
STATUTORY INSTRUMENTS

1993 No.1798

UNITED NATIONS

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

<i>Made</i>	- - - -	<i>20th July 1993</i>
<i>Laid before Parliament</i>		<i>21st July 1993</i>
<i>Coming into force</i>	- -	<i>30th July 1993</i>

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) (Guernsey) Order 1993 and shall come into force on 30th July 1993.

(2) This Order shall extend, as part of the law therein, to the Bailiwick of Guernsey 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 Attorney General” means the Attorney General for the Bailiwick;

“the Bailiwick” means the Bailiwick of Guernsey;

“the Bank” means the Bank of England;

“the Commission” means the Guernsey Financial Services Commission established by the Financial Services Commission (Bailiwick of Guernsey) Law, 1987;

“the Companies Laws” means the Companies (Guernsey) Laws, 1908 to 1990, and the Companies (Alderney) Laws, 1894 to 1962;

(1) 1946 c. 45.

“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⁽²⁾;

“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;

“HM Treasury” means the Commissioners of Her Majesty’s Treasury;

“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;

“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 person registered under section 4 of the Protection of Depositors (Bailiwick of Guernsey) Ordinance, 1971, or a person who, although not so registered, may by virtue of section 1B of that Ordinance lawfully carry on the business of accepting money for the purpose of investment on deposit;

“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” includes any ship, surface effect vehicle, small waterplane vessel and hydrofoil, and the hull or part of the hull of a vessel.

(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 Bailiwick 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 Bailiwick but shall not extend to funds in relation to which the entitlement of such a person is in issue in legal proceedings in any jurisdiction in the Bailiwick or in any other jurisdiction.

(2) OJ No.L379, 30.12.78, p.1; the relevant amending instrument is Council Regulation (EEC) No.1971/89 OJNo.L189, 4.7.89, p.1.

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 Attorney General, 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 that Schedule and in order to facilitate the obtaining, by or on behalf of the Attorney General, of evidence of the commission of an offence under this Order.

Investigations by the Commission

4.—(1) In the exercise of the powers to obtain evidence and information described in the Schedule to this Order the Attorney General may authorise the Commission to serve a notice in writing on a relevant institution requesting it to furnish to the Commission, within such period as may be specified therein, any information in its possession or control, and to produce to the Commission 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 Commission 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 Commission 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) above to relevant institutions individually or to particular classes of relevant institutions.

Investigations by the Attorney General

5. In the exercise of the powers to obtain evidence and information described in the Schedule to this Order the Attorney General may serve a notice in writing on any person requesting him to furnish to the Attorney General any information in his possession or control or to produce to the Attorney General 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 Bailiwick by an Iraqi person, or to which an Iraqi person is entitled; or
- (b) required to enable the Attorney General to ascertain whether any petroleum or petroleum products are held in the Bailiwick by an Iraqi person, or whether an Iraqi person is entitled to any such petroleum or petroleum products.

Ascertainment of Entitlement to Funds

6.—(1) Where the Attorney General considers, after consultation with the Commission, that 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 he may require the Commission—

- (a) by notice in writing to invite that institution and, if different, the Iraqi person, to make representations to the Commission 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 Commission; and
- (b) to publish a notice in *La Gazette Officielle* inviting any person who disputes the Iraqi person's entitlement to the funds to make representations to the Commission 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 Commission.

(2) Where the Attorney General considers that 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 he may—

- (a) by notice in writing invite any such person who is not a relevant institution and the Iraqi person to make representations to him 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 any person so requests, he shall be afforded an opportunity of being heard by the Attorney General; and
- (b) publish a notice in *La Gazette Officielle* inviting any person who disputes the Iraqi person's entitlement to the funds to make representations to him 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 Attorney General.

(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) above the Commission shall provide the Attorney General 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 of Entitlement to Petroleum and Petroleum Products

7. Where the Attorney General considers that petroleum or petroleum products to which an Iraqi person is entitled is or are held in the Bailiwick 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 Attorney General; and
- (b) publish a notice in *La Gazette Officielle* 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 Attorney General.

Ascertainment of Third Party Rights with respect to Funds

8.—(1) Where the Attorney General is 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 he 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 Commission to publish a notice in *La Gazette Officielle* 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 Attorney General.

(2) Where the Attorney General is satisfied that funds held 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 he 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 *La Gazette Officielle* 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 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 Attorney General.

(3) No notice shall be given under paragraph (1) or (2) above until the Attorney General has notified his 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 Commission or the Attorney General 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) above, the Commission shall provide the Attorney General 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) above may be subject to or required to satisfy the rights of any third party at the time of the adoption of the resolution.

