

**EXPLANATORY MEMORANDUM TO
THE EUROPEAN COURT OF HUMAN RIGHTS (IMMUNITIES AND
PRIVILEGES) (AMENDMENT) ORDER 2005**

2005 No.3425

1. This explanatory memorandum has been prepared by the Foreign and Commonwealth Office and is laid before Parliament by Command of Her Majesty. This memorandum contains information for the Joint Committee on Statutory Instruments.

2. **Description**

- 2.1 The United Kingdom upon ratification of the Sixth Protocol to the General Agreement on Privileges and Immunities of the Council of Europe (“the Sixth Protocol”) on 9 November 2001, made a reservation in respect of Article 1 of the Protocol. The text of this reservation states,

“Until such time as the necessary legislation is enacted, the United Kingdom reserves the right not to apply Article 1 of the Sixth Protocol in respect of the spouses and minor children of judges”.

- 2.2 In a letter of 1 October 2003 the United Kingdom declared that its ratification of the Sixth Protocol would be extended to the Isle of Man. The UK reservation in relation to the privileges and immunities to be granted to the spouse and minor children of judges was also extended to the Isle of Man.

- 2.3 The draft order will allow the UK to withdraw its reservation and give full effect to the Sixth Protocol, which guarantees the same privileges and immunities to members of the new European Court of Human Rights as those guaranteed to members of the previous part-time Commission and Court. Members of the Court are permanent appointees who reside in Strasbourg. The United Kingdom therefore considered it appropriate to increase their privileges and immunities, to bring them in line with those enjoyed by diplomatic envoys.

- 2.4 The United Kingdom will only be in a position to withdraw the reservation made in respect of the Isle of Man once the necessary Manx legislation has been passed.

3. **Matters of Special Interest to the Joint Committee on Statutory Instruments**

- 3.1 None

4. Legislative Background

4.1 It is proposed that the above Order should be made under section 5 of the International Organisations Act 1968 (“the 1968 Act”) and section 7 of the International Organisations Act 2005. Section 10 of the 1968 Act provides that no recommendation shall be made to Her Majesty to make an Order in Council under any provision (other than section 6) of that Act, unless a draft has been laid before Parliament and approved by a resolution of each House.

4.2 The date on which the Order is to come into force is set out in Article 1 of the draft Order.

5. Extent

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

6.1 Lord Triesman has made the following statement regarding Human Rights:

In my view the provisions of the European Court of Human Rights (Immunities and Privileges) (Amendment) Order 2005 are compatible with the Convention Rights.

7. Policy Background

7.1 The European Court of Human Rights forms part of the Council of Europe. Its mission is to ensure the observance by signatory states of the Council of Europe’s Convention for the Protection of Human Rights and Fundamental Freedoms. It is more commonly known as the European Convention on Human Rights. The Convention, taking as its starting point the UN’s 1948 Universal Declaration of Human Rights, is designed to protect the fundamental rights and freedoms of individuals.

7.2 The Court is based in Strasbourg and consists of 46 judges, one representing each of the contracting states to the Convention. Candidates are initially put forward by their Government, but enjoy complete independence in the performance of their duties, and do not represent the states which proposed them.

7.3 The current incarnation of the Court was instituted on 1 November 1998. It replaced the then-existing enforcement mechanisms, which included the European Commission of Human Rights (created in 1954) and the previous, limited Court of Human Rights, which was created in 1959.

7.4 The core mission of the Council of Europe, established in 1949, is to strengthen democracy, human rights and the rule of law throughout its 46 Member States. It does this through setting and monitoring legally enforceable standards, notably in the fields of human rights. The Council of Europe has adopted more than 190 Conventions, the main one being the European Convention on Human Rights. The Court examines cases brought by any Member State and any individual that claims to be a victim of a breach of the Convention on Human Rights.

7.4 Since the Court is in Strasbourg, the practical implications of the Agreement for the United Kingdom are limited.

7.5 UK implementation of the Agreement is unlikely to be controversial. Little public or media interest is envisaged.

8. Impact

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

8.2 Any loss of revenue to the Exchequer in respect of the relief from taxes and other exemptions provided for in the Agreement will be small.

9. Contact

9.1 Jackie Brown at the Foreign and Commonwealth Office (Tel 020 7008 0397 or email: jackie.brown@fco.gov.uk) can answer any queries regarding the instrument.