

Draft Order laid before the Scottish Parliament under section 10(1) of the International Organisations Act 1968, for approval by resolution of the Scottish Parliament. This draft Order replaces the one laid on 8th September 2015 and is being issued free of charge to all known recipients of that draft Order.

DRAFT SCOTTISH STATUTORY INSTRUMENTS

2015 No.

INTERNATIONAL IMMUNITIES AND PRIVILEGES

**The International Organisations (Immunities and Privileges)
(Scotland) Amendment Order 2015**

Made - - - - - *2015*

Coming into force in accordance with article 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(2) of the International Organisations Act 1968(a) and all other powers enabling Her Majesty to do so.

In accordance with section 10(1) of that Act, a draft of this instrument has been laid before and approved by resolution of the Scottish Parliament(b).

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

Citation and commencement

1.—(1) This Order may be cited as the International Organisations (Immunities and Privileges) (Scotland) Amendment Order 2015.

(2) This Order comes into force on the later of—

(a) the day after the day on which it is made; or

(a) 1968 c.48. Section 1 was amended by the International Organisations Act 1981 (c.9) and S.I. 2005/3542.

(b) The function of approving a draft of an Order in Council under section 10 of that Act has transferred to the Scottish Parliament under section 118 of the Scotland Act 1998 (c.46) in so far as the function is exercisable within devolved competence. Section 118(4) of that Act provides that any reference in a pre-commencement enactment to a requirement for a draft instrument to be approved by either or both Houses of Parliament (as specified in section 118(2)) is to be taken to be, in relation to the exercise of a devolved function by a person other than a Minister of the Crown, a member of the Scottish Government or a Scottish public authority with mixed functions or no reserved functions, a reference to the Scottish Parliament. Section 118(4) accordingly includes the powers exercisable by Her Majesty in Council.

- (b) the day on which the United Kingdom becomes a member of the Asian Infrastructure Investment Bank^(a).

Amendment of the International Organisations (Immunities and Privileges) (Scotland) Order 2009

2.—(1) The International Organisations (Immunities and Privileges) (Scotland) Order 2009^(b) is amended as follows.

(2) After Schedule 15, insert Schedule 16 (Asian Infrastructure Investment Bank) set out in the Schedule to this Order.

Name
Clerk to the Privy Council

(a) The Asian Infrastructure Investment Bank (“the Bank”) was established by the Articles of Agreement of the Asian Infrastructure Investment Bank done in Beijing on 29th June 2015 (Cm. 9126) (“the Agreement”). The United Kingdom will become a member of the Bank in accordance with article 58(2) of the Agreement when the Agreement enters into force for the United Kingdom. The date on which the Agreement 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>.

(b) S.S.I. 2009/44, amended by S.S.I. 2010/186.

SCHEDULE

Article 2

“SCHEDULE 16

Article 2

ASIAN INFRASTRUCTURE INVESTMENT BANK

Interpretation

1. In this Schedule—

“the 1961 Convention Articles” means the Articles (being certain of the Articles of the Vienna Convention on Diplomatic Relations signed in 1961) which are set out in Schedule 1 to the Diplomatic Privileges Act 1964(a);

“Agreement” means the Articles of Agreement of the Asian Infrastructure Investment Bank done in Beijing on 29th June 2015(b);

“archives of the Bank” means all written and electronic material belonging to, or held by, the Bank for its official activities;

“Bank” means the Asian Infrastructure Investment Bank established by the Agreement;

“devolved and local taxes” means devolved taxes and local taxes to fund local authority expenditure (within the meaning of the exceptions to Section A1 (fiscal, economic and monetary policy) of Part II of Schedule 5 to the Scotland Act 1998(c));

“member of the Bank” means a member in accordance with Article 3 or Article 58 of the Agreement;

“official activities” means all activities of the Bank undertaken pursuant to the Agreement, including administrative activities;

“person connected with the Bank” means a Governor, Alternate Governor, Director, Alternate Director, President, Vice-President, other officer or employee of the Bank, or expert or person engaged on a mission for the Bank;

“premises of the Bank” means the land, buildings and parts of buildings used by the Bank for its official activities.

Suit and legal process

2.—(1) The Bank shall have immunity from suit and legal process, except—

- (a) as provided in sub-paragraph (2); or
- (b) to the extent that it shall have expressly waived such immunity.

(2) The immunity of the Bank under sub-paragraph (1) does not apply in respect of any civil action arising out of, or in connection with, the exercise of its powers to raise funds, borrow money, guarantee obligations or buy, sell, or underwrite the sale of, securities if the Bank has, in the United Kingdom—

- (a) established an office;
- (b) appointed an agent for the purpose of accepting service of process; or
- (c) issued or guaranteed securities.

(a) 1964 c.81.

(b) Cm. 9126.

(c) 1998 c.46; the exception for devolved taxes was added by the Scotland Act 2012 (c.11), section 23(5).

(3) The property and assets of the Bank shall be immune from suit and legal process, except to the extent that the Bank shall have expressly waived such immunity, in respect of—

- (a) all forms of seizure, attachment or execution before final judgment against the Bank; and
- (b) search, requisition, confiscation, expropriation, or any other form of taking or foreclosure by the executive or pursuant to legislation.

(4) Nothing in sub-paragraph (2) permits any action against the Bank by any member of the Bank or by a person acting on behalf of any member of the Bank.

Archives and premises

3. The archives and premises of the Bank 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

4. The Bank shall—

- (a) have the like relief from non-domestic rates on the premises of the Bank as, in accordance with Article 23 of the 1961 Convention Articles, is accorded in respect of the premises of a diplomatic mission; and
- (b) otherwise, within the scope of its official activities, be exempt from all devolved and local taxes on its assets, property, income, operations and transactions.

Restrictions on importation and exportation

5.—(1) The Bank shall be exempt from prohibitions and restrictions on importation or exportation in the case of goods imported or exported by the Bank for its official activities and in the case of any of the Bank's publications imported or exported by the Bank.

(2) Sub-paragraph (1) shall not apply as respects the matters reserved by virtue of Section C5 (import and export control) of Part II of Schedule 5 to the Scotland Act 1998(a).

Persons connected with the Bank

6.—(1) A person connected with the Bank shall enjoy immunity from suit and legal process in respect of things done or omitted to be done in the course of the performance of the person's official duties for the Bank, except to the extent that the Bank shall have expressly waived such immunity.

(2) No devolved and local taxes shall be levied on or in respect of emoluments paid by the Bank to a person connected with the Bank.

(3) Sub-paragraph (2) does not apply to a person who is—

- (a) a British citizen, a British Overseas territories citizen, a British Overseas citizen, a British subject, a British National (Overseas), or a British protected person; or
- (b) a Governor or an Alternate Governor of the Bank.”

(a) Section C5 was amended by S.I. 2000/3252.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends the International Organisations (Immunities and Privileges) (Scotland) Order 2009 to confer immunities and privileges, insofar as they are within devolved competence, upon the Asian Infrastructure Investment Bank and its officers, employees, experts and persons engaged on missions for the Bank. The Order gives effect to the Articles of Agreement of the Asian Infrastructure Investment Bank done in Beijing on 29th June 2015 (Cm. 9126). It should be read together with the Asian Infrastructure Investment Bank (Immunities and Privileges) Order 2015 (S.I. 2015/xxx) which confers additional immunities and privileges.

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