Draft Order laid before Parliament under section 10(1) of the International Organisations Act 1968

DRAFT STATUTORY INSTRUMENTS

2020 No.

INTERNATIONAL IMMUNITIES AND PRIVILEGES

The Square Kilometre Array Observatory (Immunities and Privileges) Order 2020

Made - - - - ***

Coming into force in accordance with article 1(1)

At the Court at Buckingham Palace, the *** day of ***

Present,

The Queen's Most Excellent Majesty in Council

This Order is made in exercise of the powers conferred by section 1 of the International Organisations Act 1968(**a**).

A draft of this Order has been approved by resolution of each House of Parliament pursuant to section 10(1) of the International Organisations Act 1968(**b**).

Accordingly, Her Majesty is pleased, by and with the advice of Her Privy Council, to order as follows—

PART 1

General

Citation, commencement, extent and application

1.—(1) This Order may be cited as the Square Kilometre Array Observatory (Immunities and Privileges) Order 2020 and comes into force on the day on which the Convention comes into force in accordance with Article 19(2) of the Convention(**c**).

(**a**) 1968 c.48. Section 1 was amended by section 1 of the International Organisations Act 1981 (c.9) and article 2 of the Civil Partnership Act 2004 (International Immunities and Privileges, Companies and Adoption) Order 2005 (S.I. 2005/3542).

(**b**) The function of approving a draft of an Order in Council under section 10 of that Act has been transferred from both Houses of Parliament to the Scottish Parliament under section 118 of the Scotland Act 1998 (c. 46) as amended by section 12 of the Scotland Act 2012 (c.11) insofar as the function is exercisable within devolved competence.

(**c**) 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 on UK Treaties Online which can be found at this link: https//www.gov.uk/uk-treaties.

(2) This Order extends to the whole of the United Kingdom subject to paragraphs (3) and (4).

(3) Article 8 extends to England and Wales and Northern Ireland only(**a**).

(4) In Scotland—

(a) articles 5, 6, 14, 15 and 16 do not apply in so far as they would, if included in an Act of the Scottish Parliament, be within the legislative competence of that Parliament;

(b) article 7 and, to the extent that it applies to article 7, article 13 do not apply to devolved taxes or local taxes to fund local authority expenditure (within the meaning of the exceptions to Section A1 (fiscal, economic and monetary policy) of Part 2 of Schedule 5 to the Scotland Act 1998(**b**).

Interpretation

2. In this Order—

"the Convention" means the Convention establishing the Square Kilometre Array Observatory done in Rome on 12th March 2019(**c**);

"the Council" means the governing body of the Observatory as established by Article 8 of the Convention;

"member of staff" means members of staff of, or secondees to, the Observatory;

"the Observatory" means the Square Kilometre Array Observatory established under the Convention; and

"official activities" means all activities undertaken pursuant to the Convention including the Observatory's administrative activities.

PART 2

The Observatory

3. The Observatory is an organisation of which the United Kingdom and other sovereign Powers are members.

4. The Observatory has the legal capacities of a body corporate.

PART 3

Immunities, privileges, reliefs and exemptions of the Observatory

Immunity of the Observatory

5. Within the scope of its official activities, the Observatory has immunity from suit and legal process except—

(a) to the extent that, by a decision of its Council, the Observatory waives it in a particular case;

(b) in respect of a civil action by a third party or damage arising from an accident caused by a vehicle belonging to or operated on behalf of the Observatory or in respect of a traffic offence;

(c) in respect of an arbitration award made under Article 14 of the Convention;

(**a**) The setting of non-domestic rates is within the legislative competence of the Scottish Parliament by exemption to Section A1 of Schedule 5 of the Scotland Act 1998 c.46. Section A1 was amended by section 23(5) of the Scotland Act 2012 (c.11).
(**b**) 1998 c.46. Section A1 was amended by section 23(5) of the Scotland Act 2012 (c.11).
(**c**) CP154.

(d) in the event of an attachment order, pursuant to a decision by the administrative or judicial authorities, of the salaries, wages and emoluments owed by the Observatory to a member of staff; and

(e) in respect of a counterclaim relating directly to a main claim brought by the Observatory.

Archives and premises

6. The official archives and the premises of the Observatory shall have the like inviolability as, in accordance with the 1961 Convention Articles, is accorded in respect of the official archives and premises of a diplomatic mission.

Taxes and duties

7. Within the scope of its official activities, the Observatory shall be exempt from all direct taxation and enjoys the exemptions and reliefs set out in articles 8 to 11.

8. The Observatory shall have the like relief from non-domestic rates on the premises of the Observatory as, in accordance with Article 23 of the 1961 Convention Articles, is accorded in respect of the premises of a diplomatic mission.

9. The Observatory shall be exempt from duties (whether of customs or excise) and taxes on the importation of goods or publications of the Observatory of substantial value imported by or on behalf of the Observatory for its official use in the United Kingdom.

