership, any reference to a director or other officer of a body corporate is a reference to a partner;

"competent authority" means any authority responsible for securing compliance with or detecting evasion of the resolution in any country;

"ECUs" means European Currency Units being units of account defined in Council Regulation (EEC) No. 3180/78, as amended^[3];

"the escrow account" means the account provided for in the resolutions of the Security Council of the United Nations numbered 706 and 712 and adopted on 15th August 1991 and on 19th September 1991 respectively;

"funds" means any currency and any amount denominated in ECUs and includes any right to receive currency in respect of any credit or balance at a bank;

"Iraqi person" means

- (a) the Government of Iraq;
- (b) any body which is capable of suing and being sued and the functions of which are carried on for the purposes of the Government of Iraq or subject to its direction or approval, but which is distinct from the executive organs of the

Government of Iraq;

(c) any body, wherever incorporated or constituted, which is controlled by the Government of Iraq; and

(d) any person or body who is acting on behalf of any of the above-mentioned persons;

"the Insolvency Act" means the Insolvency Act 1986^[4];

"the Insolvency Order" means the Insolvency (Northern Ireland) Order 1989^[5];

"petroleum" means a naturally occurring mixture including hydrocarbons;

"petroleum products" means any products, other than chemicals, which may be obtained by primary distillation or secondary refining from petroleum and includes natural gas, petroleum ether, solvents, benzene, naphtha, motor spirits (including aviation spirit), kerosenes (including jet fuel), heavy oils, fuel oils, lubricating oils, greases, petroleum jelly, paraffin wax and asphaltic bitumen;

"relevant institution" means

(a) the Bank;

(b) any institution authorised by the Bank under the Banking Act;

(c) any person specified in Schedule 2 to the Banking Act; and

(d) any other person not authorised by the Bank under the Banking Act who may lawfully accept deposits in the United Kingdom in the course of carrying on a deposit-taking business for the purposes of the Banking Act;

"relevant transaction" means the sale of Iraqi petroleum or petroleum products, paid for by or on behalf of the purchaser on or after 6th August 1990;

"the resolution" means the resolution of the Security Council of the United Nations numbered 778 and adopted on 2nd October 1992;

"the Secretary General" means the Secretary General of the United Nations;

"vehicle" means a land transport vehicle and includes a barge engaged in inland navigation;

"vessel" has the meaning it bears in the Export of Goods (Control) Order 1992^[6].

(2) Any reference in this Order to funds being held by any person extends to funds held in any capacity recognised by the law of any part of the United Kingdom and any reference to funds to which an Iraqi person is entitled extends to funds to which such person is entitled under

the law of any part of the United Kingdom but shall not extend to funds in relation to which the entitlement of such person is in issue in legal proceedings in any jurisdiction in the United Kingdom or in any other jurisdiction.

Obtaining of evidence and information

3. The provisions of the Schedule to this Order shall have effect in order to facilitate the obtaining, by or on behalf of the Secretary of State or the Treasury, of evidence and information for the purpose of securing compliance with or detecting evasion of this Order or of giving effect to a request received from the Secretary-General or the Government or competent authority of another country in accordance with paragraph 1 (3) of the Schedule and in order to facilitate the obtaining, by or on behalf of the Secretary of State or the Treasury, of evidence of the commission of an offence under this Order.

Investigations by the Bank

4.—(1) In the exercise of the powers to obtain evidence and information described in the Schedule to this Order the Treasury may authorise the Bank to serve a notice in writing on a relevant institution requesting it to furnish to the Bank, within such period as may be specified therein, any information in its possession or control, and to produce to the Bank any document in its possession or control concerning any time on or after 6th August 1990—

(a) relating to any funds held by the relevant institution which it knows, believes or suspects are funds to which an Iraqi person is entitled; or

(b) required to enable the Bank to ascertain whether funds held by it are funds to which an Iraqi person is entitled; or

(c) relating to any funds held by the relevant institution to which an Iraqi person is entitled which it knows, believes or suspects represent amounts derived from or attributable to a relevant transaction; or

(d) required to enable the Bank to ascertain whether any funds held by it to which an Iraqi person is entitled represent amounts derived from or otherwise attributable to a relevant transaction.

(2) Without prejudice to the generality of the foregoing, a notice may request the furnishing of information or the production of documents concerning the balance on an account held with a relevant institution at any time on or after 6th August 1990, any transactions on the account on or after 6th August 1990 and the names of the drawers and holders of cheques in respect of monies credited to and debited from the account together with the names of the paying or collecting institutions, the numbers of the relevant accounts in other institutions to or from which payments have been credited or debited and the names of the persons by whom such accounts are held.

