

UNITED NATIONS ACT 1946

IRAQ

This Notice draws attention in convenient form to the Order in Council made under the United Nations Act 1946 which places financial sanctions on Iraq. This Notice provides guidance on certain aspects only of the Order in Council, and should be read alongside the Order in Council.

HM Treasury has appointed the Bank of England to act as its agents for the purposes of enforcing financial sanctions against Iraq. Accordingly, certain powers have been delegated by HM Treasury to the Bank of England.

This Notice supersedes the guidance set out in the Bank of England's Notice to Banks issued on 7 August 1990, as amended.

INTRODUCTION

1. The Order in Council made under Section 1 of the United Nations Act 1946 which places financial sanctions on Iraq is the Iraq (United Nations Sanctions) Order 2000 (Statutory Instrument 2000 No 3241), referred to below as 'the Order'. Copies may be obtained from HM Stationery Office.
2. The Order applies to any person within the United Kingdom, and to any person elsewhere who:-
 - (a) is a British citizen, a British Dependent Territories citizen, a British National (Overseas), a British overseas citizen, a British subject, or a British protected person; or
 - (b) is a body corporate incorporated or constituted under the law of any part of the United Kingdom or a Scottish partnership.

The Order therefore applies to banks, other financial institutions, charitable organisations and non-governmental organisations, in the United Kingdom or established under UK Law. The Order does not apply to subsidiaries operating wholly outside the United Kingdom and which do not have legal personality under UK Law.

3. Article 3 of the Order provides that:

Any person who, except under the authority of a licence granted by the Bank of England in its capacity as HM Treasury's agents:-

- (a) makes any funds available to the government of the Republic of Iraq or to any person who is a resident of the Republic of Iraq, or
- (b) otherwise remits or removes any funds from the United Kingdom to a destination in the Republic of Iraq,

commits an offence.

Definition of funds

4. "Funds" means financial assets and economic benefits of any kind, including (but not limited to) gold coin, gold bullion, cash, cheques, claims on money, drafts, money orders, and other payment instruments; deposits with financial institutions or other entities, balances on accounts, debts and debt obligations; securities and debt instruments (including stocks and shares, certificates representing securities, bonds, notes, warrants, debentures, debenture stock and derivatives contracts); interest, dividends or other income on value accruing from or generated by assets; credit, rights of set-off, guarantees, performance bonds or other financial commitments; letters of credit, bills of lading, bills of sale; documents evidencing an interest in funds or financial resources, and any other instrument of export financing.

Residence in Iraq

5. For the purposes of the Order, a person (including any body corporate) will generally be regarded as resident in the Republic of Iraq if they are normally resident in that country. A business that has a branch in Iraq is likely to be treated as itself resident in Iraq. Persons resident or becoming resident in Iraq should not subsequently be treated as no longer resident there without prior reference to the Bank of England.
6. Residential status should be determined by reference to the facts pertaining to each person. In general, a person is not regarded as being a resident of Iraq if they are exercising a permanent right (that is, a right not limited by time) to live outside Iraq. Other cases where persons have obtained a long term right to live outside of Iraq should be referred to the Bank of England, who will advise in each case whether the persons concerned are to be considered as not resident in Iraq. This will depend upon, for example, the length of any visa granted and the circumstances and conditions under which it was granted.

Iraqi accounts

7. The sterling, foreign currency and gold bullion accounts of residents of Iraq held in the United Kingdom by persons who

have been authorised by the Financial Services Authority, or by European authorised persons, should be designated as Iraqi accounts. Funds held by solicitors and accountants on behalf of such residents should be placed in a separate account that should be designated as an Iraqi account.

Payments sought by or on behalf of residents of Iraq

8. Except as provided for in paragraphs 9 and 10 below, a written licence is required for any person subject to the Order to make funds available to a resident of Iraq. This includes both making payments to such a resident and making payments to any other person on the instructions of such a resident. A licence will not normally be given for any funds to be transferred from an Iraqi account to any account held outside the United Kingdom.