Ascertainment of Third Party Rights with respect to Petroleum or Petroleum Products

9.—(1) Where the Attorney General is satisfied that an Iraqi person is entitled to petroleum or petroleum products in the Bailiwick 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 *La Gazette Officielle* 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 Attorney General.

(2) No notice shall be given under paragraph (1) above until the Attorney General 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 Attorney General 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) below—

- (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 after the company has passed a resolution for voluntary winding-up under the Companies Laws; or
 - (ii) by virtue of having proved a debt after a winding-up order has been made in respect of the company under the Companies Laws; or
 - (iii) where a provisional liquidator has been appointed in respect of the company under the Companies Laws, by virtue of being a person who would have been eligible to prove a debt had the company passed a resolution for voluntary winding-up as described in sub-paragraph (a)(i) above or had a winding-up order made against it as described in sub-paragraph (a)(ii) above on the date when the provisional liquidator was appointed;
- (b) 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 that person has been declared insolvent by the Royal Court, after that person's affairs have been declared in a state of *désastre* by arresting creditors at a meeting held before a Commissioner, or after a preliminary vesting order has been made against that person's real property in the Bailiwick.

(2) Where the Attorney General has reason to believe or to suspect that, notwithstanding the application of one of the conditions described in paragraph (1) above, a person claiming to be the creditor of an Iraqi person does not have or may not have rights as a third party to funds or to petroleum or petroleum products to which that Iraqi person is entitled 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 Commission or the Attorney General, 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 that person agrees to a lesser period of notice being given.

(2) The Commission or the Attorney General may vary the date, time and place fixed for the hearing and shall give such notice of any such variations as appears to it 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 Commission or the Attorney General, as the case may be, not later than 14 days before the date fixed for the hearing.

(2) The Commission or the Attorney General, 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 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 Commission or the Attorney General, 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 Commission or the Attorney General, 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 an advocate or by 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 Commission or the Attorney General, as the case may be, may take into account any document or any other written evidence received by it or him from any person intending to appear at a hearing before a hearing is held or during the hearing provided that it or he discloses it to such other persons intending to appear at or appearing at the hearing as in its or his view have an interest in the contents thereof.

(6) The Commission or the Attorney General, 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 Attorney General from the Commission of the evidence and assessment referred to in articles 6(3) and 8(4), the Attorney General—

(a) differs from the Commission on any matter of fact mentioned in, or appearing to him to be material to, an assessment made by the Commission, or

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

and is for that reason disposed to disagree with an assessment made by the Commission, he 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 his disagreement and the reasons for it, and affording to them an opportunity of making written representations to the Attorney General within 21 days beginning on the date of the notification, or (if the Attorney General has 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 Attorney General shall require the Commission to cause a hearing or a further hearing to be held where the Attorney General has taken into consideration any new evidence or new matter of fact and is for that reason disposed to disagree with an assessment made by the Commission if so asked by a person who made written representations or who appeared at a hearing as described in paragraph (1) above; and where a hearing or a further hearing is held the Attorney General shall

require the Commission 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 Attorney General may, if he thinks 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 he may specify.

(4) Where a further hearing is held under paragraph (3) above, the Attorney General shall send, or in the case of a hearing held by the Commission, the Attorney General shall require the Commission 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) above a written statement of the specified matters.

(5) Where a further hearing is held under paragraph (2) or (3) above, 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 with respect to Funds

15.—(1) The Attorney General shall notify any relevant institution or other person and any other person who made representations or gave evidence to the Commission or to him following the giving of notice under article 6(1) or (2) whether he is 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 his decision.

(2) Subject to paragraph (3) below, where the Attorney General is satisfied that a relevant institution or other person holds funds as described in paragraph (1) above, the Attorney General 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 Attorney General under paragraph (2) above 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 Attorney General is satisfied were derived from or otherwise attributable to a relevant transaction and which he is 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 Attorney General shall notify any person who made representations or gave evidence to the Commission or to him following the giving of notice under article 8(1) or (2) whether he is 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 the reasons for his decision.

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

(6) Where the Attorney General is 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) above with permission granted by or on behalf of HM Treasury under the Control of Gold, Securities, Payments and Credits (Republic of Iraq) Directions 1990(3), he 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 with respect to Petroleum or Petroleum Products

16.—(1) The Attorney General 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) below, where the Attorney General is satisfied that an Iraqi person is entitled to petroleum or petroleum products in the Bailiwick 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 Attorney General may specify.

