POLICY NOTE

THE INTERNATIONAL ORGANISATIONS (IMMUNITIES AND PRIVILEGES) (SCOTLAND) AMENDMENT ORDER 2024

SSI 2024/

The above instrument was made in exercise of the powers conferred by section 1 and section 10(3) of the International Organisations Act 1968 and all other powers enabling His Majesty to do so. The instrument is subject to affirmative – order in council procedure.

Summary Box

The purpose of this instrument is twofold. Firstly to amend the International Organisations (Immunities and Privileges) (Scotland) Order 2009 by adding a new schedule 1B to give effect to the obligations relating to immunities and privileges contained within the agreement between the United Kingdom and the European Space Agency concerning the European Space Agency's Sites and Facilities in the United Kingdom signed on 13 June 2013. Secondly, to amend schedule 15 of the International Organisations (Immunities and Privileges) (Scotland) Order 2009
to fully reflect the provisions contained within the Protocol on the privileges and immunities of the European Organisation for Astronomical Research in the Southern Hemisphere.
This Order deals only with those matters which are within the legislative competence of the Scottish Parliament.

Policy Objectives

European Space Agency ("ESA")

1. The European Space Agency (Immunities and Privileges) Order 1978 ("the 1978 Order") implements Annex I of the Convention for the Establishment of a European Space Agency, which entered into force on 30 October 1980.

2. An Agreement between the United Kingdom and the ESA concerning the ESA's Sites and Facilities in the United Kingdom signed on 13 June 2013 provides for the establishment and operation of an Agency Centre at Harwell Science and Innovation Campus in the United Kingdom.

3. The European Organisation for Astronomical Research in the Southern Hemisphere and the European Space Agency (Immunities and Privileges) (Amendment) Order 2018 ("the 2018 Order") was intended to enable His Majesty's Government to give effect to its obligations relating to privileges and immunities under the Agreement.

4. However, the 2018 Order failed to correctly reflect the status of the Agency's Head of the Harwell Centre as a high officer or provide that up to seven high-ranking officials in addition to the Director General and the Head of the Harwell Centre are high officers with limited privileges and immunities.

5. Due to these discrepancies being identified, the Scottish Government did not elect to take forward an equivalent order in 2018 for those matters which are within the legislative competence of the Scottish Parliament.

6. Reduced capacity, primarily as a result of emergency work required to deal with the Covid pandemic delayed the resolution of these issues. However, His Majesty's

Government has now taken corrective action through the European Organisation for Astronomical Research in the Southern Hemisphere and the European Space Agency (Immunities and Privileges) (Amendment) Order 2024. This Order takes forward equivalent action for those matters which are within the legislative competence of the Scottish Parliament.

7. The Order amends the International Organisations (Immunities and Privileges) (Scotland) Order 2009 to inserts a new schedule 1B to restate the provisions of the 1978 Order, as amended by the European Organisation for Astronomical Research in the Southern Hemisphere and the European Space Agency (Immunities and Privileges) (Amendment) Order 2018 (itself as amended by the European Organisation for Astronomical Research in the Southern Hemisphere and the European Space Agency (Immunities and Privileges) (Amendment) Order 2024) insofar as they would, if included in an Act of the Scottish Parliament, be within the legislative competence of that Parliament.

8. Schedule 1B includes the Head of Harwell Centre as a high officer. It also provides that up to 7 high-ranking officials, in addition to the Director General and the Head of the Harwell Centre, are high officers but limits their immunities and privileges.

9. In addition it provides that all officers are exempt from social security contributions.

European Organisation for Astronomical Research in the Southern Hemisphere (ESO).

10. Schedule 15 of the 2009 Order was added by the International Organisations (Immunities and Privileges) (Scotland) Amendment Order 2010 to implement the Protocol on the privileges and immunities of the ESO which entered into force for the UK on 25th September 2012 ("the Protocol"). It provides privileges and immunities to the ESO and to its representatives and members of staff.

11. Subsequently His Majesty's Government have identified discrepancies between the Protocol and the corresponding privileges and immunities orders. This Order corrects those discrepancies for those matters which are within the legislative competence of the Scottish Parliament.

12. Paragraphs 7 and 8 of schedule 15 make provision for privileges and immunities conferred by the Protocol on the officers of the ESO.

13. This Order amends paragraph 7 to ensure that, if the Director General or person appointed to act instead of the Director General of the ESO has a form of British nationality, that person will benefit from immunity from suit and legal process in respect of official acts (not including motor vehicle offences or damage), from exemption from devolved or local taxes on emoluments received as an officer of the ESO, and from exemptions relating to social security.

14. This Order amends paragraph 8 to provide that any officer of the ESO (other than high officers) who has a form of British nationality will benefit from immunity from suit and legal process in respect of official acts, from exemption from devolved or local taxes in respect of emoluments received as an officer of the ESO, and from exemptions relating to social security.

15. Article 3 of this Order revokes the provisions of the 1978 Order so far as they apply in or regards Scotland.

Scotland Act

16. Under the Scotland Act 1998, international relations (including relations with international organisations) is reserved to the UK 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.

17. 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 His Majesty under section 1 of the 1968 Act, so far as they are within devolved competence, are subject to approval by the Scottish Parliament.

EU Alignment Consideration

18. This instrument is not relevant to the Scottish Government's policy to maintain alignment with the EU.

Consultation

19. The instrument has been prepared in consultation with the Foreign, Commonwealth and Development Office, the Department for Energy Security & Net Zero 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 is obliged to give effect as a matter of international law. This is consistent with the general practice on Orders made under the 1968 Act.

Impact Assessments

20. No 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

21. The Cabinet Secretary for Justice and Home Affairs confirms that no Business and Regulatory Impact Assessment is necessary as the instrument has no financial effects on the Scottish Government, local government or on business.

Scottish Government
Justice Directorate
April 2024