POLICY NOTE

THE INTERNATIONAL ORGANISATIONS (IMMUNITIES AND PRIVILEGES) (SCOTLAND) AMENDMENT ORDER 2020

SSI 2020/

1. The above instrument is proposed to be made in exercise of the powers conferred by sections 1(2) of the International Organisations Act 1968 and all other powers enabling Her Majesty to do so.

2. The purpose of this instrument is to amend the International Organisations (Immunities and Privileges) (Scotland) Order 2009 to confer immunities and privileges, insofar as they are within devolved competence, upon the Square Kilometre Array Observatory ("the Observatory") and its representatives, experts and members of staff.

3. The Observatory was established by the Convention establishing the Square Kilometre Array Observatory done in Rome on 12 March 2019 ("the Convention"). The United Kingdom will become a member of the Observatory in accordance with Article 6(1) of the Convention when the Convention enters into force for the United Kingdom. The date on which the Convention enters into force for the United Kingdom will be published on the relevant page of UK Treaties Online which can be found at this link: https://www.gov.uk/uk-treaties

Policy Objectives

4. The Convention obliges the United Kingdom to abide by the terms of the instruments of the Observatory, including the Protocol on Privileges and Immunities of the Square Kilometre Array Observatory, and to confer legal capacity and privileges and immunities on the Observatory and on specified categories of individuals connected with the Observatory.

5. The draft Order confers such privileges and immunities on the Observatory and its representatives, experts and staff. The privileges and immunities conferred by the Order reflect those that have been agreed by the parties to the Convention.

6. The Order deals only with those matters which are within the legislative competence of the Scottish Parliament. There is a related instrument, which deals with reserved matters as regards Scotland and with other UK jurisdictions, that is subject to consideration by the UK Parliament.

7. This Order and the parallel UK Order are necessary to help secure compliance by the UK with its international obligations.

Effect of Order

8. This Order amends the International Organisations (Immunities and Privileges)(Scotland) Order 2009 ("the principal Order") by adding a new schedule 18.

9. The amendments are being made to implement the Protocol on Privileges and Immunities of the Square Kilometre Array Observatory (found at Annex A of the Convention), in respect of matters which are within the legislative competence of the Scottish Parliament. The Protocol gives privileges and immunities to the Observatory, its Director-General, representatives, experts and staff. Reserved matters are dealt with in the parallel UK Order.

10. Paragraph 2 of the new schedule 18 provides that the Observatory shall have immunity from suit and legal process except to the extent that, by a decision of the Council, the Observatory expressly waives such immunity. Paragraph 2 also provides further exceptions where that immunity would not apply, such as civil liability in respect of damage caused by a vehicle operated by the Observatory.

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

12. Paragraph 4 provides the Observatory shall have relief from non-domestic rates on the premises of the Observatory and is otherwise, within the scope of its official activities, exempt from all devolved and local taxes. Paragraph 4(2) provides the exception where exemptions and reliefs would not apply which include the disposal or hiring out of goods acquired or imported in circumstances where their acquisition or importation benefitted from an exemption or relief.

13. Paragraph 5 provides that the Director-General and members of staff 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 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. In the case of the Director-General immunity can be waived by the Council and in the case of a member of staff can be waived by the Director-General. Paragraph 5(3) provides that Director-General and members of staff shall have exemption and privileges in respect of personal baggage to the extent necessary to protect official papers and documents which relate to the official activities of the Observatory in accordance with the Vienna Convention on Diplomatic Relations of 1961.

14. Paragraph 6 provides similar arrangements for representatives of members of the Observatory, except where they are waived by the government of that member. No privilege or immunity will be conferred on:

    - a member of the official staff of representatives of members of the Observatory other than designated delegates, alternates, advisers, and secretaries of delegations;
    - any person as the representative of Her Majesty's Government in the United Kingdom or as a member of the official staff of such a representative;
    - families of representatives or a member of the family or members of their official staffs.

15. Paragraph 7 provides that experts shall have exemption and privileges in respect of personal baggage to the extent necessary to protect official papers and documents which relate to the official activities of the Observatory in accordance with the Vienna Convention on

Diplomatic Relations of 1961. This immunity can be waived by the Director-General of the Observatory.

16. 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

17. The instrument has been prepared in consultation with the Foreign and Commonwealth Office and other relevant United Kingdom Government Departments. No external consultation was undertaken as this Order implements provisions of an international agreement to which the United Kingdom will be obliged to give effect as a matter of international law once the Convention enters into force. This is consistent with the general practice on Orders made under the International Organisations Act 1968

Impact Assessments

18. 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

19. 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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