*Draft Order laid before Parliament under section 10 (1) of the International Organisations Act 1968, for approval by resolution of each House of Parliament.*

DRAFT STATUTORY INSTRUMENTS

# 2009 No. XXXX

# INTERNATIONAL IMMUNITIES AND PRIVILEGES

## The European Organization for Astronomical Research in the Southern Hemisphere (Immunities and Privileges) Order 2009

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| *Made - - - -* | *2009* |
| *Coming into force - -* | *2009* |

At the Court at Buckingham Palace, the ** day of 2009

Present,

The Queen's Most Excellent Majesty in Council

This Order is made in exercise of the powers conferred by section 1 of the International Organisations Act 1968(**a**) ("the Act").

A draft of this Order has been approved by a resolution of each House of Parliament pursuant to section 10 (1) of that Act.

Accordingly, Her Majesty is pleased, by and with the advice of Her Privy Council, to order, and it is ordered, as follows—

## PART 1

### General

**1.** This Order may be cited as the European Organization for Astronomical Research in the Southern Hemisphere (Immunities and Privileges) Order 2009. It shall come into force on the day after the day on which it is made.

**2.** In this Order—

(a) "the Organization" means the European Organization for Astronomical Research in the Southern Hemisphere;

(**a**) 1968 c. 48; section 1 was amended by the International Organisations Act 1981 (c.9), section 1, and SI 2005/3542, article 2(1).

(b) "the 1961 Convention Articles" means the Articles (being certain Articles of the Vienna Convention on Diplomatic Relations signed in 1961) which are set out in Schedule 1 to the Diplomatic Privileges Act 1964(**a**);

(c) "the Convention" means the Convention establishing a European Organization for Astronomical Research in the Southern Hemisphere done at Paris on 5 October 1962(**b**);

(d) "the Protocol" means the Multilateral Protocol on the Privileges and Immunities of the European Organization for Astronomical Research in the Southern Hemisphere done at Paris on 12 July 1974(**c**).

**3.** In this Order, the official purposes of the Organization shall mean the official activities of the Organization as defined in the Convention, including its administrative activities.

# PART 2

## The Organization

**4.** The Organization is an organisation of which the United Kingdom and other sovereign Powers are members.

**5.** The Organization shall have the legal capacities of a body corporate.

**6.**—(1) Within the scope of its official purposes, the Organization shall have immunity from suit and legal process except—

(a) to the extent that the Director-General of the Organization, or the person acting in his stead as provided for by Article VI of the Convention, shall have expressly waived such immunity in a particular case;

(b) in respect of a civil action by a third party for damage arising from an accident caused by a motor vehicle belonging to, or operated on behalf of, the Organization, or in respect of a motor traffic offence involving such a vehicle;

(c) in respect of the enforcement of an arbitration award made under either Article 23 or Article 24 of the Protocol;

(d) in respect of an attachment for debt of the wages of a member of the Organization's staff, provided that such attachment is the result of a final and enforceable judicial decision; and

(e) in respect of a counter-claim relating directly to the principal claim brought by the Organization.

(2) Paragraph (1) of this Article shall not prevent the taking of such measures as may be permitted by law in relation to the property and assets of the Organization in so far as they may be temporarily necessary in connection with the prevention of, and investigation into, accidents involving motor vehicles belonging to or operated on behalf of the Organization.

**7.** The Organization shall have the like inviolability of official archives and premises as, in accordance with the 1961 Convention Articles, is accorded in respect of the official archives and premises of a diplomatic mission.

**8.** Within the scope of its official purposes, the Organization and its property and income shall be exempt from Income Tax, Corporation Tax and Capital Gains Tax.

**9.** Within the scope of its official purposes, the Organization shall have the like relief from rates as in accordance with Article 23 of the 1961 Convention Articles is accorded in respect of the premises of a diplomatic mission.

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(**a**) 1964 c.81.
(**b**) Cm. 5767.
(**c**) United Nations, *Treaty Series*, vol 1001, No 14697.

**10.** The Organization shall have exemption from duties (whether of customs or excise) and taxes on the importation of goods imported by the Organization for the purpose of its official purposes, and on the importation of any publications of the Organization imported by it which are related to its functions, such exemption to be subject to compliance with such conditions as the Commissioners for Her Majesty's Revenue and Customs may prescribe for the protection of the Revenue.

**11.** The Organization shall have exemption from prohibitions and restrictions on importation or exportation in the case of goods imported or exported by the Organization for the exercise of its official purposes and in the case of any publications of the Organization imported or exported by it.

**12.** The Organization shall have relief, under arrangements made either by the Secretary of State or by the Commissioners for Her Majesty's Revenue and Customs, by way of refund of duty (whether of customs or excise) paid on imported hydrocarbon oil (within the meaning of the Hydrocarbon Oil Duties Act 1979(**a**)) or value added tax paid on the importation of such oil which is bought in the United Kingdom and used for the official purposes of the Organization, such relief to be subject to compliance with such conditions as may be imposed in accordance with the arrangements.

**13.** The Organization shall have relief, under arrangements made by the Secretary of State, by way of refund of car tax paid on any vehicles and value added tax paid on substantial purchases of goods or services which are strictly necessary for the performance of the official purposes of the Organization, such relief to be subject to compliance with such conditions as may be imposed in accordance with the arrangements.

