

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

2024 No.

**INTERNATIONAL IMMUNITIES
AND PRIVILEGES**

**The International Organisations (Immunities and
Privileges) (Scotland) Amendment Order 2024**

*Made - - - - 2024
Coming into force in accordance with article 1(2) and
(3)*

At the Court at Buckingham Palace, the *** day of *** 2024
Present,
The King's Most Excellent Majesty in Council

This Order is made in exercise of the powers conferred by sections 1 and 10(3) of the International Organisations Act 1968(1) and all other powers enabling His 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, His Majesty is pleased, by and with the advice of His 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 2024.

(1) 1968 c. 48 (“1968 Act”). Section 1 was amended by section 1 of 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 the 1968 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 to 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 a reference to the Scottish Parliament, 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. Section 118(4) accordingly includes the powers exercisable by His Majesty in Council.

(2) Subject to paragraph (3), this Order comes into force on the day after the day on which it is made.

(3) Article 2(2) comes into force on the date on which the Agreement between the United Kingdom and the European Space Agency concerning the European Space Agency's Sites and Facilities in the United Kingdom enters into force in Scotland(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 1A(5), insert schedule 1B (European Space Agency) set out in the schedule of this Order.

(3) Schedule 15 (European Organisation for Astronomical Research in the Southern Hemisphere)(6) is amended in accordance with paragraphs (4) to (6).

(4) In paragraph 1 (interpretation), at the end, insert—

““devolved or local taxes” means any 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 of the Scotland Act 1998(7)).”.

(5) For paragraph 7 (high officers) substitute—

“High Officers

7.—(1) Except in so far as in any particular case any immunity or privilege is waived by the Council of the Organisation, the Director-General of the Organisation and the person appointed to act in place of the Director-General in accordance with Article 6 of the Convention enjoy—

(a) the like—

(i) immunity from suit and legal process,

(ii) inviolability of residence, and

(iii) exemption or relief from devolved or local taxes, other than duties (whether of customs or excise) and taxes on the importation of goods, and rates,

as are accorded to or in respect of the head of a diplomatic mission,

(b) the like exemption and privileges in respect of their personal baggage as in accordance with Article 36 of the 1961 Convention Articles are accorded to a diplomatic agent,

(c) exemptions whereby, for the purposes of the enactments relating to social security—

(i) services rendered for the Organisation are deemed to be excepted from any class of employment in respect of which contributions under those enactments are payable, but

(3) The date on which the Agreement enters into force for Scotland will be published on the relevant page on UK Treaties Online which can be found at this link UK Treaties - GOV.UK (www.gov.uk). The date will be in accordance with notification under article 20 of the Agreement. The Agreement entered into force for the United Kingdom, except in Scotland, on 19 March 2024 by virtue of the notification under article 20 of the Agreement. A copy of the Agreement can be obtained from Protocol Directorate, Foreign and Commonwealth Office, King Charles Street, London SW1A 2AH.

(4) S.S.I. 2009/44 as relevantly amended by S.S.I. 2010/186, S.S.I. 2017/431, and S.S.I. 2023/376.

(5) Schedule 1A was inserted by S.S.I. 2023/376.

(6) Schedule 15 was inserted by S.S.I. 2010/186.

(7) 1998 c. 46.

(ii) no person is to be rendered liable to pay any contribution which that person would not be required to pay if those services were not deemed to be so excepted.

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

(3) Sub-paragraph (1)(c) does not apply as respects the matters reserved by virtue of Section F (social security) of Part 2 of schedule 5 of the Scotland Act 1998.

(4) Part 4 (privileges and immunities of official staffs and of families of representatives, high officers and official staffs) of schedule 1 (privileges and immunities) of the 1968 Act does not operate so as to confer any privilege or immunity on the families of an officer to whom this paragraph applies, except to the extent that members of families of such officers forming part of their households enjoy immunity from suit and legal process.

(5) Subject to sub-paragraphs (6) and (7), sub-paragraph (1)(a) to (c) does not apply to any person who is a British citizen, British overseas territories citizen, British Overseas citizen, British National (Overseas) or permanent resident of the United Kingdom.

