EXPLANATORY MEMORANDUM TO

THE EUROPEAN UNION AND EUROPEAN ATOMIC ENERGY COMMUNITY (IMMUNITIES AND PRIVILEGES) ORDER 2021

2021 No. XXXX

1. Introduction

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

2. Purpose of the instrument

2.1 This purpose of this instrument is to confer certain privileges and immunities upon the Delegation of the European Union in the UK ("Delegation") and its staff.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

3.2 The territorial application of this instrument includes Scotland and Northern Ireland although some provisions do not apply to Scotland insofar as they are within its devolved competence.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is the United Kingdom.

4.2 Some provisions of the instrument do not extend to, or apply in, Scotland. A separate Scottish Order in Council will be prepared to deal with those provisions within the legislative competence of the Scottish Parliament and will be laid before the Scottish Parliament.

5. European Convention on Human Rights

5.1 The Minister has made the following statement regarding Human Rights:

"In my view the provisions of The European Union and European Atomic Energy Community (Immunities and Privileges) Order 2021 are compatible with the Convention rights."

6. Legislative Context

6.1 On our departure from the European Union on 31 January 2020, the European Commission Representation in London became the European Union Delegation to the United Kingdom. Commission Representations only exist in EU Member States. EU delegations exist in over 140 countries outside the EU around the world. The EU negotiates Establishment Agreements with the countries in which it has delegations in order to regulate their status, privileges and immunities. The Foreign, Commonwealth

and Development Office has negotiated an Establishment Agreement with the EU to this end. This instrument implements the Establishment Agreement in domestic law.

7. Policy background

What is being done and why?

7.1 This instrument implements the privileges and immunities provisions of the Establishment Agreement. In particular, it accords functional ("official act") immunity from the criminal, civil and administrative jurisdiction of the United Kingdom on Delegation "staff members". There is a complete carve out from this immunity, as well as inviolability, for any alleged road traffic accidents and offences. It also accords immunity from the criminal, civil and administrative jurisdiction of the United Kingdom on those staff members notified to the FCDO as "diplomatic agents". The same complete carve out is made from this immunity in respect of any alleged road traffic accidents and offences. Certain fiscal exemptions are also provided for the Delegation in the exercise of its functions, and for staff members.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

8.1 This instrument is not being made under the European Union (Withdrawal) Act.

9. Consolidation

9.1 Not applicable.

10. Consultation outcome

10.1 Informal consultation is ongoing with the Devolved Administrations. No specific problems have been identified in the course of this consultation. Scotland will pass its own legislation in due course since certain privileges and immunities are a devolved competence. No additional external consultation has been undertaken since the external impacts will be limited.

11. Guidance

11.1 No guidance will be published.

12. Impact

12.1 There is no, or no significant, impact on business, charities or voluntary bodies.

12.2 There is no, or no significant, impact on the public sector.

12.3 An Impact Assessment has not been prepared for this instrument because there is likely to be limited impact.

13. Regulating small business

13.1 The legislation does not apply to activities that are undertaken by small businesses.

14. Monitoring & review

14.1 There is no specific requirement to monitor this legislation. However, information on EU Delegation staff members will be provided regularly, and on individual

appointments, to the Foreign Commonwealth and Development Office under the terms of the Establishment Agreement.

15. Contact

15.1 Alison MacMillan, Deputy Director of the Protocol Department, Alison.macmillan@fcdo.gov.uk, can be contacted with any queries regarding the instrument.

15.2 Victoria Busby, Director of Protocol at the Foreign, Commonwealth and Development Office can confirm that this Explanatory Memorandum meets the required standard.

15.3 Minister Adams at the Foreign, Commonwealth and Development Office can confirm that this Explanatory Memorandum meets the required standard.