# PART 3

## Representatives

**14.**—(1) Except in so far as in any particular case any privilege or immunity is waived by the Government of the member which they represent, representatives of members of the Organization (other than representatives of Her Majesty's Government in the United Kingdom and persons who are British citizens, British overseas territories citizens, British Overseas citizens, British Nationals (Overseas) or permanent residents of the United Kingdom) shall enjoy—

(a) immunity from suit and legal process in respect of acts performed by them, including words spoken or written, in the exercise of their functions and within the limits of their authority, except in the case of motor traffic offences committed by them or damage caused by motor vehicles belonging to or driven by them;

(b) while exercising their functions and during the journey to and from the place of meeting, immunity from personal arrest or detention, unless they are apprehended in the act of committing an offence in which case the competent authorities shall immediately inform the Director-General of the Organization or his representative of the arrest.

(c) while exercising their functions and during the journey to and from the place of meeting, the like exemption and privileges in respect of their personal baggage as in accordance with paragraph 2 of Article 36 of the 1961 Convention Articles are accorded to a diplomatic agent, unless they are apprehended in the act of committing an offence in which case the competent authorities shall immediately inform the Director-General of the Organization or his representative of any seizure of their personal baggage; and

(2) Part IV of Schedule 1 to the Act shall not operate so as to confer any privilege or immunity on any member of the family or any member of the official staff of a representative.

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(**a**) 1979 c. 5.

# PART 4

## Officers

### High Officers

**15.**—(1) Except in so far as in any particular case any privilege or immunity is waived by the Council of the Organization, the Director-General of the Organization, and the person appointed to act in his stead in accordance with Article VI of the Convention, shall enjoy—

(a) the like immunity from suit and legal process, the like inviolability of residence, and the like exemption or relief from taxes and rates, other than duties (whether of customs or excise) and taxes on the importation of goods, as are accorded to or in respect of the head of a diplomatic mission;

(b) the like exemption from duties (whether of customs or excise) and taxes on the importation of articles imported for his personal use or the use of members of his family forming part of his household, including articles intended for his establishment, and the like privilege as to the importation of such articles, as in accordance with paragraph 1 of Article 36 of the 1961 Convention Articles are accorded to a diplomatic agent;

(c) the like exemption and privileges in respect of his personal baggage as in accordance with paragraph 2 of Article 36 of the 1961 Convention Articles are accorded to a diplomatic agent;

(d) relief, under arrangements made either by the Secretary of State or by the Commissioners for Her Majesty's Revenue and Customs, by way of refund of duty (whether of customs or excise) paid on imported hydrocarbon oil (within the meaning of the Hydrocarbon Oil Duties Act 1979)which is bought in the United Kingdom by him or on his behalf, such relief to be subject to compliance with such conditions as may be imposed in accordance with the arrangements;

(e) exemptions whereby for the purposes of the enactments relating to social security, including enactments in force in Northern Ireland—

(i) services rendered for the Organization shall be deemed to be excepted from any class of employment in respect of which contributions under those enactments are payable, but

(ii) no person shall be rendered liable to pay any contribution which he would not be required to pay if those services were not deemed to be so excepted;

provided that this Article shall not apply to any person who is a British citizen, British overseas territories citizen, British Overseas citizen, British National (Overseas) or permanent resident of the United Kingdom.

(2) Part IV of Schedule 1 to the Act shall not operate so as to confer any privilege or immunity on the families of the officers to whom this Article applies, except to the extent that members of families of such officers forming part of their households shall enjoy immunity from suit and legal process.

### All Other Officers

**16.**—(1) Except in so far as in any particular case any privilege or immunity is waived by the Director-General of the Organization, or the person appointed to act in his stead in accordance with Article VI of the Convention, the members of staff of the Organization, other than high officers to whom article 15 applies shall enjoy—

(a) immunity from suit and legal process in respect of things done or omitted to be done by them in the course of performance of official duties, except in the case of motor traffic offences committed by them or of damage caused by a motor vehicle belonging to or driven by them;

(b) exemption from income tax in respect of emoluments received as an officer or servant of the Organization, provided that nothing in this paragraph shall be interpreted as precluding such emoluments from being taken into account for the purpose of assessing the amount of taxation to be applied to income from other sources;

(c) the like exemption from duties (whether of customs or excise) and taxes on the importation of articles which—

(i) at or about the time when they first enter the United Kingdom to take up their posts as members of the staff of the Organization are imported for their personal use, including articles intended for their establishments, and

(ii) are articles which were in their ownership or possession or which they were under contract to purchase, immediately before they so entered the United Kingdom,

and the like privilege as to the importation of such articles as in accordance with paragraph 1 of Article 36 of the 1961 Convention Articles is accorded to a diplomatic agent, if they have a contract of employment with the Organization of not less than one year;

provided that this paragraph shall not apply to any person who is a British citizen, British overseas territories citizen, British Overseas citizen, British National (Overseas) or permanent resident of the United Kingdom.

(2) Part IV of Schedule 1 to the Act shall not operate so as to confer any privilege or immunity on the families of the officers to whom this Article applies, except to the extent that members of families of such officers forming part of their households shall enjoy immunity from suit and legal process to the extent enjoyed by such officers under paragraph (1) (a).

*Judith Simpson*
Clerk of the Privy Council

## EXPLANATORY NOTE

*(This note is not part of the Order)*

This Order confers the legal capacities of a body corporate and certain privileges and immunities on the European Organization for Astronomical Research in the Southern Hemisphere, and also confers certain privileges and immunities on representatives of the Organization's member States and its officers. This Order will enable Her Majesty's Government to accede to the Multilateral Protocol on Privileges and Immunities of the European Organization for Astronomical Research in the Southern Hemisphere, done at Paris on 12 July 1974.

A full regulatory impact assessment has not been produced for this instrument as no impact on the private or voluntary sectors is foreseen.

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