

INTERNATIONAL ORGANISATIONS ACT 2005

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Sections 1, 2 and 3 Commonwealth Secretariat/Commonwealth Secretariat Arbitral Tribunal

6. The Commonwealth Secretariat Act 1966 has been interpreted by the courts as allowing the courts to exercise supervisory jurisdiction, under the Arbitration Act 1996, over the Commonwealth Secretariat Arbitral Tribunal (CSAT). The International Organisations Act 2005 gives the Commonwealth Secretariat full immunity from the jurisdiction of the United Kingdom courts, bringing the Secretariat into line with a number of other international organisations based in the United Kingdom. This immunity does not extend to written contracts entered into by or on behalf of the Commonwealth Secretariat before section 1 of the Act comes into force. The Act also accords the President and members of the CSAT the same immunity from legal process in relation to their official activities as is conferred on the Commonwealth Secretariat staff under the Commonwealth Secretariat Act 1966. The International Organisations Act 2005 also provides that, if CSAT is replaced by a successor body, an order may be made by the Secretary of State for the purpose of conferring on the successor body privileges and immunities equivalent to those conferred on CSAT. The Act exempts the staff of the Commonwealth Secretariat from United Kingdom income tax on their salaries and emoluments on condition that the Secretariat levies its own internal income tax for the benefit of the Secretariat.

Section 4 The Organization for Security and Co-operation in Europe

7. The Organization for Security and Co-operation in Europe (“the OSCE”), was previously known as the Conference on Security and Co-operation in Europe (“the CSCE”). The OSCE consists of 55 member states and is active in conflict prevention, crisis management, human rights, democracy building and post-conflict rehabilitation throughout the Euro-Atlantic region, extending to the Caucasus and Central Asia. Although the OSCE has similar structures and working methods to an international organisation it is not considered to have international legal personality separate from its participating States. It is, therefore, not currently an “organisation” for the purposes of the International Organisations Act 1968 (“the 1968 Act”). The International Organisations Act 2005 brings the OSCE within the scope of the 1968 Act and enables the United Kingdom to implement the provisions regarding legal capacity and privileges and immunities set out in a report of the CSCE Ad Hoc Group of Legal and Other Experts annexed to the decision of the CSCE Council of Ministers of 1 December 1993 held in Rome.

Section 5 Bodies established under the Treaty on European Union

8. The International Organisations Act 2005 adds a further section to the 1968 Act to enable the UK to confer legal capacity and privileges and immunities, by Order in Council, on bodies established under Title V (Provisions on a common foreign and security policy (CFSP)) or Title VI (Provisions on police and judicial cooperation in

criminal matters (PJCC)) of the Treaty on European Union and certain categories of individuals connected with those bodies. Prior to this Act there was no provision to enable the United Kingdom to implement its commitments under a number of CFSP and PJCC European Union measures to confer domestic legal capacity and privileges and immunities on bodies established under those measures.

Section 6 International Criminal Court

9. The International Organisations Act 2005 amends the International Criminal Court Act 2001 to allow the UK to confer privileges and immunities on representatives of States participating in the Assembly and its subsidiary organs, representatives of inter-governmental organisations and also on family members of the judges, prosecutor, deputy prosecutors or the registrar who form part of their household, during their period of residence in the UK. This enables the UK to implement fully its obligations in the Agreement on the Privileges and Immunities of the International Criminal Court of 2002 which the UK signed on 10 September 2002. Before the International Organisations Act 2005 it was not possible to use the 2001 Act to confer privileges and immunities on these individuals.

Section 7 European Court of Human Rights

10. The Sixth Protocol to the General Agreement on the Privileges and Immunities of the Council of Europe confers privileges and immunities on members of the European Court of Human Rights. The UK has signed and ratified the Sixth Protocol. However, ratification of the Sixth Protocol was subject to a reservation in respect of Article 1, which confers privileges and immunities on judges and their family members. The International Organisations Act 2005 enables the conferral of immunities and privileges on the members of the family of a judge of the European Court of Human Rights, allowing the UK to give full effect to the Sixth Protocol.

Section 8 International Tribunal for the Law of the Sea

11. The International Tribunal for the Law of the Sea (“ITLOS”) was established by Annex VI to the 1982 United Nations Convention on the Law of the Sea (“UNCLOS”). ITLOS is an international court with its seat in Hamburg and has jurisdiction to hear disputes submitted to it in accordance with UNCLOS and all matters specifically provided for in any other agreement which confers jurisdiction on it. The UK is a State Party to UNCLOS. The Agreement on the Privileges and Immunities of the International Tribunal for the Law of the Sea (“the ITLOS Privileges and Immunities Agreement”) provides that the Tribunal and various categories of individuals connected with it shall enjoy certain privileges and immunities. The UK signed the ITLOS Privileges and Immunities Agreement but did not ratify it because it was not possible to implement the provisions of the Agreement relating to the Tribunal itself using any of the enabling provisions of the 1968 Act. The International Organisations Act 2005 brings ITLOS within the scope of the 1968 Act and thus enables the making of an Order in Council conferring privileges and immunities on the Tribunal and allows the United Kingdom to ratify the ITLOS Privileges and Immunities Agreement.