10. The Observatory shall have relief under arrangements made by the Commissioners for Her Majesty's Revenue and Customs by way of refund of duty (whether customs or excise) paid on imported hydrocarbon oil (within the meaning of the Hydrocarbon Oil Duties Act 1979(**a**)) or value added tax paid on the importation of such oil which is bought in the United Kingdom and is used for its official activities.

11. The Observatory shall have relief under arrangements made by the Secretary of State by way of refund of car tax paid on any vehicle used for its official purposes and value added tax paid on the supply of any goods or services of substantial value which are supplied for its official activities, such relief to be subject to compliance with such conditions as may be imposed in accordance with the arrangements.

12. The exemption and reliefs granted in articles 9 and 10 are to be subject to compliance with such conditions as the Commissioners for Her Majesty's Revenue and Customs may prescribe for the protection of the Revenue.

13. The exemption and reliefs granted in articles 7, 9, 10 and 11 do not apply to the disposal or hiring out of goods acquired or imported in circumstances where their acquisition or importation benefitted from an exemption or relief under any of those articles.

PART 4

Privileges and immunities of members of staff including the Director-General

14.—(1) The Director-General and members of staff have the privileges and immunities set out in this article except where, in the case of an immunity, it is waived—

(a) in the case of the Director-General, by the Council, and

(b) in the case of a member of staff, by the Director-General.

(**a**) 1979 c.5.

(2) The Director-General and members of staff have immunity from suit and legal process in respect of things done or omitted to be done in the course of the performance of official duties, except in relation to road traffic offences and damage resulting from a vehicle driven by them.

(3) The Director-General and members of staff enjoy the like exemption and privileges in respect of their personal baggage, to the extent necessary to protect official papers and documents which relate to the exercise of their functions within the scope of the official activities of the Observatory as, in accordance with paragraph 2 of Article 36 of the 1961 Convention Articles, are accorded to a diplomatic agent.

(4) The Director-General and members of staff are exempt from income tax in respect of emoluments received as a member of staff (other than pensions and annuities).

(5) In the event that the Observatory establishes its own social security scheme the Director-General and members of staff shall, from the date on which they are subject to such scheme be deemed exempted from any class of employment in respect of which contributions under enactments relating to social security (including enactments in force in Northern Ireland) are payable.

(6) The Director-General and members of staff are exempt from duties (whether of customs or excise) and taxes on the importation of articles which—

(a) at or about the time when the Director-General or the member of staff first enters the United Kingdom to take up their post, are imported for their personal use, or that of members of their family forming part of their household, including articles intended for their establishment, and

(b) were in the Director-General or the member of staff's ownership or possession, or that of such a member of their family, or which they or such a member of their family were under contract to purchase, immediately before they so entered the United Kingdom;

and they shall enjoy the like privilege as to the importation of such articles as, in accordance with paragraph 1 of Article 36 of the 1961 Convention Articles, is accorded to a diplomatic agent.

(7) The Director-General and members of staff are exempt from duties (whether of customs or excise) and taxes on the importation of any motor vehicle imported by way of replacement of a motor vehicle imported in accordance with paragraph (6) above, and subject to compliance with such conditions as the Commissioners for Her Majesty's Revenue and Customs may prescribe for the protection of the Revenue.

(8) Paragraphs (4), (5), (6) and (7) do 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 their functions with the Observatory is a permanent resident of the United Kingdom.

PART 5

Privileges and immunities of representatives

15.—(1) A representative of a Member State of the Observatory has the privileges and immunities set out in this article except where they are waived by the government of that Member State.

(2) A representative has immunity from suit and legal process in respect of things done by them or omitted to be done in the course of the performance of official duties, except in relation to road traffic offences and damage resulting from a vehicle driven by them.

(3) A representative enjoys the like exemption and privileges in respect of their personal baggage, to the extent necessary to protect official papers and documents which relate to the exercise of their functions within the scope of the official activities of the Observatory as, in accordance with paragraph 2 of Article 36 of the 1961 Convention Articles, are accorded to a diplomatic agent.

PART 6

Privileges and immunities of experts

16.—(1) An expert has the privileges and immunities set out in this article except where they are waived by the Director-General.

(2) An expert has immunity from suit and legal process in respect of things done by them or omitted to be done in the course of the performance of official duties, except in relation to road traffic offences and damage resulting from a vehicle driven by them.

(3) An expert enjoys the like exemption and privileges in respect of their personal baggage, to the extent necessary to protect official papers and documents which relate to the exercise of their functions within the scope of the official activities of the Observatory as, in accordance with paragraph 2 of Article 36 of the 1961 Convention Articles, are accorded to a diplomatic agent.

Name
Clerk of the Privy Council

EXPLANATORY NOTE

(This note is not part of the Order)

This Order confers legal capacity and grants immunities and privileges to the Square Kilometre Array Observatory, its representatives, experts and members of staff.

This Order gives effect to the Articles of Annex A (Protocol on Privileges and Immunities of the Square Kilometre Array Observatory) of the Convention establishing the Square Kilometre Array Observatory done in Rome on 12th March 2019 (CP154).

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