(3) A direction by the Attorney General under paragraph (2) above shall not extend to any petroleum or petroleum products in the Bailiwick to which an Iraqi person is entitled which the Attorney General 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 Attorney General 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 Bailiwick 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 the reasons for his decision.

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

Disclosure of Assessments and Reasons for Decisions

17.—(1) The Attorney General shall not be required to give reasons for his conclusions under article 14(1), 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 that Schedule.

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

(3) Where the Commission has so consented, the Attorney General may—

- (a) in giving reasons for his decision under article 15(1) disclose extracts from or the entirety of the Commission's assessment obtained under article 6(3); and
- (b) in giving reasons for his decision under article 15(4) disclose extracts from or the entirety of the Commission's assessment obtained under article 8(4).

(4) No assessment obtained from the Commission under article 6(3) shall be disclosed by the Attorney General 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 Attorney General and the Commission, or, as the case may be, the Attorney General, in writing of having complied with the direction and shall provide

the Attorney General and the Commission, or, as the case may be, the Attorney General, 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 Attorney General may direct that person to deliver the petroleum or petroleum products, to which the direction under article 16(2) related, to the Attorney General 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) above the Attorney General 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 Attorney General 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 Attorney General 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) above shall be the liability of the person by whom the account is held unless the relevant institution agrees otherwise with that person.

(3) Notwithstanding the foregoing, a relevant institution may restrict access to an account described in paragraph (1) above 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 HM Treasury shall transfer the amount to the Attorney General who 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 Attorney General may apportion any amount remitted by the Secretary General as described in paragraph (1) above which does not represent the total of any payments into the escrow account under article 15 or 16 as he considers appropriate between relevant institutions and other persons by whom amounts have been remitted.

(3) The Attorney General may pay to any person described in paragraph (4) below any amount remitted by the Secretary General as described in paragraph (1) above which he considers 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 under the Companies Laws; or
- (ii) is the subject of an order under the Companies Laws appointing a provisional liquidator; or
- (iii) is the subject of a declaration of insolvency made by the Royal Court; or
- (iv) has otherwise ceased to exist; or

- (v) is incapable, by reason of mental incapacity, of managing and administering his property and affairs; or
- (vi) has died; or
- (vii) has ceased to exercise the functions by virtue of which he or it held the funds subject to a direction under article 15(2) or 16(2); or
- (viii) cannot be traced.

(4) Where paragraph (3) above applies, the Attorney General may pay any relevant amount to a person who appears to him 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 the Ecclesiastical Court; 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 16(2).

(5) Where the Attorney General decides that there is no person of a description in paragraph (4) above he 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 Attorney General that he is entitled to receive it and the receipt of such a person shall be a valid discharge to the Attorney General 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 Attorney General under paragraph (1), (4) or (5) above, 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) above 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) above; or
- (c) the date on which an amount is deposited by the Attorney General in an interest-bearing account at the Bank under paragraph (5) above following a decision that there is no person of a description in paragraph (4) above.

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 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 the statutory maximum or to both.

(3) Any person who fails without reasonable excuse to notify the Attorney General and the Commission or, as the case may be, the Attorney General of compliance with a direction under article 15(2) or 16(2) or to provide the evidence of compliance required by them 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 16(2) any sum which has not been certified by the Attorney General 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) Proceedings against any person for an offence under this Order may be taken before the appropriate court in the Bailiwick having jurisdiction in the place where that person is for the time being.

Exercise of Powers of the Attorney General

23. The Attorney General 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 the Schedule to this Order 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 Attorney General shall be construed accordingly.

N. H. Nicholls
Clerk of the Privy Council

SCHEDULE

Article 3

EVIDENCE AND INFORMATION

1.—(1) Without prejudice to any other provision of this Order, or any provision of any other law, the Attorney General (or any person authorised by him for that purpose either generally or in a particular case) may request any person in or resident in the Bailiwick to furnish to him (or to that authorised person) any information in his possession or control, which he (or that authorised person) may require 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 from the Government or competent authority of another country in accordance with sub-paragraph (3) below; 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 the foregoing sub-paragraph shall be taken to require any person who has acted as advocate for any person to disclose any privileged communication made to him in that capacity.

(3) The Attorney General may, if he receives a request from the Secretary General or from the Government or competent authority of another country for information or documents stated to be required for securing compliance with or detection of evasion of the resolution, exercise the powers conferred on him by sub-paragraph (1) above in order to give effect to such a request.

(4) Where a person is convicted of failing to furnish information or produce a document when requested to do so 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.

(5) 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.