(3) A notice may be given under paragraph (1) to relevant institutions individually or to particular classes of relevant institutions.

Investigations by the Secretary of State

5. In the exercise of the powers to obtain evidence and information described in the Schedule to this Order the Secretary of State may serve a

notice in writing on any person requesting him to furnish to the Secretary of State any information in his possession or control or to produce to the Secretary of State any document in his possession or control within such period as may be specified therein—

(a) concerning any petroleum or petroleum products which that person knows, believes or suspects to be held in the United Kingdom by an Iraqi person, or to which an Iraqi person is entitled; or

(b) required to enable the Secretary of State to ascertain whether any petroleum or petroleum products are held in the United Kingdom by an Iraqi person, or whether an Iraqi person is entitled to any such petroleum or petroleum products.

Ascertainment by the Treasury of Entitlement to Funds

6.—(1) Where the Treasury consider, after consultation with the Bank, that a relevant institution other than the Bank holds funds to which an Iraqi person is entitled representing amounts which may be derived from or otherwise attributable to a relevant transaction they may require the Bank—

(a) by notice in writing to invite that institution and, if different, the Iraqi person, to make representations to the Bank in writing concerning the entitlement to or the source of the funds within such period of not less than 21 days beginning on the day on which the notice is given as may be specified in the notice and to state that, if the institution or person so requests, it or he shall be afforded an opportunity of being heard by the Bank; and

(b) to publish a notice in the London, Edinburgh and Belfast Gazettes inviting any person who disputes the Iraqi person's entitlement to the funds to make representations to the Bank in writing concerning the entitlement of any person to the funds within such period of not less than 21 days beginning on the day on which the notice is published as may be specified in the notice and stating that, if the person so requests, he shall be afforded the opportunity of being heard by the Bank.

(2) Where the Treasury consider that the Bank or any person who is not a relevant institution holds funds to which an Iraqi person is entitled representing amounts which may be derived from or otherwise attributable to a relevant transaction they may—

(a) by notice in writing invite the Bank or any such person who is not a relevant institution and the Iraqi person to make representations to them in writing concerning the entitlement to or the source of the funds within such period of not less than 21 days beginning with the day on which the notice is given as may be specified in the notice and state that, if the Bank or any other person so requests, it or he shall be afforded an opportunity of being heard by the Treasury; and

(b) publish a notice in the London, Edinburgh and Belfast Gazettes inviting any person who disputes the Iraqi person's entitlement to the funds to make representations to them in writing concerning the entitlement to the funds within such period of not less than 21 days beginning with the day on which the notice is published as may be specified in the notice and stating that, if the person so requests, he shall be afforded the opportunity of being

heard by the Treasury.

(3) After considering any representations made by any relevant institution or person in writing and any evidence submitted before or given at a hearing following the giving of notice under paragraph (1) the Bank shall provide the Treasury with copies of such representations, a record of the evidence submitted before or given at the hearing and its assessment of whether a relevant institution holds funds to which an Iraqi person is entitled representing amounts which are derived from or otherwise attributable to a relevant transaction.

Ascertainment by the Secretary of State of Entitlement to Petroleum and Petroleum Products

7. Where the Secretary of State considers that petroleum or petroleum products to which an Iraqi person is entitled is or are held in the United Kingdom he may—

(a) by notice in writing invite the person holding the petroleum or petroleum products, and, if different, the Iraqi person, to make representations to him in writing concerning the entitlement of any person to the petroleum or petroleum products within such period of not less than 21 days beginning on the day on which the notice is given as may be specified in the notice and shall state that, if the person so requests, he shall be afforded an opportunity of being heard by the Secretary of State; and

(b) publish a notice in the London, Edinburgh and Belfast Gazettes inviting any person who disputes the Iraqi person's entitlement to the petroleum or petroleum products to make representations in writing to him concerning the entitlement of any person to it or them within such period of not less than 21 days beginning on the day on which the notice is published as may be specified in the notice and stating that, if the person so requests, he shall be afforded an opportunity of being heard by the Secretary of State.

Ascertainment by the Treasury of Third Party Rights

8.—(1) Where the Treasury are satisfied that funds to which an Iraqi person is entitled held by a relevant institution represent amounts which are derived from or otherwise attributable to a relevant transaction they may, for the purpose of ascertaining whether such funds may be subject to or required to satisfy the rights of a third party at the time of the adoption of the resolution, require the Bank to publish a notice in the London, Edinburgh and Belfast Gazettes inviting any person who considers that the funds or any part thereof are subject to or required to satisfy such rights to make representations in writing to it within such period of not less than 21 days beginning on the day on which the notice is published as may be specified in the notice and stating that, if the person so requests, he shall be afforded an opportunity of being heard by the Bank.