(6) Sub-paragraph (1)(a)(i) applies to any person who is a British citizen, British overseas territories citizen, British Overseas citizen, British National (Overseas) or permanent resident of the United Kingdom, in respect of things done or omitted to be done by them in the course of performance of official duties, except in the case of motor traffic offences committed by them or of damage caused by a motor vehicle belonging to or driven by them.

(7) Sub-paragraph (1)(a)(iii) applies to any person who is a British citizen, British overseas territories citizen, British Overseas citizen, British National (Overseas) or permanent resident of the United Kingdom only in respect of exemption from devolved or local taxes on emoluments received as an officer of the Organisation, provided that nothing in this sub-paragraph is to be interpreted as precluding such emoluments from being taken into account for the purposes of assessing the amount of taxation to be applied to income from other sources.”.

(6) For paragraph 8 (all other officers) substitute—

“All other officers

8.—(1) Except in so far as in any particular case any immunity or privilege is waived by the Director-General of the Organisation or the person appointed to act in place of the Director General in accordance with Article 6 of the Convention, the members of staff of the Organisation, other than high officers to whom paragraph 7 applies, enjoy—

- (a) immunity from suit and legal process in respect of things done or omitted to be done by them in the course of performance of official duties, except in the case of motor traffic offences committed by them or of damage caused by a motor vehicle belonging to or driven by them,
- (b) exemption from devolved or local taxes in respect of emoluments received as an officer or servant of the Organisation, provided that nothing in this paragraph is to be interpreted as precluding such emoluments from being taken into account for the purposes of assessing the amount of taxation to be applied to income from other sources,
- (c) exemptions whereby for the purposes of the enactments relating to social security—
 - (i) services rendered for the Organisation are deemed to be excepted from any class of employment in respect of which contributions under those enactments are payable, but

(ii) no person is to be rendered liable to pay any contribution which that person would not be required to pay if those services were not deemed to be so excepted.

(2) Part 4 of schedule 1 of the 1968 Act does not operate so as to confer any immunity or privilege on the families of the officers to whom this paragraph applies, except to the extent that members of families of such officers forming part of their households enjoy immunity from suit and legal process to the extent enjoyed by such officers under sub-paragraph (1)(a).

(3) Sub-paragraph (1)(c) does not apply as respects the matters reserved by virtue of Section F (social security) of Part 2 of schedule 5 of the Scotland Act 1998.”.

Revocation

3. The European Space Agency (Immunities and Privileges) Order 1978⁽⁸⁾ is revoked so far as it applies in or regards Scotland.

Name
Clerk of the Privy Council

⁽⁸⁾ S.I. 1978/1105 as prospectively amended by S.I. 2018/787 and by S.I. 2024/368.

SCHEDULE

Article 2(2)

“SCHEDULE 1B

EUROPEAN SPACE AGENCY

Interpretation

1. In this schedule—

“the 1961 Convention Articles” means the Articles (being certain Articles of the Vienna Convention on Diplomatic Relations signed in 1961) which are set out in schedule 1 of the Diplomatic Privileges Act 1964⁽⁹⁾,

“the Agency” means the European Space Agency as established by the Convention,

“the Convention” means the Convention on the Establishment of a European Space Agency⁽¹⁰⁾,

“devolved or local taxes” means 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 of the Scotland Act 1998⁽¹¹⁾),

“Official Activities” of the Agency includes its administrative activities and those undertaken in the field of space research and technology and their space applications in pursuance of the purposes of the Agency as defined in the Convention.

The Agency

2.—(1) The Agency has immunity from suit and legal process except—

- (a) to the extent that the Agency has expressly waived such immunity in a particular case,
- (b) in respect of a civil action by a third party for damage arising from an accident caused by a motor vehicle belonging to or operated on behalf of the Agency, or in respect of a motor traffic offence involving such a vehicle,
- (c) in respect of enforcement of an arbitration award made under Article 25 or 26 of Annex 1 to the Convention, and
- (d) in respect of an attachment order against the salaries, wages and emoluments owed by the Agency to a member of staff.