Payments to and from Iraqi accounts

9. No payment or transfer may be made from an Iraqi account, including to another Iraqi account, without a written licence from the Bank of England, which will not normally be granted. Loans and other forms of credit should not be made available to residents of Iraq. A licence is not required to credit funds to Iraqi accounts. A licence will not normally be granted to change the ownership of an Iraqi account, for example by adding or deleting signatories.
10. By this paragraph, which constitutes a general licence granted under the Order, permission is given for the payment from Iraqi accounts of:-
 - (a) up to £250 per week in respect of the living or medical, expenses of the account holder(s) only whilst in the United Kingdom.
 - (b) distributions and payments to residents of the United Kingdom under wills and intestacies and under trusts set up before 4 August 1990;
 - (c) sums due to the Inland Revenue and HM Customs and Excise, provided no overdraft is thereby created on an Iraqi account;
 - (d) charges due to banks in the United Kingdom;

It is a condition of this licence that evidence in support of the funds released in accordance with this paragraph should

be retained by the persons releasing those funds for possible inspection by the Bank of England (see paragraph 16 below).

11. The Bank of England will consider, on a case by case basis, applications to debit Iraqi accounts for other purposes, such as:-

- (a) living or medical expenses in excess of the amount referred to in paragraph 10(a);
- (b) the costs of education in the United Kingdom;
- (c) the cost of travel to and from the United Kingdom;
- (d) payments for charitable purposes.

12. All applications shall be made to the Bank of England. All licences granted by the Bank of England will be made in writing.

Notifying knowledge or suspicion of relevant matters

13. A bank or other financial institution which knows or suspects that a customer or other person with which it has had business dealings:-

- (a) is a resident of Iraq whose account(s) are not frozen;
- (b) has breached a condition of a licence granted by the Bank of England; or
- (c) has committed an offence under the Order,

must report the information on which its knowledge or suspicion is based to the Bank of England as soon as reasonably practicable. Failure to do so is an offence.

Freezing of funds on suspicion

14. If the Bank of England, in consultation with HM Treasury, considers that there are reasonable grounds to suspect that funds are being held by or on behalf of the government of Iraq or a resident of Iraq, the Bank of England can direct that those funds are not to be made available to that government or resident. Any such direction will be given in writing and will specify for how long the funds are to remain

frozen, up to a maximum of five working days. It is an offence under the Order to contravene such a direction.

15. The person holding those funds shall send a copy of this written direction without delay to the owner of those funds. Failure to do so constitutes an offence.

Requirements to provide information

16. The Bank of England can serve a written notice on anyone to whom the Order applies, requiring them to furnish the Bank of England with any information in their possession or control, or produce any document in their possession or control, for the owner of those funds shall furnish the Bank of England with any information in their possession or control, or produce any document in their possession or control, for the purpose of allowing the Bank of England to ensure compliance with, or detect evasion of, the Order.
17. Failure or refusal to furnish such information or documents without reasonable excuse is an offence. Intentionally furnishing false information or a false explanation, or damaging or disposing of a document in order to evade such a requirement, is an offence.

Transfers of funds to Iraq

18. By this paragraph which constitutes a licence granted under the Order, permission is granted to charitable organisations, non-government organisations, and other persons visiting Iraq for bona fide medical or humanitarian purposes (including for the purposes of conducting business under the oil for food programme) to transfer funds to Iraq subject to the following conditions:-

- (a) the funds are to be used for personal living and travel expenses only;
- (b) the value of funds transferred does not exceed the equivalent of US\$150 per person per day;

Requests by such persons to export funds to Iraq in excess of the amount referred to in paragraph 18(b) will be considered, on a case by case basis, upon written application to the Bank of England.

19. Requests to export funds to Iraq in relation to other medical or humanitarian needs, and any other requests for transfers, will be considered, on a case by case basis, upon written application to the Bank of England. Supporting documentation should be provided where appropriate.

Application and enquiries

20. Applications should be made to the Bank of England in respect of any transaction, which is not covered by the licences granted in paragraphs 10 and 18 of this Notice.

21. Enquiries concerning this Notice should be addressed to the Bank of England, Threadneedle Street, London, EC2R 8AH and marked for the attention of the Financial Sanctions Unit (FSU). Enquiries may also be made by facsimile transmission (020 7601 4309) and by Email (sanctions.unit@bofe.co.uk). Telephone enquiries may be made to 020 7601 4768/5811/4783.

BANK OF ENGLAND
14 December 2000