(2) Where the Treasury are satisfied that funds held by the Bank or by any person who is not a relevant institution to which an Iraqi person is entitled represent amounts which are derived from or otherwise attributable to a relevant transaction they may, for the purpose of ascertaining whether such funds may be subject to or required to satisfy

the rights of a third party at the time of the adoption of the resolution, publish a notice in the London, Edinburgh and Belfast Gazettes inviting any person who considers that the funds or any part thereof are subject to or required to satisfy such rights to make representations in writing to them within such period of not less than 21 days beginning on the day on which the notice is published as may be specified in the notice and stating that, if the person so requests, he shall be afforded an opportunity of being heard by the Treasury.

(3) No notice shall be given under paragraph (1) or (2) until the Treasury have notified their decision under article 15(1) to the relevant institution or to any other person holding funds to which the decision applies and to any other person who made representations to the Bank or the Treasury under article 6(1) or (2).

(4) Following consideration of any representations made by any person in writing and any evidence submitted before or given at a hearing following the giving of notice under paragraph (1), the Bank shall provide the Treasury with copies of such representations, a record of the evidence submitted before or given at the hearing and its assessment of whether any funds described in paragraph (1) may be subject to or required to satisfy the rights of any third party at the time of the adoption of the resolution.

Ascertainment by the Secretary of State of Third Party Rights

9.—(1) Where the Secretary of State is satisfied that an Iraqi person is entitled to petroleum or petroleum products in the United Kingdom he may, for the purpose of ascertaining whether such petroleum or petroleum products may be subject to or required to satisfy the rights of a third party at the time of the adoption of the resolution, publish a notice in the London, Edinburgh and Belfast Gazettes inviting any person who considers that the petroleum or petroleum products or any part thereof is or are subject to or required to satisfy his rights to make representations in writing to him within such period of not less than 21 days beginning on the day on which the notice is published as may be specified in the notice and stating that, if the person so requests, he shall be afforded an opportunity of being heard by the Secretary of State.

(2) No notice shall be given under paragraph (1) until the Secretary of State has notified his decision under article 16(1) to any person holding petroleum or petroleum products to which the decision applies and to any other person who has made representations to the Secretary of State under article 7.

Scope of Third Party Rights

10.—(1) For the purposes of this Order and without prejudice to the existence of third party rights in other circumstances, but subject as provided in paragraph (2)—

(a) a person claiming to be a creditor of a company which is an Iraqi person shall be deemed to have established a right as a third party to funds or to petroleum or petroleum products to which that Iraqi person is entitled—

(i) by virtue of having proved a debt or, in Scotland, submitted a claim after the company has passed a resolution

for voluntary winding-up as described in section 84 of the Insolvency Act or article 70 of the Insolvency Order; or

(ii) by virtue of having proved a debt or, in Scotland, having submitted a claim after a winding-up order has been made in respect of the company under section 125 of the Insolvency Act or article 105 of the Insolvency Order; or

(iii) where a provisional liquidator has been appointed in respect of the company under section 135 of the Insolvency Act or article 115 of the Insolvency Order, by virtue of being a person who would have been eligible to prove a debt or, in Scotland, to submit a claim had the company passed a resolution for voluntary winding-up as described in sub-paragraph (a)(i) or had a winding-up order made against it as described in sub-paragraph (a)(ii) on the date when the provisional liquidator was appointed; or

(b) a person claiming to be a creditor of a partnership which is an Iraqi person and is the subject of a winding-up order against it under any provision of the Insolvency Act as applied by an order made under section 420 of that Act or is the subject of a winding-up order against it under any provision of the Insolvency Order as applied by an order made under article 364 of that Order or, in Scotland, has had an award of sequestration made against its estate under section 12 of the Bankruptcy (Scotland) Act 1985^[7] or is the subject of a winding-up order under section 92 of the Banking Act shall be deemed to have established a right as a third party to funds or to petroleum or petroleum products to which that Iraqi person is entitled by virtue of having proved a debt or, in Scotland, submitted a claim after the order or award was made; or

(c) a person claiming to be a creditor of an Iraqi person shall be deemed to have established a right as a third party to funds or to petroleum or petroleum products to which that Iraqi person is entitled by virtue of having proved a debt after a bankruptcy order has been made in respect of that person under section 264 of the Insolvency Act or article 238 of the Insolvency Order, or, in Scotland, by virtue of having submitted a claim after an award of sequestration has been made under section 12 of the Bankruptcy (Scotland) Act 1985.