(2) Sub-paragraph (1) does not prevent the taking of such measures as may be permitted by law in relation to the property and assets of the Agency in so far as they may be temporarily necessary in connection with the prevention of and investigation into accidents involving motor vehicles belonging to or operated on behalf of the Agency.

Inviolability of archives and premises

3. The Agency has the like inviolability of official archives and premises as in accordance with the 1961 Convention Articles is accorded in respect of the official activities of a diplomatic mission.

Taxes

4. Within the scope of its Official Activities, the Agency—

⁽⁹⁾ 1964 c. 81. Schedule 1 was amended by paragraph 1 of schedule 2 of the Diplomatic and Consular Premises Act 1987 (c. 46).

⁽¹⁰⁾ The Convention on the Establishment of the European Space Agency was signed by the United Kingdom on 30 May 1975 and came into force on 30 October 1980 https://www.esa.int/About_Us/Law_at_ESA/ESA_Convention.

⁽¹¹⁾ 1998 c. 46.

- (a) has the like relief from non-domestic rates on the premises of the Agency as, in accordance with Article 23 of the 1961 Convention Articles, is accorded in respect of the premises of a diplomatic mission,
- (b) is otherwise, exempt from all devolved or local taxes as is accorded to a foreign sovereign Power.

Customs treatment

5.—(1) The Agency is exempt from prohibitions and restrictions on importation or exportation in the case of goods imported or exported by or on behalf of the Agency and necessary for the exercise of its Official Activities and in the case of any publications of the Agency imported or exported by it.

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

Representatives

6.—(1) Except in so far as in any particular case any privilege or immunity is waived by the Government of the member which they represent, representatives of members of the Agency enjoy—

- (a) immunity from suit and legal process in respect of things done or omitted to be done by them in exercise of their functions, except in the case of a motor traffic offence committed by a representative or in the case of damage caused by a motor vehicle belonging to or driven by them,
- (b) while exercising their functions and in the course of their journeys to and from the place of meeting, the like immunity from personal arrest or detention and the like inviolability for all their official papers and documents as are accorded to a diplomatic agent, and
- (c) while exercising their functions and in the course of their journeys to and from the place of meeting, the like exemptions and privileges in respect of their personal baggage as in accordance with Article 36 of the 1961 Convention Articles are accorded to a diplomatic agent.

(2) Sub-paragraph (1) does not apply to any person who as the representative of the United Kingdom, or any person who is a British citizen, a British overseas territories citizen, a British Overseas citizen or a British National (Overseas) or who is a permanent resident of the United Kingdom.

(3) Part 4 (privileges and immunities of official staffs and of families of representatives, high officers and official staffs) of schedule 1 (privileges and immunities) of the 1968 Act does not operate so as to confer any privilege or immunity on any member of the family or any member of the official staff of a representative.

High Officers

7.—(1) Except in so far as in any particular case any privilege or immunity is waived by the Council of the Agency, the Director General of the Agency and, when that office is vacant, the person appointed to act in place of the Director General in accordance with paragraph 1(c) of Article 12 of the Convention, and the head of the Harwell Centre enjoy—

- (a) the like immunity from suit and legal process, the like inviolability of residence and the like exemption or relief from devolved or local taxes, other than income tax in respect of their emoluments and customs or excise duties and taxes on the importation of goods, and rates as are accorded to or in respect of the head of a diplomatic mission,
- (b) the like exemption and privileges in respect of their personal baggage as in accordance Article 36 of the 1961 Convention Articles accorded to a diplomatic agent.

(2) This paragraph does not apply to any person who is a British citizen, a British overseas territories citizen, a British Overseas citizen or a British National (Overseas) or to any person who, at the time of taking up their duties in the United Kingdom, is a permanent resident of the United Kingdom.

(3) Part 4 (privileges and immunities of official staffs and of families of representatives, high officers and official staffs) of schedule 1 (privileges and immunities) of the 1968 Act does not operate so as to confer any privilege or immunity on any person who is a member of the family of an officer to whom this paragraph applies if the person is a British citizen, a British overseas territories citizen, a British Overseas citizen, a British National (Overseas) or who is a permanent resident of the United Kingdom.

