EXPLANATORY MEMORANDUM TO

THE INTERNATIONAL CRIMINAL COURT (REMAND TIME) ORDER 2008

2008 No.

1. This explanatory memorandum has been prepared by The Home Office and is laid before Parliament by Command of Her Majesty.

2. Description

2.1 This Order specifies the maximum periods for which a court may remand a person who has been arrested under a provisional warrant issued under the provisions of section 3 of the International Criminal Court Act 2001 pending the production of a warrant issued under section 2 of that Act.

2.2 The Order specifies that, pending receipt of a section 2 warrant, a court may on any single occasion remand a person for a maximum period of 18 days, and that the total period for which a person may be so remanded must not exceed 60 days.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None

4. Legislative Background

4.1 This Order is necessary to comply with the requirements of the International Criminal Court Act 2001 (the 'ICC Act'), which implements the UK's obligations under the Rome Statute of the International Criminal Court.

4.2 Part 2 of the ICC Act puts in place an expedited procedure for the execution of ICC requests for the arrest and surrender of persons.

4.3 Under section 2 of the ICC Act, where the Secretary of State receives a request from the ICC for the arrest and surrender of a person alleged to have committed an ICC crime, or who has been convicted by the ICC, he will transmit that request to a designated District Judge (or in Scotland, the Sheriff of Lothian and Borders) who will consider whether to endorse or issue a warrant for that person's arrest.

4.4 In cases of urgency, however, the ICC may request the provisional arrest of a person alleged to have committed an ICC crime or who has been convicted by the ICC. In such cases section 3 of the ICC Act requires the Secretary of State to transmit the request to a constable (or in Scotland, the Scottish Ministers) and to direct that a warrant be applied.

4.5 Section 4 of the ICC Act sets out what is to happen if a person is arrested under a provisional warrant.

4.6 Section 4(4)(a) of the ICC Act imposes a duty that provision be made by Order in Council specifying the maximum period for which a person arrested under a provisional warrant may be remanded on any single occasion.

4.7 Section 4(4)(b) of the ICC Act imposes a duty that provision be made by Order in Council specifying the maximum total period for which a person may be remanded following their provisional arrest. Rule 188 of the ICC Rules of Procedure and

Evidence, which sets time limits for the purposes of Article 92.3 of the Rome Statute, specifies that this time period should be 60 days.

5. Extent

5.1 This instrument applies to all of the United Kingdom. (A draft must also be laid before, and approved by resolution of, the Scottish Parliament.)

6. European Convention on Human Rights

Lord West of Spithead, Parliamentary Under Secretary of State, has made the following statement regarding Human Rights:

In my view the provisions of the International Criminal Court (Remand Time) Order 2008 are compatible with the Convention rights.

7. Policy background

7.1 The Government is committed to bringing international criminals to justice The UK is among the ICC's founding members, having ratified the Rome Statute following the passage of the ICC Act and the corresponding Scottish legislation.
7.2 The specification of these time limits ensures that someone arrested following an ICC request for provisional arrest will not be able to be kept on remand indefinitely.
7.3 The time limits in question were not included in the ICC Act as at the time of its passing the ICC Rules of Procedure and Evidence had not been finally adopted. This did not occur until the first meeting of the Assembly of States Parties, which itself only took place after 60 states had ratified the Rome Statute.
7.4 The time limit of 18 days is in line with the equivalent provisions in relation to provisional arrests under the United Nations (International Tribunal) (Former Yugoslavia) Order 1996 and the United Nations (International Tribunal) (Rwanda) Order 1996.

8. Impact

8.1 An Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies.

9. Contact

Kenny Bowie at the Home Office Tel: 020 7035 1275 or e-mail: Kenny.Bowie@homeoffice.gsi.gov.uk can answer any queries regarding the instrument.