

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.

DRAFT SCOTTISH STATUTORY INSTRUMENTS

2017 No.

**INTERNATIONAL IMMUNITIES
AND PRIVILEGES**

**The International Organisations (Immunities and
Privileges) (Scotland) Amendment (No. 2) Order 2017**

Made - - - - 2017

Coming into force in accordance with article 1

At the Court at Buckingham Palace, the day of 2017

Present,

The Queen's Most Excellent Majesty in Council

This Order is made in exercise of the powers conferred by sections 1 and 5 of the International Organisations Act 1968(1) 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(2).

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

Citation and commencement

1. This Order may be cited as the International Organisations (Immunities and Privileges) (Scotland) Amendment (No. 2) Order 2017 and comes into force on the date on which the Protocol

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

(2) 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.

on Privileges and Immunities of the Unified Patent Court done in Brussels on 29th June 2016 enters into force in the United Kingdom⁽³⁾.

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

2.—(1) The International Organisations (Immunities and Privileges) (Scotland) Order 2009⁽⁴⁾ is amended as follows.

(2) After schedule 16, insert schedule 17 (Unified Patent Court) set out in the schedule to this Order.

Name
Clerk of the Privy Council

(3) The date on which the Protocol enters force in 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>.

(4) S.S.I. 2009/44, amended by S.S.I. 2010/186, S.S.I. 2015/421 and S.S.I. 2017/xxx.

SCHEDULE

Article 2

“SCHEDULE 17

UNIFIED PATENT COURT

General

1. In this schedule—

“the Agreement” means the Agreement on a Unified Patent Court done in Brussels on 19th February 2013⁽⁵⁾;

“Committee” means any of the Administrative Committee, the Budget Committee and the Advisory Committee set up under Article 11 of the Agreement;

“the Court” means the Unified Patent Court established under Article 1 of the Agreement;

“the Deputy-Registrar” means the Deputy-Registrar appointed under Article 25 of the Statute;

“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 of the Scotland Act 1998⁽⁶⁾);

“Judge” means a Judge of the Court;

“official activities” in relation to the Court means the activities that are necessary for the purposes and functions conferred on it by the Agreement and Statute;

“premises of the Court” means land and buildings made available to the Court by a State party to the Agreement in accordance with Article 37 of the Agreement and used for the official activities of the Court;

“the Presidium” means the Presidium referred to in Article 15 of the Statute;

“the Protocol” means the Protocol on Privileges and Immunities of the Unified Patent Court done in Brussels on 29th June 2016⁽⁷⁾;

“Registrar” means the Registrar appointed under Article 22 of the Statute;

“Staff” means all personnel employed by the Court as officials and other servants of the Court except the Judges, Registrar and the Deputy-Registrar;

“State Party” means a State party to the Protocol; and

“the Statute” means the Statute of the Court as set out in Annex I of the Agreement.

The Court

2.—(1) The Court has immunity from suit and legal process except to the extent that it has expressly waived such immunity.

(2) Sub-paragraph (1) does not apply in respect of—

(a) any civil action brought against the Court—

(i) with respect to contractual liability brought by persons other than the Judges, the Registrar, the Deputy-Registrar or the Staff of the Court;

(ii) with respect to non-contractual liability except where the claim is based on the performance of the Court’s jurisprudence;

⁽⁵⁾ Cm 8653.

⁽⁶⁾ 1998 c.46; the exception for devolved taxes was added by the Scotland Act 2012 (c.11), section 23(5).

⁽⁷⁾ Cm 9405.

Draft Legislation: This is a draft item of legislation. This draft has since been made as a Scottish Statutory Instrument:
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- (iii) by a third party for damages resulting from an accident caused by a motor vehicle belonging to, or operated on behalf of, the Court; or
 - (b) a motor traffic offence involving a motor vehicle belonging to, or operated on behalf of, the Court.
- 3.** The official archives of the Court have the like inviolability as, in accordance with the 1961 Convention Articles, is accorded in respect of the official archives of a diplomatic mission.
- 4.—(1)** The premises of the Court have the like inviolability of premises as, in accordance with the 1961 Convention Articles, is accorded in respect of the premises of a diplomatic mission.
- (2) Sub-paragraph (1) does not apply to premises which are made available to the Court on a temporary basis.
- 5.** The Court—
- (a) has the like relief from non-domestic rates on the premises of the Court as, in accordance with Article 23 of the 1961 Convention Articles, is accorded in respect of the premises of a diplomatic mission; and
 - (b) is otherwise, within the scope of its official activities, exempt from all devolved and local taxes.
- 6.—(1)** The Court is exempt from prohibitions and restrictions on importation or exportation in the case of goods imported or exported by the Court for its official use.
- (2) Sub-paragraph (1) does not apply as respects the matters reserved by virtue of Section C5 (import and export control) of Part II of schedule 5 of the Scotland Act 1998⁽⁸⁾.

Representatives

- 7.—(1)** Except in so far as in any particular case any immunity is waived by the Presidium of the Court, representatives of a State Party enjoy immunity from suit and legal process in respect of all acts performed by them, including words spoken or written, while attending a meeting of a Committee in their official capacity.
- (2) This paragraph does 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 his functions with the Court is a permanent resident of the United Kingdom.

Judges, Registrar and Deputy-Registrar

- 8.—(1)** Except in so far as in any particular case any privilege or immunity is waived by the Presidium of the Court the Judges, Registrar and Deputy-Registrar have the privileges and immunities in this paragraph.
- (2) They have immunity from suit and legal process in respect of all acts performed by them, including words spoken or written, in their official capacity.
- (3) They are exempt from devolved and local taxes in respect of salaries, wages and emoluments paid to them by the Court (other than pensions and annuities) from the date on which the internal tax for the benefit of the Court on salaries, wages and emoluments is applied to them.

(8) 1998 c.46. Section C5 was amended by S.I. 2000/3252 and S.I. 2014/1559.

Staff

9.—(1) Except in so far as in any particular case any privilege or immunity is waived by the Presidium of the Court, the Staff of the Court have the privileges and immunities in this paragraph.

(2) They have immunity from suit and legal process in respect of all acts performed by them, including words spoken or written, in their official capacity.

(3) They are exempt from devolved and local taxes in respect of salaries, wages and emoluments paid to them by the Court (other than pensions and annuities) from the date on which the internal tax for the benefit of the Court on salaries, wages and emoluments is applied to them.

(4) Sub-paragraph (3) does 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 his functions with the Court is a permanent resident of the United Kingdom.”

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends the International Organisations (Immunities and Privileges) (Scotland) Order 2009 to confer privileges and immunities, insofar as they are within devolved competence, on the Unified Patent Court and its representatives, judges, registrars and employees. It gives effect to the Protocol on Privileges and Immunities done in Brussels on 29th June 2016. It should be read together with the Unified Patent Court (Immunities and Privileges) Order 2017 (S.I. 2017/xxx) which confers additional immunities and privileges.