Draft Order in Council laid before Parliament and the Scottish Parliament under paragraph 4 of Schedule 1 to the International Criminal Court Act 2001, for approval by resolution of each House of Parliament and of the Scottish Parliament.

DRAFT STATUTORY INSTRUMENTS

2006 No.

INTERNATIONAL IMMUNITIES AND PRIVILEGES

The International Criminal Court (Immunities and Privileges) (No. 1) Order 2006

Made - - - -

Coming into force in accordance with Article 1

At the Court at Buckingham Palace, the

Present,

The Queen's Most Excellent Majesty in Council

Whereas a draft of this Order has been laid before Parliament and the Scottish Parliament in accordance with Schedule 1, paragraph 4 to the International Criminal Court Act 2001(**1**)("the Act") and has been approved by a resolution of each House of Parliament and of the Scottish Parliament:

Now, therefore, Her Majesty, by virtue and in exercise of the powers conferred on Her by Schedule 1, paragraph 1 to the Act or otherwise in Her Majesty vested, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered as follows:–

PART 1

GENERAL

1. This Order may be cited as the International Criminal Court (Immunities and Privileges) (No. 1) Order 2006. It shall come into force on the date on which the Agreement on the Privileges and Immunities of the International Criminal Court done at New York on 9th September 2002(**2**)enters into force in respect of the United Kingdom. This date shall be notified in the London, Edinburgh and Belfast Gazettes.

(**1**) 2001 c. 17.
(**2**) Cm. 5839.

2. In this Order:

"the 1961 Convention Articles" means the Articles (being certain Articles of the Vienna Convention on Diplomatic Relations signed in 1961) which are set out in Schedule 1 to the Diplomatic Privileges Act 1964(**3**);

"the Court" means the International Criminal Court established by the Rome Statute;

"Deputy Prosecutors" means the Deputy Prosecutors elected by the Assembly of States Parties to the Rome Statute in accordance with article 42, paragraph 4, of the Rome Statute;

"Deputy Registrar" means the Deputy Registrar elected by the Court in accordance with article 43, paragraph 4, of the Rome Statute;

"the Presidency" means the organ of the Court composed of the President and the first and second Vice-Presidents of the Court elected in accordance with article 38, paragraph 1, of the Rome Statute;

"Prosecutor" means the Prosecutor elected by the Assembly of States Parties to the Rome Statute in accordance with article 42, paragraph 4, of the Rome Statute;

"Registrar" means the Registrar elected by the Court in accordance with article 43, paragraph 4, of the Rome Statute;

"the Rome Statute" means the Rome Statute of the International Criminal Court done at Rome on 17th July 1998(**4**);

"the Rules" means the Rules of Procedure and Evidence adopted under article 51 of the Rome Statute;

"victims" means victims participating in the proceedings of the Court in accordance with rules 89 to 91 of the Rules.

3. The International Criminal Court (Immunities and Privileges) Order 2002(**5**) is hereby revoked.

PART 2

THE COURT

4. The Court shall have the legal capacities of a body corporate.

5. The Court shall have the like inviolability of its official archives and premises as, in accordance with the 1961 Convention Articles, is accorded in respect of the official archives and premises of a diplomatic mission.

6. The Court, and its property, funds and assets, wherever located and by whomsoever held, shall be immune from suit and legal process, except in so far as the Court has expressly waived such immunity in any particular case.

7. The Court, its property and income shall have exemption from taxes on income and capital gains.

8. The Court shall have the like relief from rates on its official premises as, in accordance with Article 23 of the 1961 Convention Articles, is accorded in respect of the premises of a diplomatic mission.

(**3**) 1964 c. 81; as amended by section 2(2) and paragraph 4 of the Schedule to the Hong Kong Act 1985 (c. 15.) and by section 1(1) of the Arms Control and Disarmament (Privileges and Immunities) Act 1988 (c. 2.).
(**4**) Cm. 4555.
(**5**) S.I.2002/793.

