EXPLANATORY MEMORANDUM TO

THE INTERNATIONAL CRIMINAL COURT (LIBYA) ORDER 2011

2011 No. 1696

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

2. Purpose of the Instrument

This Order provides that, where in connection with the investigation by the Prosecutor of the International Criminal Court (ICC) into the situation in Libya, a person alleged to have committed a crime within the jurisdiction of the ICC, or to have been convicted by the ICC, would otherwise enjoy immunity, then that immunity shall not prevent proceedings under Part 2 of the International Criminal Court Act 2001, for example to arrest the person and deliver him to the ICC.

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

(a) The Order will enter into force on the date of its being made, and accordingly no commencement date is specifically provided for in the Order.

(b) The Order does not enter into force 21 days after laying, as would be the normal practice. The justification for this is that, once the power to arrest a person to whom the Order applies has been enacted into law, it would be potentially counter-productive for that power not to enter into force for 21 days. If the 21 day rule were respected, that could give persons present in the United Kingdom who might be subject to arrest, ample time to leave the United Kingdom.

4. Legislative content

This Order is made under section 1 of the United Nations Act 1946, as extended by section 23(5) of the International Criminal Court Act 2001. It is the second, such Order made under that power, the first being the International Criminal Court (Darfur) Order 2009 (S.I. 2009/699).

5. Territorial Extent and Application

This instrument extends to the whole of the United Kingdom.

6. European Convention on Human Rights

As the instrument is only required to be laid before Parliament and does not amend primary legislation, no statement is required.

7. Policy background

The Order is necessary because of the referral by the Security Council in resolution 1970 (2011) of the situation in Libya since 15 February 2011 to the Prosecutor of the ICC.

The policy objective is to ensure that any arrest warrant issued by the ICC which the United Kingdom is obliged to implement cannot be defeated by a plea of immunity. Before issuing an arrest warrant, the ICC must satisfy itself that it has jurisdiction and once it has done so, and has issued an arrest warrant, the United Kingdom is obliged to implement that arrest warrant.

8. Consultation outcome

No formal public consultation has been conducted.

9. Guidance

No guidance is thought necessary.

10. Impact

10.1 No impact on business, charities or voluntary bodies in the United Kingdom is foreseen.

10.2 No impact on the public sector in the United Kingdom is foreseen.

10.3 An impact assessment has not been prepared for this instrument. This is because an impact on the private or voluntary sector is not foreseen.

11. Regulating small business

The Order will have no impact on small businesses.

12. Monitoring and review

No requirement for monitoring and review of the provisions of the Order is foreseen.

13. Contact

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