(2) Where the Treasury have or the Secretary of State has reason to believe or to suspect that, notwithstanding the application of one of the conditions described in paragraph (1), a person claiming to be the creditor of an Iraqi person does not or may not have rights as a third party to funds or to petroleum or petroleum products to which that Iraqi person is entitled they or he shall examine all the relevant facts before reaching a conclusion on the existence of third party rights in the circumstances.

(3) A person shall not be treated as having rights as a third party to funds or to petroleum or petroleum products unless—

(a) his rights are contingent on an Iraqi person's entitlement to the funds, or as the case may be, to the petroleum or petroleum products; and

(b) he is not an Iraqi person.

Date and Notification of Hearings

11.—(1) The Bank, the Treasury or the Secretary of State, as the case may be, shall give no less than 28 days' notice to any person who has requested a hearing following the giving of notice under article 6(1) or (2), article 7, article 8(1) or (2) or article 9(1) of the date, time and place fixed for the hearing unless such a person agrees to a lesser period of notice being given.

(2) The Bank, the Treasury or the Secretary of State may vary the date, time and place fixed for the hearing and shall give such notice of any such variations as appears to it, them or him to be reasonable.

Documents and Other Evidence

12.—(1) A person intending to appear at a hearing following the giving of notice under article 6(1) or (2), article 7, article 8(1) or (2) or article 9(1) shall send a copy of any documents to which he proposes to refer at the hearing and any proof of evidence which he proposes to read or have read by a witness at the hearing to the Bank, the Treasury or the Secretary of State, as the case may be, not later than 14 days before the date fixed for the hearing.

(2) The Bank, the Treasury or the Secretary of State, as the case may be, shall send a copy of any document or proof of evidence received from a person intending to appear at a hearing to such other persons intending to appear at a hearing as in its, their or his view have an interest in the contents thereof.

Procedure at Hearings

13.—(1) A hearing following the giving of notice under article 6(1) or (2), article 7, article 8(1) or (2) or article 9(1) shall be conducted by the Bank, the Treasury or the Secretary of State, as the case may be, who shall, subject as provided in this article, determine the procedure at the hearing.

(2) A hearing shall be conducted in private.

(3) The Bank, the Treasury or the Secretary of State, as the case may be, may hold a single hearing following the giving of notice under article 6(1) or (2) or article 7 or, if relevant, under article 8(1) or (2) or article 9 (1) in relation to all the issues arising in connection with particular funds or petroleum or petroleum products or may hold separate hearings at which specific persons or classes of person concerned with particular funds or petroleum or petroleum products may appear.

(4) At a hearing a person may appear on his own behalf or be represented by counsel, a solicitor or any other person, and may give or produce oral and written evidence and may cross-examine any other person appearing at the same hearing and any witnesses produced by any such person.

(5) The Bank, the Treasury or the Secretary of State, as the case may be, may take into account any document or any other written evidence received by it, them or him from any person intending to appear at a hearing before a hearing is held or during the hearing provided that it,

they or he disclose it to such other persons intending to appear at or appearing at the hearing as in its, their or his view have an interest in the contents thereof.

(6) The Bank, the Treasury or the Secretary of State, as the case may be, may from time to time adjourn a hearing and, if the date, time and place of the adjourned hearing are announced at the hearing before the adjournment, no further notice shall be required.

Procedure following Hearings and Assessments

14.—(1) If, following the receipt by the Treasury from the Bank of the evidence and assessment referred to in articles 6(3) and 8(4) the Treasury—

(a) differ from the Bank on any matter of fact mentioned in, or appearing to them to be material to, an assessment made by the Bank, or

(b) take into consideration any new evidence or new matter of fact,

and are for that reason disposed to disagree with an assessment made by the Bank, they shall not reach a decision which is at variance with that assessment without first notifying the persons who made written representations or who appeared at a hearing following the giving of notice under article 6(1) or 8(1) of their disagreement and the reasons for it, and affording to them an opportunity of making written representations to the Treasury within 21 days beginning on the date of the notification, or (if the Treasury have taken into consideration any new evidence or new matter of fact) of asking within that period for a hearing or a further hearing, as the case may be, to be held.

