

EXPLANATORY MEMORANDUM TO THE
THE IMMIGRATION (EXEMPTION FROM CONTROL) (AMENDMENT) ORDER
2004

2004 No. 3171

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

2. Description

2.1 This Order is made under section 8(2) of the Immigration Act 1971 and amends the Immigration (Exemption from Control) Order 1972 (S.I. 1972/1613).

2.2 The Agreement on the Privileges and Immunities of the International Criminal Court done at New York on 9th September 2002 (Cm. 5839) (“the Agreement”) obliges State parties, including the United Kingdom, to, inter alia, confer on specified individuals and categories of individuals connected with the International Criminal Court (“the ICC”) exemption from immigration restrictions. The individuals and categories of individuals are:-

- (i) representatives of a State party to the Rome Statute (which established the ICC) attending meetings of the Assembly;
- (ii) representatives of another State invited to observe meetings of the Assembly;
- (iii) representatives of States or intergovernmental organisations invited to attend a meeting of the Assembly;
- (iv) representatives of States participating in the proceedings of the ICC;
- (v) any judge, the Prosecutor, Deputy Prosecutors, and Registrar when engaged on or with respect to the business of the ICC;

- (vi) the Deputy Registrar, staff of the Office of the Prosecutor and staff of the Registry of the ICC as far as necessary in the performance of their functions;
- (vii) counsel and persons assisting defence counsel of the ICC;
- (viii) witnesses giving evidence and appearing before the ICC;
- (ix) victims appearing before the ICC;
- (x) experts performing functions for the ICC;
- (xi) family members forming part of the household of those referred to in (v) and (vi) above.

2.3 The Order confers exemption from immigration control on these individuals and categories of individuals. The Foreign and Commonwealth Office is preparing an Order in parallel under the International Criminal Court Act 2001 to confer legal capacity, privileges and immunities on the ICC and confer certain other privileges and immunities on the individuals and categories of individuals referred to in paragraph 2.2 above, as required by the Agreement. This Order and the Foreign and Commonwealth Office's Order will therefore enable Her Majesty's Government to ratify the Agreement.

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

None.

4. Legislative Background

4.1 It is proposed that the above Order should be made under section 8(2) of the Immigration Act 1971 ("the 1971 Act"). Section 8(2) allows the Secretary of State to make an order exempting any person or class of persons, either unconditionally or subject to such conditions as may be imposed, from all or any of the provisions of the 1971 Act relating to those who are not British citizens. Section 8(2) provides that an order made under the subsection, if made with respect to a class of persons, shall be

made by statutory instrument, which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

4.2 This Order exempts from the provisions of the 1971 Act relating to those who are not British citizens, except any provision relating to deportation, the individuals and categories of individual referred to above at paragraph 2.2. It does this by amending the Immigration (Exemption from Control) Order 1972.

4.3 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

This instrument applies to all of the United Kingdom.

6. European Convention of Human Rights

Not applicable.

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 individuals and 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 State 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 United Kingdom acceptance of the Agreement is unlikely to be controversial. Little public or media interest is envisaged.

8. Impact

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

9. Contact

Lynn Wallis at the Home Office Immigration and Nationality Directorate Tel: 020 8603 5465 or e-mail: Lynn.Wallis@homeoffice.gsi.gov.uk can answer queries regarding the instrument.