INTRODUCTION

1. This document relates to the International Criminal Court (Scotland) Bill introduced in the Scottish Parliament on 4 April 2001. It has been prepared by the Scottish Executive to satisfy Rule 9.3.3(c) of the Parliament’s Standing Orders. The contents are entirely the responsibility of the Scottish Executive and have not been endorsed by the Parliament. Explanatory Notes and other accompanying documents are published separately as SP Bill 27–EN.

POLICY OBJECTIVES OF THE BILL

2. The purpose of the Bill is to enable the United Kingdom to ratify the Rome Statute of the International Criminal Court. Ratification of this Statute requires changes to be made to the law in the United Kingdom and the Bill, together with the International Criminal Court Bill (the “UK Bill”) being considered by Parliament at Westminster, will enable the United Kingdom to comply with its obligations under the Statute.

3. Recent international atrocities have shown that there are still many individuals who are willing to perpetrate war crimes, crimes against humanity and genocide in both their own and in neighbouring communities, and it was felt that new measures were required to deal with such violations of international law.

4. Historically, the international community has reacted to crime of this nature by establishing ad hoc tribunals to deal with the perpetrators. Recent examples of these are the tribunals set up in response to the atrocities committed in the former Yugoslavia and Rwanda.

5. The Bill, along with the UK Bill and corresponding legislation being enacted in many other countries across the world, will lead to a new approach in dealing with war crimes and similar offences. After considerable preliminary work (beginning in 1995),
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the Statute of the ICC was adopted at Rome on 17 July 1998. Since then and as at 12 February 2001, 139 States have signed and 29 have ratified. However, the International Criminal Court (the “ICC”) can only be established when 60 States have ratified the Statute.

6. The ICC will be a permanent Court, situated in the Hague, and will try individuals for genocide, crimes against humanity and war crimes. It will be complementary to national courts, which means that individual States will retain jurisdiction unless they are unable or unwilling genuinely to investigate and prosecute a crime. The ICC will have 18 judges and its own prosecutor. It will be able to investigate crimes committed on the territory of States Parties, or on the territory of non-States Parties which have given consent. It will also have jurisdiction over crimes, wherever committed, which are referred to it by the United Nations Security Council. States Parties are obliged to co-operate with the ICC, by assisting with matters such as the gathering of evidence and the arrest of suspects.

7. It is hoped that a permanent ICC will be a powerful deterrent to war crimes, genocide and crimes against humanity, and will demonstrate to would-be criminals that they will be held quickly to account if they commit atrocities.

8. The Bill makes it an offence under Scots law to commit genocide, war crimes or crimes against humanity. It allows such crimes to be prosecuted in Scotland if they are committed in Scotland, or outwith the United Kingdom by United Kingdom nationals or United Kingdom residents. It enables the Scottish Ministers to assist the ICC if it requests help in gathering evidence, in tracking down and identifying individuals suspected of ICC crimes, or in locating and freezing proceeds of crime. It enables the Scottish Ministers to issue warrants so that prisoners sentenced by the ICC or certain UN tribunals can serve their sentences in Scotland. It confers powers on the Scottish Ministers to make provision for the enforcement of fines, forfeitures and reparation awards for victims which are ordered by the ICC.

ALTERNATIVE APPROACHES

9. Against the background of the UK Government’s objective to ratify the ICC Statute, which the Scottish Executive fully supports, the only variation in approach considered was whether implementation of the ICC Statute should be achieved via a single Bill of the Westminster Parliament. The Executive took the view that, as implementation required a number of changes to Scots law, it was appropriate that these should be implemented by legislation passed by the Scottish Parliament. There were, however, some matters which, although within the legislative competence of the Scottish Parliament, it was thought sensible to include within the UK Bill. The inclusion of these matters within the UK Bill was debated and approved by the Scottish Parliament on 18 January 2001.
CONSULTATION

10. A consultation document, the International Criminal Court (Consultation on Draft Legislation) (Cm 4847), incorporating the draft UK Bill, was published on 25 August 2000 by the Foreign and Commonwealth Office. As well as being generally available, the Scottish Executive also circulated it to interested parties in Scotland. These included the Law Society of Scotland, the Faculty of Advocates, the Scottish Human Rights Centre, Amnesty International Scotland, the Lord President of the Court of Session, the Scottish Court Authority, the Sheriff Principal of Lothian and Borders and a selection of people in the academic community.

11. The general reaction from those in Scotland who responded was positive. On a UK wide basis 45 submissions were received from interested Parliamentarians, lawyers and academics as well as human rights, religious and professional organisations, giving comments on the draft UK Bill. The draft UK Bill was revised in the light of these comments. A report, outlining the main points raised during the consultation and the UK Government’s response, has been issued separately, and is available on the Foreign and Commonwealth Office website (www.fco.gov.uk).

EFFECTS ON EQUAL OPPORTUNITIES, HUMAN RIGHTS, ISLAND COMMUNITIES, LOCAL GOVERNMENT, SUSTAINABLE DEVELOPMENT, ETC.

12. The Bill is compatible with the European Convention on Human Rights. It is not envisaged that there will be any implications for equal opportunities, island communities, local government or sustainable development.