EXPLANATORY MEMORANDUM TO

THE EUROPEAN ORGANIZATION FOR ASTRONOMICAL RESEARCH IN THE SOUTHERN HEMISPHERE AND THE EUROPEAN SPACE AGENCY (IMMUNITIES AND PRIVILEGES) (AMENDMENT) ORDER 2018

2018 No. [XXXX]

1. Introduction

1.1 This explanatory memorandum has been prepared by the Foreign and Commonwealth Office and is laid before Parliament by Command of Her Majesty.

1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

2.1 This Order amends the European Organization for Astronomical Research in the Southern Hemisphere (Immunities and Privileges) Order 2009 (S.I. 2009/1748) ("the ESO Order") and the European Space Agency (Immunities and Privileges) Order 1978 (S.I. 1978/1105) ("the ESA Order").

2.2 It confers limited privileges and immunities on those officers of the European Organization for Astronomical Research in the Southern Hemisphere ("the Organization") who have British nationality and provides an exemption from social security contributions for all officers. These amendments will come into force on the day after the Order is made.

2.3 It also confers additional immunities and privileges to officers of the European Space Agency ("the ESA") and their family members. The additional privileges and immunities are conferred by an Agreement between the United Kingdom and the ESA concerning the ESA's Sites and Facilities in the United Kingdom signed on 16 July 2013 ("the ESA Agreement")[1]. These amendments will come into force on the day on which the ESA Agreement enters into force for the United Kingdom. This is when the United Kingdom informs the ESA that it has taken all steps to implement the ESA Agreement.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 The ESO Order gives effect to the Protocol on the privileges and immunities of the Organization (Cm 8516) ("the ESO Protocol")[2]. Articles 15 and 16 of the ESO Order confer privileges and immunities on high officers and all other officers of the Organization respectively. The provisions in the ESO Protocol applying privileges and immunities to officers with British nationality were inadvertently omitted from

[1] The date on which the Agreement enters into force for the United Kingdom will be published on the relevant page on UK Treaties Online which can be found at this link: https://www.gov.uk/uk-treaties. A copy of the Agreement can be obtained from Protocol Directorate, Foreign and Commonwealth Office, King Charles Street, London SW1A 2AH.

[2] The ESO Protocol is available at http://treaties.fco.gov.uk/docs/pdf/2012/TS0052.pdf.

the ESO Order. The Department regrets this omission and this Order will be issued free of charge to all known recipients of the ESO Order.

3.2 Three previous versions of the amendments relating to the ESO have been published and withdrawn.

3.3 A version of this Order was published on 27 January 2017 and withdrawn on 3 February 2017 when it was noticed that new paragraph (4) of article 15 had failed to omit, from the immunity of high officers with British nationality in respect of their official acts, motor traffic offences and damage caused by their motor vehicles.

3.4 A further version was published on 22 February 2017 which corrected the new paragraph (4) of article 15 so that it properly reflected the terms of the Protocol. The opportunity was also taken to tidy the drafting of article 2(3)(a)(ii) without changing its meaning or scope.

3.5 The version published on 22 February failed to include a head note to reflect that it replaced the version published on 27 January 2017 and was withdrawn on 24 February 2017. A further version containing the head note was laid on 28 February 2017.

3.6 When these versions were prepared, it was thought that the parent Act did not contain the power to confer an exemption from social security upon staff other than high officers. A reservation was made to the ESO Protocol in respect of those other staff. Following discussions with the ESO, the Foreign and Commonwealth Office reconsidered the powers within the Act and is now of the view that they do allow this provision to be made. This version includes a new sub-paragraph (d) in article 26(1) which makes provision for a social security exemption for all officers. The version laid on 28 February 2017 will be withdrawn from the House of Commons at the same time this Order is laid; as the version of 28 February 2017 has already been approved by the House of Lords it is not possible to withdraw it from the House of Lords.

3.7 The Foreign and Commonwealth Office regrets these errors and this Order will be issued free of charge to all known recipients of the Orders published on 27 January, 22 February and 28 February 2017.

Other matters of interest to the House of Commons

3.8 Disregarding minor or consequential changes, the territorial application of this instrument includes Scotland and Northern Ireland.

4. Legislative Context

4.1 Section 1 of the International Organisations Act 1968 ("the 1968 Act") allows Her Majesty, by Order in Council, to confer on an international organisation, of which the United Kingdom (and any other sovereign Power) is a member, the legal capacities of a body corporate and to grant certain immunities and privileges to the international organisation and its officers and employees.

4.2 Section 10(1) of the 1968 Act provides that no recommendation shall be made to Her Majesty in Council to make the Order unless a draft of the Order has been laid before Parliament and approved by a resolution of each House of Parliament.

5. Extent and Territorial Application

5.1 This Order applies to the whole of the United Kingdom, but some provisions do not extend to, or apply in, Scotland. A separate Scottish Order has been prepared to deal with those provisions relating to the ESO which are within the legislative competence of the Scottish Parliament. This was made on 13 December 2017. A separate Scottish Order in relation to the ESA will be made in due course.

6. European Convention on Human Rights

6.1 The Minister of State at the Foreign and Commonwealth Office, Rt Hon Sir Alan Duncan KCMG MP, has made the following statement regarding Human Rights:

"In my view the provisions of the European Organization for Astronomical Research in the Southern Hemisphere and the European Space Agency (Immunities and Privileges) (Amendment) Order 2018 are compatible with the Convention rights."

7. Policy background

What is being done and why

7.1 The ESO Order gives effect to the ESO Protocol. The provisions in the ESO Protocol for officers with a form of British nationality were inadvertently omitted from the ESO Order. This Order gives effect to those of the provisions for officers with a form of British nationality which are permissible under the 1968 Act. It also provides for an exemption from social security contributions for all officers and not just high officers. It also clarifies the territorial extent and application of the ESO Order with reference to matters devolved to Scottish Ministers.

7.2 The ESA Agreement provides for the establishing and operating of an Agency centre at the Harwell Science and Innovation Campus in the United Kingdom. In order to bring the ESA Agreement into force it is necessary to amend the ESA Order. This Order will enable Her Majesty's Government to give effect to its obligations relating to the grant of privileges and immunities under the ESA Agreement. It also makes some minor amendments to update the language used to refer to British nationals.

Consolidation

7.3 The Foreign and Commonwealth Office will keep the need for consolidation under review.

8. Consultation outcome

8.1 The Foreign and Commonwealth Office has consulted the Department for Business, Energy and Industrial Strategy, the ESO, the ESA and the UK Space Agency. No external consultation was undertaken as this Order implements the provisions of international agreements to which the UK is obliged to give effect as a matter of international law.

9. Guidance

9.1 No guidance will be issued.

10. Impact

10.1 There is no impact on business, charities or voluntary bodies in the United Kingdom.

10.2 There is no impact on the public sector in the United Kingdom.

10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

11.1 The legislation does not apply to activities that are undertaken by small businesses in the United Kingdom.

12. Monitoring & review

12.1 As this Order makes technical amendment to the ESO Order and the ESA Order, no specific monitoring or review is considered necessary.

13. Contact

13.1 Margaret Purdasy at the Foreign and Commonwealth Office can answer any queries regarding the instrument, by telephone (020 7008 2740) or email (margaret.purdasy@fco.gov.uk).