2.—(1) If the Bailiff (in relation to the Bailiwick), the Chairman of the Court of Alderney (in relation to the island of Alderney) or the Seneschal (in relation to the Island of Sark) is satisfied by information on oath given by any officer of police or person authorised by the Attorney General 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 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, vessel or aircraft so specified; or
- (b) that any documents which ought to have been produced under paragraph 1 of this Schedule and have not been produced are to be found on any such premises or in any such vehicle, vessel or aircraft,

he may grant a search warrant authorising any officer of police together with any other persons named in the warrant and any other officers of police, to enter the premises specified in the information or, as the case may be, any premises upon which the vehicle, vessel 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, vessel or aircraft.

(2) A person authorised by any such warrant as aforesaid to search any premises or any vehicle, vessel or aircraft may search every person who is found in, or whom he has reasonable ground to believe to have recently left or to be about to enter, those premises or that vehicle, vessel or aircraft, and may seize any document or article found on the premises or in the vehicle, vessel or aircraft or on such person which he has reasonable ground to believe to be evidence of the commission of any such offence as aforesaid or any documents which he has reasonable ground to believe ought to have been produced under paragraph 1 of this Schedule, and may take copies of or extracts made

from any such documents and may take in relation to any such document or article any other steps which may appear necessary for preserving it and preventing interference with it:

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

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

(4) 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.

(5) In this paragraph, references to an officer of police shall be construed as references to a member of the salaried police force of the Island of Guernsey, and—

- (a) in relation to the Islands of Guernsey, Herm and Jethou, within the limits of his jurisdiction, as a reference to a member of the special constabulary of the Island of Guernsey;
- (b) in relation to the Island of Alderney, as a reference to a member of any police force which may be established by the States of Alderney; and
- (c) in relation to the Island of Sark, as a reference to the Constable and the Vingtenier.

3. A person authorised by the Attorney General 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 or extract made from any document produced) by any person in pursuance of a request made under this Schedule and no document seized or from which copies or extracts are taken under paragraph 2(2) of this Schedule, other than the information or documents described in paragraph 5 of this Schedule, 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 or by unlawful means 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 the Crown in respect of the Government of the United Kingdom or under or in the service of the States of Guernsey or Alderney or the Chief Pleas of Sark; or
- (c) to any person holding office in or employed by the Commission; or
- (d) to any person in connection with the publication of a notice under this Order; or
- (e) on the authority of the Attorney General, to any organ of the United Nations or to any person in the service of the United Nations or to 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
- (f) with a view to the institution of, or otherwise for the purposes of, any proceedings for an offence under this Order.

5. No information furnished or document provided (including any copy of or extract made from any document provided) by any person in pursuance of a request made under this Schedule, and no document seized or from which copies or extracts are taken under paragraph 2(2) of this Schedule, to give effect to a request received from the Secretary General or from the Government or competent

authority of another country in accordance with paragraph 1(3) of this Schedule, shall be disclosed except—

- (a) as provided in paragraph 4(a), (c) or (e) of this Schedule; or
- (b) where information or documents have been requested by the Secretary General, to the Secretary General; or
- (c) where information or documents have been requested by a Government or competent authority, to that Government or competent authority.

6. 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) intentionally furnishes false information or a false explanation to any person exercising his powers under this Schedule; or
- (c) otherwise intentionally 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 is made under the United Nations Act 1946 and gives effect in the Bailiwick of Guernsey to a decision of the Security Council of the United Nations in Resolution No.778 of 1992. It requires the transfer of any funds in the Bailiwick, to which specified Iraqi persons are entitled and which represent the proceeds of sale of Iraqi petroleum or petroleum products on or after 6th August 1990, to the escrow account established by the United Nations under Security Council Resolutions No.706 and 712 of 1991, following a procedure for ascertaining entitlement to relevant funds and to petroleum or petroleum products. Funds which had already been paid to a person entitled to them or which were subject to or required to satisfy third-party rights at the time of the adoption of Resolution No.778 of 1992 are exempt from the transfer requirement.

The Order also requires the sale of any petroleum or petroleum products in the Bailiwick to which specified Iraqi persons are entitled and the transfer of the proceeds of sale to the escrow account.

It provides for the retransfer of any monies received by the United Kingdom Government from the Secretary General of the United Nations representing monies transferred to the escrow account back to the persons entitled to them.

The Order empowers the Attorney General for the Bailiwick to obtain information and documents to secure compliance with it; limits the circumstances in which information and documents obtained may be disclosed; disappplies obligations or restrictions which would conflict with the requirements of the Order; and excludes any liability which might otherwise arise in acting pursuant to or in compliance with the Order.

