

Annex 16

International Organisations Act 2005



Explanatory Notes to International Organisations Act 2005

2005 Chapter 20

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These Notes refer to the International Organisations Act 2005 (c. 20) which received Royal Assent on 7 April 2005

INTERNATIONAL ORGANISATIONS ACT 2005

EXPLANATORY NOTES

INTRODUCTION

1. These explanatory notes relate to the International Organisations Act 2005 which received Royal Assent on 7 April 2005. They have been prepared by the Foreign and Commonwealth Office in order to assist the reader in understanding the Act. They do not form part of the Act and have not been endorsed by Parliament.

2. The notes need to be read in conjunction with the Act. They are not, and are not meant to be, a comprehensive description of the Act. So where a section or part of a section does not seem to require any explanation or comment, none is given.

SUMMARY AND BACKGROUND

3. This Act enables the UK to fulfil international commitments to confer legal capacity and privileges and immunities on a number of international organisations and bodies, and certain categories of individuals connected to them.

4. The International Organisations Act 2005 covers the Commonwealth Secretariat/Commonwealth Secretariat Arbitral Tribunal, the Organization for Security and Co-operation in Europe (OSCE), bodies established under Title V (Provisions on a common foreign and security policy) or Title VI (Provisions on police and judicial cooperation in criminal matters) of the Treaty on European Union, the International Criminal Court (ICC), the European Court of Human Rights (ECHR) and the International Tribunal for the Law of the Sea (ITLOS). The Act consists of 11 sections and a Schedule.

TERRITORIAL EXTENT

5. The Act extends to the whole of the UK.

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.

COMMENCEMENT DATE

12. Except for sections 1 to 3, the International Organisations Act 2005 comes into force at the end of the period of two months beginning with the day on which it was passed (which was 7 April 2005). Sections 1 to 3 come into force on such a day as the Secretary of State appoints, by order made by statutory instrument.

HANSARD REFERENCES

The following table sets out the dates and Hansard references for each stage of this

Act's passage through Parliament.

Stage	Date	Hansard Reference
House of Lords		
Introduction/First Reading	24 November 2004	Vol 667, Col 21
Second Reading	16 December 2004	Vol 667, Cols 1460 - 1478
Grand Committee	11 January 2005	Vol 668, Cols GC1 - GC56
Report	7 February 2005	Vol 669, Cols 546 - 571
Third Reading	28 February 2005	Vol 670, Col 12 - 13
House of Commons		
Introduction/First Reading	1 March 2005	House of Commons Votes and Proceedings, Tuesday 1 March 2005,

		items 6 and 7
Second Reading/remaining stages	7 April 2005	Vol 432, Cols 1632 - 1641
Royal Assent	7 April 2005	House of Lords Hansard Vol 671, Col 949 House of Commons Hansard Vol 432, Col 1641

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Prepared 11 April 2005

International Organisations Act 2005

2005 Chapter 20 - *continued*

An Act to make provision about privileges, immunities and facilities in connection with certain international organisations.

[7th April 2005]

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:-

1 Commonwealth Secretariat

(1) In the Commonwealth Secretariat Act 1966 (c. 10) the following provisions (which limit the privileges and immunities of the Secretariat) are omitted-

- (a) in section 1, subsections (3) and (4), and
- (b) in the Schedule, paragraph 1(1)(b) and the word "and" before it.

(2) In Schedule 3 to the Arbitration Act 1996 (c. 23) (consequential amendments), paragraph 23 is omitted.

(3) This section does not have effect in relation to any written contract entered into by or on behalf of the Commonwealth Secretariat before this section comes into force.

(4) "The Commonwealth Secretariat" has the same meaning as in the Commonwealth Secretariat Act 1966.

2 Commonwealth Secretariat Arbitral Tribunal

(1) The Commonwealth Secretariat Act 1966 is amended as follows.

(2) In section 1(2) (immunities and privileges), after "their families" insert "and the President and members of the Commonwealth Secretariat Arbitral Tribunal".

(3) In the Schedule (immunities and privileges)-

- (a) in paragraph 6, after "of this Schedule" there is inserted ", and the President and members of the Commonwealth Secretariat Arbitral Tribunal," and
- (b) in paragraph 8, after "their families" there is inserted "and

on the President and members of the Commonwealth Secretariat Arbitral Tribunal".

(4) If the Commonwealth Secretariat Arbitral Tribunal is replaced by a successor, the Secretary of State may by order made by statutory instrument amend the Commonwealth Secretariat Act 1966 (c. 10) in whatever way he considers appropriate for the purpose of conferring, in relation to the successor, immunities and privileges equivalent to those conferred by virtue of subsections (2) and (3).

(5) No order under subsection (4) may be made unless a draft of the statutory instrument containing the order has been laid before, and approved by resolution of, each House of Parliament.

3 Commonwealth Secretariat: income tax

In the Schedule to the Commonwealth Secretariat Act 1966 (immunities and privileges)-

(a) in paragraph 5(1) the words from "except that" to the end are omitted,

(b) after paragraph 5 there is inserted-

"5A (1) With effect from the relevant day, the officers and servants of the Commonwealth Secretariat are exempt from income tax in respect of the salaries and emoluments received by them in that capacity.

