EXPLANATORY MEMORANDUM TO

THE INTERNATIONAL CRIMINAL COURT (IMMUNITIES AND PRIVILEGES) (NO.2) ORDER

2006 No. 1908

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 ("ICC"), and to confer privileges and immunities on specified categories of individuals connected with the ICC.

2.2 The International Criminal Court (Immunities and Privileges) (No.1) Order 2006 ("No.1 Order") has completed its Westminster parliamentary stages and has been approved by the Scottish Parliament (see paragraph 4.1 on procedure). The No.1 Order seeks to implement the majority of the obligations that flow from the Agreement. A provision implementing article 13 of the Agreement could not however be included in the No.1 Order as the necessary legal powers were not available at the time. The International Organisations Act 2005, which came on into effect on 7 June this year, amends Schedule 1 to the International Criminal Court Act 2001 ("the 2001 Act"). This amendment provides the power to confer privileges and immunities on persons attending meetings of the Assembly of States Parties to the Rome Statute ("the Assembly") and its subsidiary organs, as required by article 13 of the Agreement.

2.3 The draft Order confers privileges and immunities on:

(i) representatives of States Parties to the Rome Statute attending meetings of the Assembly and its subsidiary organs;
(ii) representatives of States attending meetings of the Assembly and its subsidiary organs as observers;
(iii) representatives of States and Intergovernmental Organisations invited to meetings of the Assembly and its subsidiary organs.

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 draft Order should be made under Schedule 1, paragraph 1 to 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

paragraph 1 of Schedule 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.

5. Extent

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

Lord Triesman has made the following statement regarding Human Rights:

In my view the provisions of the International Criminal Court (Immunities and Privileges) (No.2) Order 2006 are compatible with the Convention rights.

7. Policy background

7.1 The ICC 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.

9. Contact

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