(2) The Treasury shall require the Bank to cause a hearing or a further hearing to be held where the Treasury have taken into consideration any new evidence or new matter of fact and are for that reason disposed to disagree with an assessment made by the Bank if so asked by a person who made written representations or who appeared at a hearing as described in paragraph (1); and where a hearing or a further hearing is held the Treasury shall require the Bank to send to such persons a written statement of the matters with respect to which further evidence is invited.

(3) Where a hearing has been held following the giving of notice under article 6(1) or (2), article 7, article 8(1) or (2) or article 9(1), the Treasury or the Secretary of State may, if they or he think fit, cause or require a further hearing to be held to afford an opportunity for persons to be heard on such matters relating to the subject matter of the hearing as they or he may specify.

(4) Where a further hearing is held under paragraph (3), the Treasury or the Secretary of State shall send, or in the case of a hearing held by the Bank, the Treasury shall require the Bank to send to the persons who made written representations or appeared at the previous hearing following the giving of notice as described in paragraph (3) a written statement of the specified matters.

(5) Where a further hearing is held under paragraph (2) or (3), articles 6(3), 8(4), 11, 12 and 13 shall apply as if the references to a hearing were

references to a further hearing.

Decisions and Directions by the Treasury

15.—(1) The Treasury shall notify any relevant institution or other person and any other person who made representations or gave evidence to the Bank or to them following the giving of notice under article 6(1) or (2) whether they are satisfied that the institution or other person holds funds to which an Iraqi person is entitled representing amounts derived from or otherwise attributable to a relevant transaction and of the reasons for their decision.

(2) Subject to paragraph (3), where the Treasury are satisfied that a relevant institution or other person holds funds as described in paragraph (1), the Treasury may direct it or him to remit the funds or equivalent amounts to the escrow account within such period and in such manner as may be specified.

(3) A direction by the Treasury under paragraph (2) shall not extend to any funds to which an Iraqi person is, or where sub-paragraph (a) below applies was, entitled representing amounts which the Treasury are satisfied were derived from or otherwise attributable to a relevant transaction and which they are satisfied—

(a) had been paid to any person as the supplier of products which were the subject of a relevant transaction or to a person otherwise having a right to receive them at the time of adoption of the resolution; or

(b) were subject to or required to satisfy the rights of any third party at the time of adoption of the resolution.

(4) The Treasury shall notify any person who made representations or gave evidence to the Bank or to them following the giving of notice under article 8(1) or (2) whether they are satisfied that funds to which an Iraqi person is entitled representing amounts derived from or otherwise attributable to a relevant transaction are subject to or required to satisfy any rights of a third party at the time of the adoption of the resolution and of their reasons for their decision.

(5) A direction by the Treasury under paragraph (2) may be given at the time of notification of their decision under paragraph (1) or at the time of or following notification of their decision under paragraph (4).

(6) Where the Treasury are satisfied that funds in an account held with a relevant institution to which an Iraqi person is entitled include amounts derived from or otherwise attributable to a relevant transaction, and that funds have been withdrawn from the account between the date of the relevant transaction and the date of the decision under paragraph (2) with permission granted by or on behalf of the Treasury under the Control of Gold, Securities, Payments and Credits (Republic of Iraq) Directions 1990^[8], they may give a direction in relation to such a proportion of the funds remaining in the account as is equivalent to the proportion which the funds derived from or otherwise attributable to a relevant transaction bore to the total funds in the account immediately before the date of the withdrawal or, if more than one, the first withdrawal.

Decisions and Directions by the Secretary of State

16.—(1) The Secretary of State shall notify any person holding petroleum or petroleum products and any other person who made representations or gave evidence to him following the giving of notice under article 7 whether he is satisfied that an Iraqi person is entitled to it or them and of the reasons for his decision.

(2) Subject to paragraph (3), where the Secretary of State is satisfied that an Iraqi person is entitled to petroleum or petroleum products in the United Kingdom he may direct the person holding it or them to sell the petroleum or petroleum products and to remit the proceeds of sale to the escrow account within such period and in such manner as the Secretary of State may specify.

(3) A direction by the Secretary of State under paragraph (2) shall not extend to any petroleum or petroleum products in the United Kingdom to which an Iraqi person is entitled which the Secretary of State is satisfied was or were subject to or required to satisfy the rights of any third party at the time of adoption of the resolution.

(4) The Secretary of State shall notify any person who made representations or gave evidence to him following the giving of notice under article 9(1) whether he is satisfied that petroleum or petroleum products in the United Kingdom to which an Iraqi person is entitled are subject to or required to satisfy any third party rights at the time of the adoption of the resolution and of his reasons for the decision.

