

INTERNATIONAL TRIBUNALS (SIERRA LEONE) BILL [HL]

EXPLANATORY NOTES

INTRODUCTION

1. These explanatory notes relate to the International Tribunals (Sierra Leone) Bill [HL]. They have been prepared by the Foreign and Commonwealth Office in order to assist the reader of the Bill. They do not form part of the Bill and have not been endorsed by Parliament.
2. The notes need to be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So where a clause, subsection or paragraph does not seem to require any explanation or comment, none is given.

SUMMARY AND BACKGROUND

3. The Special Court for Sierra Leone was established in 2002 under an Agreement between the Government of that country and the United Nations; its function is to try persons who bear “the greatest responsibility” for serious violations of international humanitarian and national law during the civil war in Sierra Leone.
4. The existing provisions in the International Criminal Court Act 2001 will not suffice to implement a sentence enforcement agreement with the Special Court, since those provisions only apply to tribunals established by the United Nations Security Council, and the Special Court is established by an agreement between the Government of Sierra Leone and the United Nations.
5. This Bill adds a new section to the International Criminal Court Act 2001 so as to permit the implementation in the law of England and Wales of an agreement with the Special Court for Sierra Leone under which persons convicted by that Court may serve their sentences of imprisonment in England and Wales.
6. If the Bill becomes law, a sentence enforcement agreement between the Government of the United Kingdom and the Special Court can then be implemented by an Order in Council made under the new power. If Mr Charles Taylor, the former President of Liberia, were to be convicted by the Special Court, he could be imprisoned in England and Wales as a result of these provisions.

COMMENTARY ON CLAUSES

Clause 1 : Special Court for Sierra Leone

7. Clause 1 inserts a new section into the International Criminal Court Act 2001 to confer power to make provision by Order in Council in relation to the Special Court for Sierra Leone. The provision which may be made corresponds to that made in section 77(3) of the Act of 2001, which applies the sections of the Act of 2001 which make provision about the enforcement of sentences of imprisonment.

8. Since the power in the clause will extend only to England and Wales, and since some of the provisions of the 2001 Act mentioned in section 77(3) extend to other parts of the United Kingdom, it is made clear that an Order can make provision corresponding to those provisions only insofar as they have effect in England and Wales. Because the Sewel Convention provides that Westminster will not normally legislate with regard to devolved matters in Scotland, without the consent of the Scottish Parliament, if amendments were introduced that related to such matters, the consent of the Scottish Parliament would be sought for them.

9. Once made, the Order in Council has to be laid before Parliament; this follows the precedent of orders under section 1 of the United Nations Act 1946, which confers the power to be used under section 77(4) of the 2001 Act in relation to tribunals established by United Nations Security Council Resolution.

Clause 2: Extent and Short Title

10. The Bill will extend only to England and Wales.

FINANCIAL EFFECTS OF THE BILL

11. On the assumption that anybody is imprisoned in England and Wales as a result of the change made by the Bill, the annual cost per inmate is estimated to be £44,000.

PUBLIC SERVICE MANPOWER EFFECTS OF THE BILL

12. There will be no effect on public service manpower as a result of the Bill.

REGULATORY IMPACT OF THE BILL

13. The Bill will have no impact on business, charities or voluntary organisations.

*These notes refer to the International Tribunals (Sierra Leone) Bill [HL]
as introduced in the House of Lords on 18th April 2007 [HL Bill 60]*

EUROPEAN CONVENTION ON HUMAN RIGHTS

14. Since any person who serves a sentence in England and Wales by virtue of the power conferred by the Bill will be treated in the same way as any other prisoner, no issue under Article 3 of the Convention (prohibition of torture) will arise.

15. Since any trial will be conducted by the Special Court for Sierra Leone, Article 6 of the Convention (right to a fair trial) does not as such apply. Although in certain circumstances a State may be in breach of the Convention if it imprisons a person convicted outside that State in proceedings which involve a “flagrant denial of justice”, the proceedings before the Special Court will be conducted in accordance with internationally accepted human rights norms, so no issue under Article 6 will arise for the United Kingdom.

16. Section 19 of the Human Rights Act 1998 requires the Minister in charge of a Bill in either House of Parliament to make a statement about the compatibility of the provisions of the Bill with the Convention rights (as defined in section 1 of that Act). The statement has to be made before second reading. Lord Triesman, Parliamentary Under-Secretary of State, Foreign and Commonwealth Office, has made the following statement:

“In my view the provisions of the International Tribunals (Sierra Leone) Bill [HL] are compatible with the Convention rights.”

COMMENCEMENT

17. Since no express provision is made for commencement in the Bill, it will come into force on Royal Assent by virtue of section 4(b) of the Interpretation Act 1978.

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