(2) The relevant day is the day specified by the Secretary of State as the day from which the officers and servants of the Commonwealth Secretariat become subject to internal income tax imposed by the Secretariat for its benefit.

(3) Sub-paragraphs (1) and (2) do not apply to any pension or annuity paid by the Commonwealth Secretariat to any person who has ceased to be an officer or servant of the Secretariat.

(4) This paragraph applies to senior officers of the Commonwealth Secretariat in place of any exemption from liability for income tax in respect of the salaries and emoluments received by them in that capacity to which (but for this sub-paragraph) they would be entitled by virtue of paragraph 5(1) of this Schedule."

4 Organization for Security and Co-operation in Europe

(1) If at any time the Organization for Security and Co-operation in Europe ("the OSCE") is not for the purposes of section 1 of the International Organisations Act 1968 (c. 48) ("the 1968 Act") an organisation of which-

(a) the United Kingdom, or Her Majesty's Government in the United Kingdom, and

(b) at least one other sovereign Power, or the Government of such a Power,

are members, it is to be treated for those purposes as such an organisation.

(2) Any agreement or formal understanding between the United Kingdom or Her Majesty's Government in the United Kingdom and any other sovereign Power or the Government of such a Power and relating to the OSCE is to be treated for the purposes of section 1(5) and (6)(a) of the 1968 Act as an agreement between the United Kingdom and the OSCE.

5 Bodies established under Treaty on European Union

After section 4A of the 1968 Act there is inserted-

"4B Bodies established under Treaty on European Union

(1) This section applies to any body-

(a) established under Title V (provisions on a common foreign and security policy) or Title VI (provisions on police and judicial cooperation in criminal matters) of the Treaty on European Union signed at Maastricht on 7th February 1992 as amended from time to time; and

(b) in relation to which the United Kingdom, or Her Majesty's Government in the United Kingdom, has obligations by virtue of any instrument under that Treaty or by virtue of any agreement to which the United Kingdom, or Her Majesty's Government in the United Kingdom, is a party (whether made with another sovereign Power or the Government of such a Power or not).

(2) Her Majesty may by Order in Council make any one or more of the following provisions in respect of a specified body to which this section applies-

(a) confer on the body the legal capacities of a body corporate;

(b) provide that the body shall, to such extent as is specified, have such specified privileges and immunities as (having regard to the obligations referred to in subsection (1)(b)) it is in the opinion of Her Majesty in Council appropriate for the body to have;

(c) confer on such specified classes of persons mentioned in subsection (3), to such extent as is

specified, such specified privileges and immunities as (having regard to those obligations) it is in the opinion of Her Majesty in Council appropriate to confer on them.

(3) The persons mentioned in subsection (2)(c) are-

- (a) the body's officers or staff;
- (b) other persons connected with the body, and members of their families who form part of their households.

(4) In this section, "specified" means specified in the Order in Council."

6 International Criminal Court

(1) Paragraph 1 of Schedule 1 to the International Criminal Court Act 2001 (c. 17) (supplementary provisions relating to International Criminal Court) is amended as follows.

(2) In sub-paragraph (2)-

- (a) at the end of paragraph (b) there is added "and members of their families who form part of their households,"
- (b) the word "and" at the end of paragraph (c) is omitted, and
- (c) at the end of paragraph (d) there is inserted "and
 - (e) persons attending meetings of the Assembly (including persons attending such meetings as observers and persons invited to such meetings),".

(3) After sub-paragraph (2) there is added-

"(3) In sub-paragraph (2)(e) "the Assembly" means the Assembly of States Parties to the ICC statute (and includes the subsidiary organs of that Assembly)."

7 European Court of Human Rights

Section 5 of the 1968 Act (privileges relating to international judicial proceedings) applies to members of the family of a judge of the European Court of Human Rights as it applies to a judge of that court.

8 International Tribunal for the Law of the Sea

The International Tribunal for the Law of the Sea is to be treated for the purposes of section 1 of the 1968 Act (organisations of which the United Kingdom is a member) as an organisation of which-

(a) the United Kingdom, or Her Majesty's Government in the United Kingdom, and

(b) at least one other sovereign Power, or the Government of such a Power,

are members.

9 Repeals

The Schedule contains a list of enactments repealed by this Act.

10 Devolution

For the purposes of the Scotland Act 1998 (c. 46), sections 4, 5, 7 and 8 of this Act are to be taken to be pre-commencement enactments within the meaning of that Act.

11 Short title, interpretation, commencement and extent

(1) This Act may be cited as the International Organisations Act 2005.

(2) In this Act "the 1968 Act" means the International Organisations Act 1968 (c. 48).

(3) Except for sections 1 to 3, this Act comes into force at the end of the period of two months beginning with the day on which it is passed.

(4) Sections 1 to 3 come into force on such day as the Secretary of State by order made by statutory instrument appoints, and he may appoint different days for different purposes.

(5) This Act extends to Northern Ireland.

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