POLICY NOTE

THE INTERNATIONAL ORGANISATIONS (IMMUNITIES AND PRIVILEGES) (SCOTLAND) AMENDMENT (NO. 2) ORDER 2017

SSI 2017/

1. The above instrument is proposed to be made in exercise of the powers conferred by sections 1 and 5 of the International Organisations Act 1968 and all other powers enabling Her Majesty to do so.

2. The purpose of the instrument is to provide legal privileges and immunities on the Unified Patent Court ("the Organisation"), its Judges, Representatives and Staff, so far as this is within devolved competence of the Scottish Parliament. The Organisation was established by the Agreement on a Unified Patent Court done in Brussels on 19th February 2013 ("the Agreement"). The Agreement provides for its entry into force not prior to the first day of the fourth month after the 13 Signatory States, which must include Germany, France and the UK, have ratified it.

Policy Objectives

3. The privileges and immunities conferred by the instrument in respect of devolved matters reflect those that have been conferred, or are in the course of being conferred, in relation to the Organisation by a related order that is subject to consideration by the UK Parliament as it relates to reserved matters as regards Scotland.

4. This is being done in order to help secure compliance by the United Kingdom with its international obligations.

Effect of Order

5. This Order amends the International Organisations (Immunities and Privileges) (Scotland) Order 2009 ("the principal Order") by adding a new schedule 17.

6. The amendments are being made to ensure that the principal Order properly implements the Protocol on Privileges and Immunities of the Unified Patent Court done in Brussels on 29th June 2016. The UK signed it on 14th December 2016 (Cm 9405). It gives privileges and immunities to the Court, its Judges, Representatives and Staff. The Protocol require States party to the Protocol to grant a number of privileges and immunities to the Organisation and to its officers and staff. The majority of these relate to reserved matters and are dealt with not in the principal Order but in the parallel United Kingdom Order.

7. The new Schedule 17 provides that the Court shall have immunity from suit and legal process except to the extent that it shall have expressly waived such immunity. Paragraph 2(2) of the new schedule provides the exceptions where that immunity would not apply which include certain motoring offences and contractual liabilities and non-contractual liabilities where they do not arise from decisions of the court.

8. Paragraph 3 provides that official archives of the court are inviolable in accordance with the Vienna Convention on Diplomatic Relations of 1961. This means that the state cannot access or remove them.

9. Paragraph 4 provides the Court shall have like inviolability of premises, which means that agents of the state such as the Police cannot enter without permission, although inviolability would not apply to premises made available on a temporary basis. Accordingly, where the court has its permanent seat in London and sits occasionally in Glasgow, the premises that it occupies in Glasgow will not have the advantage of inviolability. Similarly, where the court has a permanent location in Edinburgh and the premises are unavailable e.g. due to renovation, other premises that it occupies in Edinburgh will not enjoy like inviolability.

10. Paragraphs 5 and 6 provide the Court shall have relief from non-domestic rates on the premises of the Court otherwise, within the scope of its official activities, be exempt from all devolved and local taxes on its assets, property, income, operations and transactions. The Court shall also be exempt from prohibitions and restrictions on importation or exportation in the case of goods imported or exported by the Court for its official use.

11. Representatives of a state, party to the agreement, enjoy by virtue of paragraph 7 immunity from legal process when they attend meetings, in their official capacity, of committees set up under the agreement. This immunity can be waived by the Presidium of the Court (the body charged with management of the court, comprising the President of the Court and a number of its senior judges) . This immunity does not apply to a person who is a British citizen, British overseas territories citizen, British Overseas citizen, British National (Overseas) or any person who at the time of taking up his functions with the Court is a permanent resident of the United Kingdom.

12. Paragraph 8 provides that Judges, the Registrar and the Deputy-Registrar shall have immunity from suit and legal process in respect of things done or omitted to be done in the course of performance of official duties. This immunity can be waived by the Presidium of the Court. They shall also be exempt from devolved and local taxes in respect of salaries, wages and emoluments paid to them by the Court.

13. Paragraph 9 provides similar arrangements for staff of the court except that it would not apply to a person who is a British citizen, British overseas territories citizen, British Overseas citizen, British National (Overseas) or any person who at the time of taking up his functions with the Court is a permanent resident of the United Kingdom.

14. Under the Scotland Act 1998, international relations (including relations with international organisations) is reserved to the Westminster Parliament. However, to the extent that the UK's obligations in respect of international organisations fall within devolved competence – for instance, conferral of immunity from criminal and civil proceedings, and relief from local and devolved taxes – the making of orders under section 1 of the 1968 Act to meet those obligations is subject to procedure in the Scottish Parliament, given the terms of paragraph 7(2) of Part I of schedule 5 of the Scotland Act 1998, under which the observance and implementation of international obligations is a devolved matter. The effect of section 118(4) of the Scotland Act 1998 is that a power to make an Order in Council in a pre-commencement enactment (i.e. an Act preceding the Scotland Act 1998) which is exercisable within devolved competence must be approved

by a resolution of the Scottish Parliament rather than the UK Parliament. Consequently, Orders in Council made by Her Majesty under section 1 of the 1968 Act, so far as they are within devolved competence, are subject to approval by the Scottish Parliament.

Consultation

15. The instrument has been prepared in consultation with the Foreign and Commonwealth Office and other relevant United Kingdom Government Departments.

Impact Assessments

16. No equality impact assessment has been completed as there is no effect on people other than those to whom the UK Government has afforded privileges and immunities.

Financial Effects

17. The Cabinet Secretary for Justice confirms that no BRIA is necessary as no financial effects on the Scottish Government, local government or on business are foreseen.

Scottish Government
Justice Directorate
August 2017