9. The Court shall have exemption from duties (whether of customs or excise) and taxes on the importation of goods and publications of the Court imported by the Court for its official use, such exemption to be subject to compliance with such conditions as the Commissioners of Customs and Excise may prescribe for the protection of the Revenue.

10. The Court shall have exemption from prohibitions and restrictions on importation or exportation of goods by the Court for its official use and in the case of any publications of the Court imported or exported by it.

11. The Court shall have relief, under arrangements made by the Commissioners of Customs and Excise, by way of refund of duty (whether of customs or excise) paid on imported hydrocarbon oil within the meaning of the Hydrocarbon Oil Duties Act 1979(**6**)or value added tax paid on the importation of such oil which is bought in the United Kingdom by the Court and necessary for the exercise of its official activities, such relief to be subject to compliance with such conditions as may be imposed in accordance with the arrangements.

12. The Court shall have relief, under arrangements made by the Secretary of State, by way of refund of car tax paid on any vehicles and value added tax paid on the supply of any goods or services which are used for the official purposes of the Court, such relief to be subject to compliance with such conditions as may be imposed in accordance with the arrangements.

13. The Court shall have relief, under arrangements made by the Secretary of State, by way of refund of Insurance Premium Tax and Air Passenger Duty paid by the Court in the exercise of its official activities.

PART 3

REPRESENTATIVES OF STATES PARTICIPATING IN THE PROCEEDINGS OF THE COURT

14.—(1) Except in so far as in any particular case any privilege or immunity is waived by the State which they represent, representatives of States participating in the proceedings of the Court shall enjoy, while exercising their official functions and during their journeys to and from the place of the proceedings of the Court:–

(a) the like immunity from personal arrest or detention and the like inviolability for all papers and documents as is accorded to a diplomatic agent;

(b) immunity from suit and legal process (even after they have ceased to exercise their functions as representatives) in respect of acts, including words written or spoken, performed by them in the exercise of their official functions;

(c) the like exemptions and privileges in respect of their personal baggage as in accordance with paragraph 2 of Article 36 of the 1961 Convention Articles are accorded to a diplomatic agent;

(d) exemption from income tax in respect of salaries and emoluments paid to them as representatives;

(e) exemptions whereby, for the purposes of the enactments relating to national insurance and social security, including enactments in force in Northern Ireland,–

(i) services rendered for the Court by the representative shall be deemed to be excepted from any class of employment in respect of which contributions or premiums under those enactments are payable, but

(**6**) 1979 c. 5.

(ii) no person shall be rendered liable to pay any contribution or premium which he would not be required to pay if those services were not deemed to be so excepted.

(2) Where the incidence of any form of taxation depends upon residence, a representative shall not be deemed to be resident in the United Kingdom during any period when he is present in the United Kingdom for the discharge of his duties.

(3) Paragraphs (1) and (2) shall not operate so as to confer any privilege or immunity on any person as the representative of the United Kingdom or on any person who is a British citizen, a British overseas territories citizen, a British Overseas citizen, or a British National (Overseas).

PART 4

JUDGES, PROSECUTOR, DEPUTY PROSECUTORS AND REGISTRAR

15.—(1) Except in so far as in any particular case any privilege or immunity is waived as set out in paragraph (6), the judges, the Prosecutor, the Deputy Prosecutors and the Registrar shall enjoy:–

(a) when engaged on or with respect to the business of the Court, the like privileges and immunities as in accordance with the 1961 Convention Articles are accorded to the head of a diplomatic mission;

(b) exemption from income tax in respect of salaries and emoluments (excluding pensions and annuities) received by them from the Court as judges, Prosecutor, Deputy Prosecutors or Registrar;

(c) when residing in the United Kingdom for the purpose of holding themselves at the disposal of the Court the privileges and immunities accorded to a diplomatic agent in accordance with the 1961 Convention Articles;

(d) on journeys in or through the United Kingdom in connection with the exercise of their functions, the privileges and immunities accorded to a diplomatic agent in similar circumstances under the 1961 Convention Articles;

provided that the provisions of this paragraph shall not apply to any person who is a British citizen, a British overseas territories citizen, a British Overseas citizen, a British National (Overseas) or permanently resident in the United Kingdom.

