POLICY NOTE

THE INTERNATIONAL ORGANISATIONS (IMMUNITIES AND PRIVILEGES) (SCOTLAND) REVOCATION ORDER 2021

SSI 2021/69

1. The above instrument is made in exercise of the powers conferred by section 1(2), 5(1) and 10(3) of the International Organisations Act 1968 and all other powers enabling Her Majesty to do so.

2. The purpose of the instrument is to amend the International Organisations (Immunities and Privileges) (Scotland) Order 2009 (S.S.I. 2009/44) ("the 2009 Order") to revoke schedule 17. The International Organisations (Immunities and Privileges) (Scotland) Amendment (No. 2) Order 2017 (S.S.I. 2017/447) ("the 2017 Order") is also to be revoked.

3. The 2017 Order amended the 2009 Order to confer immunities and privileges, insofar as they are within devolved competence, upon the Unified Patent Court and its representatives, judges, registrars and employees.

Policy Objectives

4. On 20 July 2020 the United Kingdom withdrew its ratification of the Agreement on a Unified Patent Court and the Protocol on Privileges and Immunities of the Unified Patent Court done in Brussels on 26 June 2016.

5. Participating in a court that applies EU law and bound by the Court of Justice of the European Union is not consistent with the aims of the United Kingdom leaving the European Union.

6. The United Kingdom will not be seeking to participate in the Unitary Patent or Unified Patent Court when it is expected to come into operation later in 2021.

7. The immunities and privileges conferred by the amendment of the 2009 Order by the 2017 Order are therefore no longer required.

8. This Order and the parallel UK Order are necessary to revoke the Orders before they come into force.

9. This 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.

Consultation

10. The instrument has been prepared in consultation with the relevant United Kingdom Government Departments. No external consultation was undertaken as this Order revokes provisions of an international agreement to which the United Kingdom will no longer be obliged to give effect. The future of the Unified Patent Court system will be for the remaining Member States of the European Union to decide.

Impact Assessments

11. An impact assessment is not required as the Unified Patent Court system has not yet entered into force. Having withdrawn from the UPC Agreement and Protocol in advance, it is not expected that there will be any UPC judges or staff appointed. Businesses will still be able to maintain and enforce patents in the UK as they do currently.

Financial Effects

12. A Business and Regulatory Impact Assessment (BRIA) is not required as no financial effects on the Scottish Government, local government or on business are foreseen.

Scottish Government
Justice Directorate
October 2020