EXPLANATORY MEMORANDUM TO THE

THE INTERNATIONAL CRIMINAL COURT (IMMUNITIES AND PRIVILEGES) (NO. 1) ORDER

2006 No. 1907

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 The United Kingdom signed the Agreement on the Privileges and Immunities of the International Criminal Court of 2002 (Cm. 5839) ("the Agreement") on 10 September 2002. The Agreement obliges the United Kingdom to confer legal capacity and privileges and immunities on the International Criminal Court ("the ICC"); and to confer privileges and immunities on specified categories of individuals connected with the ICC:-

(i) representatives of States participating in the proceedings of the ICC;

(ii) the judges, Prosecutor, Deputy Prosecutors, and Registrar;

(iii) the Deputy Registrar, staff of the Office of the Prosecutor and staff of the Registry;

(iv) other locally recruited personnel working for the ICC;

(v) counsel and persons assisting defence counsel;

(vi) witness giving testimony and appearing before the ICC;

(vii) victims participating in the proceeding of the ICC;

(viii) experts performing functions for the ICC; and

(ix) other persons required to be present at the seat of the ICC.

2.2 The draft Order confers legal capacity and privileges and immunities on the ICC; and confers privileges and immunities on the categories of individuals referred to in paragraph 2 of this explanatory memorandum. The Home Secretary has amended the Immigration (Exemption from Control) Order 1972 to exempt individuals from immigration restrictions as required under the Agreement. This Order and the Home Secretary's Order will therefore enable Her Majesty's Government to ratify the Agreement, subject to article 13 of the Agreement under which privileges and immunities are

conferred on representatives of States participating in the Assembly and its subsidiary organs and representatives of intergovernmental organisations. At the time of the this Order completing the Westminster Parliamentary stages, the enabling provision required to amend Schedule 1, paragraph 1, of the 2001 Act, so as to give effect to Article 13, had not yet come into force. However, a subsequent Order, the International Criminal Court (Immunities and Privileges) (No.2) Order 2006, has since been drafted to give effect to Article 13 of the Agreement.

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

3.1 None.

4. Legislative Background

4.1 It is proposed that the above Order should be made under Schedule 1, paragraph 1, to the International Criminal Court Act 2001 ("the 2001 Act"). Paragraph 4 of Schedule 1 to the 2001 Act provides that no recommendation shall be made to Her Majesty to make an Order in Council under Schedule 1, paragraph 1, to the 2001 Act unless a draft has been laid before Parliament and approved by a resolution of each House; and has been laid before, and approved by resolution of, the Scottish Parliament.

4.2 On ratification of the Agreement Her Majesty's Government will make the declaration referred to in article 23 of the Agreement. The draft Order provides for a lower level of privileges and immunities to be conferred on persons who are British nationals or permanent residents of the United Kingdom, in accordance with article 23.

4.3 The draft Order revokes the International Criminal Court (Immunities and Privileges) Order 2002, which implements articles 4 and 48 of the Rome Statute of the International Criminal Court (Cm. 4555), because the present Order incorporates those provisions.

4.4 The table attached to this explanatory memorandum sets out, in relation to each article of the draft Order, the relevant provisions in the Agreement, as well as the power in the 2001 Act which justifies the making of that particular provision in the draft Order.

4.5 The privileges and immunities conferred by the draft Order are no greater in the extent than those required by the Agreement or those authorised by the 2001 Act.

4.6 The Agreement will enter into force on the date thirty days after the date of deposit with the Secretary-General of the United Nations of the tenth instrument of ratification, acceptance, approval or accession. For each State ratifying, accepting, approving or acceding to the Agreement after the deposit of the tenth instrument of ratification, acceptance, approval or accession, the Agreement shall enter into force on the thirtieth day following the deposit with the Secretary-General of its instrument of ratification, acceptance, approval or

accession. Article 1 of the draft Order therefore provides that it will come into force on the date on which the Agreement enters into force in respect of the United Kingdom, which date shall be notified in the London, Edinburgh and Belfast Gazettes.

5. Extent

5.1 This instrument applies to all of the United Kingdom.

6. European Convention of Human Rights

The Parliamentary Under-Secretary of State, Bill Rammell, has made the following statement regarding Human Rights:

In my view the provisions of the International Criminal Court (Immunities and Privileges) (No.1) Order 2006 are compatible with the Convention rights.

7. Policy Background

7.1 The International Criminal Court was established by the Rome Statute of the International Criminal Court of 1998 (Cm. 4555) ("the Rome Statute") and was inaugurated in March 2003. Under the Agreement the Court and certain categories of individuals working for it and involved in its proceedings are to enjoy privileges and immunities to allow them to carry out their functions effectively and without undue external interference, in the interests of the good administration of justice.

7.2 The United Kingdom is a strong supporter of the ICC and was one of the States which signed the Agreement, on 10 September 2002, immediately following its adoption by the first Assembly of States Parties to the Rome Statute. Since the ICC is based in The Hague, and is unlikely to move to the United Kingdom, the practical implications of the Agreement for the United Kingdom are limited.

7.3 UK acceptance of the Agreement is unlikely to be controversial. Little public or media interest is envisaged.

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.

8.2 Any loss of revenue to the Exchequer in respect of the relief from taxes and other exemptions provided for in the Agreement will be small.

9. Contact

Jackie Brown at the Foreign and Commonwealth Office [Tel: 020 7008 0397 or e-mail: Jackie.Brown@fco.gov.uk] can answer any queries regarding the instrument.

ARTICLE IN DRAFT ORDER	ARTICLE IN AGREEMENT	ENABLING PROVISION: PARAGRAPH OF SCHEDULE 1 TO THE INTERNATIONAL CRIMINAL COURT ACT 2001
Article 3	N/A	Paragraph 1
Article 4	Article 2	Paragraph 1(1)
Article 5	Article 4 and 7	Paragraph 1(2)(a)
Article 6	Article 6	Paragraph 1(2)(a)
Article 7	Article 8(1)	Paragraph 1(2)(a)
Article 8	Article 8(1)	Paragraph 1(2)(a)
Article 9	Article 8(2)	Paragraph 1(2)(a)
Article 10	Article 8(2)	Paragraph 1(2)(a)
Article 11	Article 9	Paragraph 1(2)(a)
Article 12	Article 9	Paragraph 1(2)(a)
Article 13	Article 9	Paragraph 1(2)(a)
Article 14	Articles 14 and 25	Paragraph 1(2)(d)
Article 15	Articles 15, 23, 25 and 27	Paragraph 1(2)(b)

ARTICLE IN DRAFT ORDER	ARTICLE IN AGREEMENT	ENABLING PROVISION: PARAGRAPH OF SCHEDULE 1 TO THE INTERNATIONAL CRIMINAL COURT ACT 2001
Article 16	Articles 16, 23, 26 and 27	Paragraph 1(2)(c)
Article 17	Articles 17, 26 and 27	Paragraph 1(2)(d)
Article 18	Articles 18, 26 and 23	Paragraph 1(2)(d)
Article 19	Articles 19, 23 and 26	Paragraph 1(2)(d)
Article 20	Articles 20, 23 and 26	Paragraph 1(2)(d)
Article 21	Articles 21, 23 and 26	Paragraph 1(2)(d)
Article 22	Articles 22, 23 and 26	Paragraph 1(2)(d)