(2) Except in so far as in any particular case any privilege or immunity is waived as set out in paragraph (6), the judges, the Prosecutor, the Deputy Prosecutors and the Registrar after the expiry of their terms of office shall enjoy immunity from suit and legal process in respect of acts, including words written or spoken, performed by them in the exercise of their official functions for the Court, but the provisions of this paragraph shall not apply to any person who is a British citizen, a British overseas territories citizen, a British Overseas citizen, a British National (Overseas) or permanently resident in the United Kingdom.

(3) Except in so far as in any particular case any privilege or immunity is waived as set out in paragraph (6), the judges of the Court shall enjoy the privileges and immunities in paragraph (1) after their term of office has expired if they continue to exercise their functions in accordance with article 36, paragraph 10 of the Rome Statute, but the provisions of this paragraph shall not apply to any person who is a British citizen, a British overseas territories citizen, a British Overseas citizen, a British National (Overseas) or permanently resident in the United Kingdom.

(4) Except in so far as in any particular case any privilege or immunity is waived as set out in paragraph (6), the judges, the Prosecutor, the Deputy Prosecutors and the Registrar, if they are British citizens, British overseas territories citizens, British Overseas citizens, British Nationals (Overseas) or permanently resident in the United Kingdom, shall enjoy to the extent necessary for the independent performance of their functions:–

(a) the like immunity from personal arrest or detention and the like inviolability for all papers and documents relating to the exercise of their functions for the Court as is accorded to a diplomatic agent;

(b) immunity from suit and legal process (even after the expiry of their terms of office) in respect of all acts, including words spoken or written, performed by them in the exercise of their official functions for the Court;

(c) exemption from income tax in respect of salaries and emoluments (excluding pensions and annuities) received by them from the Court as judges, Prosecutor, Deputy Prosecutor, or Registrar.

(5) Where the incidence of any form of taxation depends on residence, any period during which the judges, the Prosecutor, the Deputy Prosecutors or the Registrar are present in the United Kingdom for the discharge of their functions for the Court shall not be considered as periods of residence in the United Kingdom.

(6) Privileges and immunities may be waived:–

(a) in the case of a judge or the Prosecutor, by an absolute majority of the judges;

(b) in the case of a Deputy Prosecutor, by the Prosecutor;

(c) in the case of the Registrar, by the Presidency.

PART 5

DEPUTY REGISTRAR, STAFF OF THE OFFICE OF THE PROSECUTOR AND STAFF OF THE REGISTRY

16.—(1) Except in so far as in any particular case any privilege or immunity is waived as set out in paragraph (3), the Deputy Registrar, the staff of the Office of the Prosecutor and the staff of the Registry, as necessary for the independent performance of their functions, shall enjoy:–

(a) the like immunity from personal arrest or detention as is accorded to a diplomatic agent;

(b) immunity from suit and legal process (even after they have left the service of the Court) in respect of acts, including words spoken or written, performed by them in the exercise of their official functions for the Court ;

(c) the like inviolability for all official papers, documents and materials as is accorded to a diplomatic agent;

(d) exemption from income tax in respect of the salaries and emoluments (excluding pensions and annuities) paid to them by the Court;

(e) the like immunity from seizure of personal baggage as is accorded to a diplomatic agent;

(f) exemption from inspection of personal baggage unless there are serious grounds for believing that the baggage contains articles the import or export of which is prohibited by the law or controlled by quarantine regulations in the United Kingdom;

(g) the like exemption from duties (whether of customs or excise) and taxes on the importation, and re-exportation to their country of permanent residence, of articles which–

(i) at or about the time when the Deputy Registrar, the member of staff of the Office of the Prosecutor or the member of staff of the Registry first entered the United Kingdom to take up that post of employment for the Court in the United Kingdom, are imported for his personal use, including articles intended for his establishment, and