(5) A direction by the Secretary of State under paragraph (2) may be given at the time of notification of his decision under paragraph (1) or at the time of or following notification of his decision under paragraph (4).

Disclosure of Assessments and Reasons for Decisions

17.—(1) The Treasury shall not be required to give reasons for their conclusions under article 14(1), and the Treasury and the Secretary of State shall not be required to give reasons for their or his decisions under article 15(1) or (4) or under article 16(1) or (4), to the extent that to do so would involve the disclosure of information obtained under the Schedule to this Order contrary to the provisions of the Schedule.

(2) The Treasury shall not be required to give reasons for their conclusions under article 14(1), and the Treasury and the Secretary of State shall not be required to give reasons for their or his decisions under article 15(1) or 16(1), to the extent that to do so would in their or his opinion be likely to cause damage to national security.

- (3) Where the Bank has so consented, the Treasury may—
- (a) in giving reasons for their decision under article 15(1) disclose extracts from or the entirety of the Bank's assessment obtained under article 6(3); and
 - (b) in giving reasons for their decision under article 16(4) disclose extracts from or the entirety of the Bank's assessment obtained under article 8(5).

(4) No assessment obtained from the Bank under article 6(3) shall be

disclosed by the Treasury when notifying a decision under article 15(4).

Compliance with Directions

18.—(1) A relevant institution or any other person to whom a direction has been given under article 15(2) or article 16(2) shall, within 7 days of the expiry of the period specified for compliance or of the date of compliance, if earlier, notify the Treasury and the Bank, or, as the case may be, the Secretary of State, in writing of having complied with the direction and shall provide the Treasury and the Bank or the Secretary of State with such evidence of compliance as they or he may require within 7 days of being required to provide it.

(2) Where a person has not complied with a direction under article 16(2) within the period specified for compliance, the Secretary of State may direct that person to deliver the petroleum or petroleum products, to which the direction under article 16(2) related, to the Secretary of State at such time and in such manner as he may specify.

(3) On delivery to him of the petroleum or petroleum products pursuant to a direction under paragraph (2) the Secretary of State may sell it or them at such time and in such manner as he thinks fit and may remit the proceeds of sale to the escrow account.

(4) A relevant institution or other person to whom a direction has been given under article 15(2) or article 16(2) may deduct from the amount transferred to the escrow account such sum in respect of its or his costs in complying with the direction as the Treasury, or, as the case may be, the Secretary of State may before the date of the transfer certify as appropriate.

Maintenance of Accounts and Preservation of Existing Rights

19.—(1) A person who holds an account at a relevant institution, and a relevant institution with which an account is held from which a transfer of an amount has been made pursuant to a direction of the Treasury under article 15, shall not close the account pending any retransfer of the amount transferred or any part of it under article 20.

(2) Any costs or expenses which may be incurred consequent on the continuing operation of the account pursuant to paragraph (1) shall be the liability of the person by whom the account is held unless the relevant institution agrees otherwise with such person.

(3) Notwithstanding the foregoing, a relevant institution may restrict access to an account described in paragraph (1) to any lawful extent.

(4) Nothing in this Order shall affect any rights, liabilities or claims existing with respect to amounts transferred to the escrow account under article 15 or 16 prior to the date of their transfer.

Restitution

20.—(1) If the Secretary General at any time pursuant to the resolution remits an amount representing the amount of any payment into the escrow account under article 15 or 16, together with any interest which may be determined to be applicable, to the Government of the

United Kingdom, the Secretary of State or the Treasury shall take such measures as may be necessary to arrange for the amount to be transferred forthwith to any relevant institution by which, or to any person by whom, an amount was remitted to the escrow account to replace any such amount.

(2) The Secretary of State or the Treasury may apportion any amount remitted by the Secretary General as described in paragraph (1) which does not represent the total of any payments into the escrow account under article 15 or 16 as he or they consider appropriate between relevant institutions and other persons by whom amounts have been remitted.

