EXPLANATORY MEMORANDUM TO THE

INTERNATIONAL CRIMINAL COURT ACT 2001 (ELEMENTS OF CRIMES) (NO.2) REGULATIONS 2004

2004 No. 3239

1. This explanatory memorandum has been prepared by the Foreign and Commonwealth Office and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Description

2.1 This instrument sets out the constituent elements of the offences of genocide, crimes against humanity and war crimes for the purposes of the International Criminal Court Act 2001. It revokes and replaces Regulations on the same subject which were made earlier in 2004 but which were defective.

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

3.1 This instrument corrects errors in the International Criminal Court Act 2001 (Elements of Crimes) Regulations 2004 (S.I. 2004/1080) which were previously noted by the Joint Committee on Statutory Instruments and set out in a letter from Martyn Atkins, Commons Clerk of the Committee, to Peter May at the Foreign and Commonwealth Office dated 11 May 2004.

4. Legislative Background

4.1 This instrument revokes and replaces the International Criminal Court Act 2001 (Elements of Crimes) Regulations 2004 (S.I. 2004/1080) which were defective because the commencement date in regulation 1(1) was left blank, and because the Regulations did not apply to Scotland but should have done pursuant to section 79(1)(c) of the International Criminal Court Act 2001. This instrument corrects these defects. It is made pursuant to section 50(3) of the International Criminal Court Act 2001. It provides guidance to the UK courts in interpreting and applying the provisions of the Act on genocide, crimes against humanity and war crimes, by setting out the constituent elements of these offences, known as the "Elements of Crimes", adopted by the Assembly of States Parties of the International Criminal Court.

5. Extent

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

6.1 Not applicable

7. Policy background

7.1 The International Criminal Court Act 2001 states that the Secretary of State shall set out in regulations the Elements of Crimes, that is the constituent elements of the offences of genocide, crimes against humanity and war crimes, adopted by the Assembly of States Parties of the International Criminal Court. The Assembly adopted Elements of Crimes on 9 September 2002 and the purpose of this instrument is to apply these in domestic law pursuant to the Act, so that they will be taken into account by UK courts considering such offences under domestic law. This instrument replaces a defective instrument made earlier this year which had the same aim.

8. Impact

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

9. Contact

Sarah Moore at Foreign and Commonwealth Office Legal Advisers, telephone number 020 7008 2669 or e-mail sarah.moore@fco.gov.uk can answer queries regarding this instrument.