POLICY NOTE

THE INTERNATIONAL ORGANISATIONS (IMMUNITIES AND PRIVILEGES) (SCOTLAND) AMENDMENT ORDER 2017

SSI 2017/

1. The above instrument is proposed to be made in exercise of the powers conferred by section 1(2) of the International Organisations Act 1968 ("the 1968 Act"). The instrument is subject to affirmative resolution procedure.

Policy Objectives

2. The purpose of the instrument is to amend the legal privileges and immunities on the European Organisation for Astronomical Research in the Southern Hemisphere ("the Organisation"), and on persons associated with that organisation, so far as this is within devolved competence of the Scottish Parliament. The Organisation was established by the Convention establishing a European Organisation for Astronomical Research in the Southern Hemisphere done at Paris on 5th October 1962 ("the Convention").

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[1].

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 schedule 15 of the International Organisations (Immunities and Privileges) (Scotland) Order 2009 ("the principal Order") which was added by the International Organisations (Immunities and Privileges) (Scotland) Amendment Order 2010 ("the 2010 Order"). The principal Order confers privileges and immunities on the Organisation, representatives of its member States, its officers and experts.

6. The amendments are being made to ensure that the principal Order properly implements the Protocol on the privileges and immunities of the Organisation ("the Protocol") signed at Paris on 12 July 1974 and which entered into force for the United Kingdom on 25 September 2012. Articles 7 to 19 of 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 (S.I. 2009/1748). The privileges and immunities set out in articles 15 and 16 are dealt with in paragraphs 7 and 8 of schedule 15 of the principal Order.

7. Article 15 of the Protocol entitles High Officers of the Organisation, i.e. the Director-General and a person appointed to act in the stead of the Director-General in accordance with article VI of the Convention, in addition to the privileges and immunities provided for in articles 16 and 17, to enjoy during their term of office the privileges and immunities to which

[1] The European Organization for Astronomical Research in the Southern Hemisphere (Immunities and Privileges) (Amendment) Order 2017 [Draft] http://www.legislation.gov.uk/ukdsi/2017/9780111154717.

diplomatic agents of comparable rank are entitled under the Vienna Convention on Diplomatic Relations of 18 April 1961. These are (so far as relevant) inviolability of residence, exemption from local taxes and, while exercising their functions (and during their journeys to and from the place of meeting), immunity from personal arrest or detention and from seizure of their personal baggage.

8. Article 16 of the Protocol provides that persons in the service of the Organisation (including High Officers) shall enjoy immunity from legal action in respect of acts performed by them 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 of damage caused by motor vehicles belonging to or driven by them.

9. Article 22 of the Protocol provides that a State party to the Protocol is not obliged to extend the privileges and immunities referred to in article 15 (or a number of other articles not relevant to this instrument) to its own nationals or to persons permanently resident in its territory. States party are, however, required to extend article 16 immunity to all persons in the service of the Organisation, regardless of their nationality or permanent residence.

10. The 2010 Order, the principal Order and this instrument are made under section 1(2) of the 1968 Act. Section 1(6)(a) of that Act provides that the privileges and immunities conferred by an Order under section 1(2) may not be greater in extent than are required to be conferred in accordance with the relevant international agreement. The effect of article 22 of the Protocol (so far as relevant) is that a State party is not required to extend the privileges and immunities in article 15 to its own nationals or to persons permanently resident in its territory. Read together with section 1(6)(a) of the 1968 Act, this means that an Order under section 1(2) cannot be used to confer these privileges and immunities upon British citizens or permanent UK residents.

11. Paragraph 7 of schedule 15 of the principal Order bears to grant these privileges and immunities to any High Officer of the Organisation, regardless of nationality or residence As such, it is not compatible with section 1(6)(a) of the 1968 Act, as read with article 22 of the Protocol.

12. Article 2(2) of the Order amends paragraph 7 so that the immunities referred to in article 15 of the Protocol do not extend to a High Officer who is a British citizen, British overseas territories citizen, British National (Overseas) or a permanent resident of the United Kingdom. It further amends paragraph 7 to provide that a High Officer who is a British citizen, British overseas territories citizen, British National (Overseas) or permanent resident of the United Kingdom will enjoy immunity from suit and legal process only in respect of things done or omitted to be done by them in the course of performance of official duties (limiting the extent of the immunity in line with article 16 of the Protocol).

13. Paragraph 8 of schedule 15 of the principal Order confers upon other officers of the Organisation 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. As enacted, sub-paragraph (2) of that paragraph excludes from this immunity any person who is a British citizen, British overseas territories citizen, British National (Overseas) or who is a permanent resident of the United Kingdom. The exclusion of UK nationals and permanent residents from this immunity is not compatible with article 16 of the Protocol, which requires this immunity to be conferred on all persons in the service of

the Organisation. Article 2(3) of the Order removes this incompatibility by revoking paragraph 8(2) of schedule 15 of the principal Order.

14. The last mentioned of these discrepancies (failure to confer immunities and privileges on other officers of the Organisation who are British nationals) came to light because the Organisation pointed out that some of its staff were not receiving the tax exemptions to which they were entitled. When this was alerted to Scottish officials, it was noticed that a different error had been implemented in that too many immunities and privileges had been conferred on High Officers who were British nationals (as discussed in paragraph 12 of this Policy Note).

15. The Scottish Government is not aware of any case in which the errors in the 2010 Order corrected by this instrument have had practical effect.

16. Section 1 of the 1968 Act empowers Her Majesty to make Orders in Council to confer legal personality and/or privileges and immunities on certain international organisations, representatives to those organisations, staff members and experts on missions.

17. 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

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

Impact Assessments

19. 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

20. 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
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