(3) The Secretary of State or the Treasury may pay to any person described in paragraph (4) any amount remitted by the Secretary General as described in paragraph (1) which he or they consider appropriate to transfer to a relevant institution or other person by which or by whom an amount was remitted to the escrow account, where the relevant institution or other person—

- (i) has gone into liquidation as described in section 247 of the Insolvency Act or article 6 of the Insolvency Order; or
- (ii) is the subject of an order under section 135 of the Insolvency Act or article 105 of the Insolvency Order appointing a provisional liquidator; or
- (iii) is the subject of an administration order under section 8 of the Insolvency Act or article 21 of the Insolvency Order; or
- (iv) is a partnership in England and Wales or in Northern Ireland which has been dissolved by order under section 35 of the Partnership Act 1890^[9] or has had a winding-up order made against it under any provision of the Insolvency Act as applied by an order made under section 420 of that Act or is the subject of a winding-up order made against it under any provision of the Insolvency Order as applied by an order made under Article 364 of the Insolvency Order; or is a partnership in Scotland which has had an award of sequestration on the estate of the partnership made against it or a winding-up order made against it under section 92 of the Banking Act or is a dissolved partnership, or is a partnership in Northern Ireland which has had an order of adjudication of bankruptcy made against any of the partners; or
- (v) is the subject of a bankruptcy order under section 264 of the Insolvency Act or article 238 of the Insolvency Order or has had an award of sequestration made against him under section 12 of the Bankruptcy (Scotland) Act 1985^[10]; or
- (vi) has otherwise ceased to exist; or
- (vii) is incapable, by reason of mental disorder within the meaning of the Mental Health Act 1983^[11] or the Mental Health (Northern Ireland) Order 1986^[12] of managing and administering his property and affairs or, in Scotland, is incapax; or
- (viii) has died; or
- (ix) has ceased to exercise the functions by virtue of which he or it held the funds subject to a direction under articles 15(2) or 16(2); or
- (x) cannot be traced.

(4) Where paragraph (3) applies, the Secretary of State or the Treasury may pay any relevant amount to a person who appears to him or them to be—

- (a) the person responsible for administering the assets and liabilities of the relevant institution or person; or
- (b) the person to whom probate or letters of administration have been granted by a court in England and Wales or Northern Ireland or in respect of whom they have effect as if so granted or, in Scotland, the person who has been confirmed as the executor of the estate, or who is otherwise intromitting with the estate; or
- (c) a person entitled to take out probate of the will of a deceased person or letters of administration to his estate; or
- (d) the successor of the relevant institution or person; or
- (e) the person appointed to act on behalf of the person from whom an amount was transferred pursuant to a direction under article 15 (2) or article 16(2).

(5) Where the Secretary of State or the Treasury decide that there is no person of a description in paragraph (4) he or they shall deposit the relevant amount including any interest in an interest-bearing account at the Bank and may release that amount or any part of it together with any interest accruing from the date of deposit with the Bank to any Iraqi person or any other person who establishes to the satisfaction of the Secretary of State or of the Treasury that he is entitled to receive it and the receipt of such a person shall be valid discharge to the Secretary of State or to the Treasury for the amount paid.

(6) Where any amounts are paid to a relevant institution or to any other person by the Secretary General pursuant to the resolution, or are so paid by the Secretary of State or by the Treasury under paragraph (1), (4) or (5), they shall be treated for all purposes as subject to any rights, liabilities and claims subsisting at the date of the transfer under article 15 or 16.

(7) An amount transferred under this article to a relevant institution or to any person shall not be subject to interest in respect of any period between the date of the transfer under article 15 or 16 and—

- (a) the date of the transfer under paragraph (1) to the relevant institution by which, or to the person by whom, an amount was remitted to the escrow account; or
- (b) the date of any payment under paragraph (4); or
- (c) the date on which an amount is deposited by the Secretary of State or the Treasury in an interest-bearing account at the Bank under paragraph (5) following a decision that there is no person of a description in paragraph (4).

Disapplication of Existing Obligations and Restrictions and Exclusion of Liability

21.—(1) Any requirement imposed on a relevant institution or any other person under this Order shall have effect notwithstanding—

- (a) any obligation as to secrecy or other restriction, whether imposed by statute or otherwise, upon the disclosure of information subject to or affected by the requirements imposed

under this Order except as provided in paragraph 1(2) of the Schedule to this Order; and

(b) any obligation, restriction or immunity, whether imposed or conferred by statute or otherwise, in relation to any property subject to or affected by the requirements imposed under this Order.

(2) No relevant institution or other person shall be liable in respect of any action taken pursuant to powers conferred by this Order or in compliance with duties imposed under it.

Offences, Penalties and Proceedings

22.—(1) Any person who fails without reasonable excuse to comply with a direction given to him under article 15(2) or article 16(2) within the period and in the manner specified therein or who fails without reasonable excuse to comply with a direction given to him under article 18(2) at the time and in the manner specified shall be guilty of an offence and shall be liable—

(a) on conviction on indictment to imprisonment for a term not exceeding five 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 the statutory maximum or to both.

(2) Any person guilty of an offence under paragraph 6(b) or (d) of the Schedule to this Order shall be liable—

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

(b) on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum or to both.

(3) Any person who fails without reasonable excuse to notify the Treasury and the Bank or, as the case may be, the Secretary of State, of compliance with a direction under article 15(2) or 16(2) or to provide the evidence of compliance required by them or him under article 18(1) shall be guilty of an offence and 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 the statutory maximum.

(4) Any person guilty of an offence under paragraph 6(a) or (c) of the Schedule to this Order shall be liable on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding level 5 on the standard scale or to both.

(5) Any person who without reasonable excuse deducts from an amount transferred to the escrow account in compliance with a direction given to him under article 15(2) or article 16(2) any sum which has not been certified by the Treasury or the Secretary of State under article 18(4) as being properly deductible shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(6) Any person who without reasonable excuse closes an account described in article 19(1) pending a transfer under article 20 of the amount remitted or any part of it shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(7) 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.

(8) Notwithstanding anything in section 127(1) of the Magistrates' Courts Act 1980^[13], a summary offence may be tried by a magistrates' court in England and Wales, if an information is laid 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.

(9) Notwithstanding anything in section 331 of the Criminal Procedure (Scotland) Act 1975^[14], summary proceedings in Scotland for an offence under this Order may be commenced at any time within 12 months after the date on which evidence sufficient in the Lord Advocate's opinion to justify the proceedings came to his knowledge; and subsection (3) of that section applies for the purpose of this paragraph as it applies for the purpose of that section:

Provided that such proceedings shall not be commenced after the expiration of 3 years from the commission of the offence.

(10) Notwithstanding anything in Article 19 of the Magistrates' Courts (Northern Ireland) Order 1981^[15], summary proceedings for an offence under this Order in Northern Ireland may be instituted 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.

(11) For the purposes of this article—

(a) a certificate signed by or on behalf of the prosecutor or the Lord Advocate (as the case may be) as to the date on which such evidence as is referred to in paragraphs (7), (8), (9) and (10) 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.

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

(13) In England and Wales, subsection (2) of section 24 of the Police

and Criminal Evidence Act 1984^[16] shall apply to the offences under this Order that are not arrestable offences by virtue of the term of imprisonment for which a person may be sentenced in respect of them, as if they were mentioned in that subsection; and accordingly such offences shall be arrestable offences within the meaning of that Act.

(14) In Northern Ireland, paragraph (2) of Article 26 of the Police and Criminal Evidence (Northern Ireland) Order 1989^[17] shall apply to the offences under this Order that are not arrestable offences by virtue of the term of imprisonment for which a person may be sentenced in respect of them, as if they were mentioned in that paragraph; and accordingly such offences shall be arrestable offences within the meaning of that Order.

(15) No proceedings for an offence under this Order, other than for a summary offence, shall be instituted in England, Wales or Northern Ireland except by the Secretary of State or with the consent of the Attorney General, or, as the case may be, the Attorney General for Northern Ireland:

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 Powers of the Secretary of State or of the Treasury

23. The Secretary of State or the Treasury may to such extent, and subject to such restrictions and conditions as he or they may think proper, delegate or authorise the delegation of any of his or their powers under this Order (other than the power to give authority under the Schedule to this Order to apply for a search warrant) to any person, or class or description of persons, approved by him or them, and references in this Order to the Secretary of State or the Treasury shall be construed accordingly.

N. H. Nicholls

Clerk of the Privy Council

Notes:

[1] 1946 c. 45. [back](#)

[2] 1987 c. 22. [back](#)

[3] OJ No. L379, 30.12.78, p.1; the relevant amending instrument is Council Regulation (EEC) No. 1971/89 OJ No. L189, 4.7.89, p.1. [back](#)

[4] 1986 c. 45. [back](#)

[5] S.I. [1989/2405](#) (N.I.19). [back](#)

[6] S.I. [1992/3092](#), to which there are amendments not relevant to this Order. [back](#)

[7] 1985 c. 66. [back](#)

[8] S.I. [1990/1616](#). [back](#)

[9] 53 & 54 Vict. c.34. [back](#)

[10] 1985 c. 66. [back](#)

[11] 1983 c. 20. [back](#)

[12] S.I. 1986/596 (N.I.4). [back](#)

[13] 1980 c. 43. [back](#)

[14] 1975 c. 21. [back](#)

[15] S.I. 1981/1675 (N.I. 26). [back](#)

[16] 1984 c. 60. [back](#)

[17] S.I. [1989/1341](#) (N.I. 12). [back](#)

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