High Ranking Staff

8.—(1) This paragraph applies to up to 7 officers of the Agency who—

- (a) hold the position of Head of Office,
- (b) are high ranking staff discharging their functions in the United Kingdom, and
- (c) are notified to the Secretary of State by the Agency.

(2) Except in so far as in any particular case any privilege or immunity is waived by the Director General of the Agency an officer mentioned in sub-paragraph (1) enjoys—

- (a) the like immunity from suit and legal process, except in the case of a motor traffic offence committed by that officer or in the case of damage caused by a motor vehicle belonging to or driven by that officer, the like inviolability of residence and the like exemption or relief from devolved or local taxes, other than income tax in respect of their emoluments and customs or excise duties and taxes on the importation of goods, as are accorded to or in respect of a diplomatic agent,
- (b) the like exemption and privileges in respect of their personal baggage as in accordance with Article 36 of the 1961 Convention Articles are accorded to a diplomatic agent.

(3) Sub-paragraphs (1) and (2) do not apply to an officer who is a British citizen, a British overseas territories citizen, a British Overseas citizen or a British National (Overseas) or to an officer who, at the time of taking up their duties in the United Kingdom, is a permanent resident of the United Kingdom.

(4) Part 4 (privileges and immunities of official staffs and of families of representatives, high officers and official staffs) of schedule 1 (privileges and immunities) of the 1968 Act does not operate so as to confer any privilege or immunity on any person who is a member of the family of an officer mentioned in sub-paragraph (1) if that member of the family is a British citizen, a British overseas territories citizen, a British Overseas citizen, a British National (Overseas) or who is a permanent resident of the United Kingdom.

(4) “High ranking staff” has the same meaning in this paragraph as is set out in 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 in Glasgow on 16 July 2013.

Officers

9.—(1) Except in so far as in any particular case any privilege or immunity is waived by the Director General of the Agency or, in the case of the Director General or the Head of the Harwell Centre, by the Council, the Director General and the other permanent members of the staff of the Agency enjoy—

- (a) immunity from suit and legal process in respect of things done or omitted to be done by them in the exercise of their functions, except in the case of a motor traffic offence

committed by a member of the staff of the Agency or in the case of damage caused by a motor vehicle belonging to or driven by a member of the staff,

- (b) exemption from devolved or local taxes in respect of salaries and emoluments received by them as members of staff of the Agency, provided that nothing in this sub-paragraph is to be interpreted as precluding such salaries and emoluments from being taken into account for the purpose of assessing the amount of taxation to be applied to income from other sources, and
 - (c) provided that the Agency has established or joined a social security scheme, exemptions whereby for the purposes of the enactments relating to social security—
 - (i) services rendered for the Agency by them are deemed to be excepted from any class of employment in respect of which contributions under those enactments are payable, but
 - (ii) no person is to be rendered liable to pay any contribution which the person would not be required to pay of those service were not deemed to be so excepted.
- (2) Sub-paragraph (1)(c) does not apply as respects the matters reserved by virtue of Section F (social security) of Part 2 of schedule 5 of the Scotland Act 1998.

Experts

10. Except in so far as in any particular case any privilege or immunity is waived by the Director General of the Agency, an expert (other than a member of the staff of the Agency), in exercise of their functions in connection with the Agency or in carrying out missions for the Agency enjoys—

- (a) immunity from suit and legal process in respect of things done or omitted to be done by them in the exercise of their functions, except in the case of a motor traffic offence committed by them or in the case of damage caused by a motor vehicle belonging to or driven by them,
- (b) the like inviolability for all their official papers and documents as is accorded to a diplomatic agent, to the extent that this is necessary for the exercise of their functions including during journeys made in carrying out their functions and in the course of their missions.”

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends the International Organisations (Immunities and Privileges) (Scotland) Order 2009 (“the 2009 Order”).

Article 2(2) of this Order inserts a new schedule 1B into the 2009 Order. Schedule 1B restates the provisions of the European Space Agency (Immunities and Privileges) Order 1978 (“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 amended by the European Organisation for Astronomical Research in the Southern Hemisphere and the European Space Agency (Immunities and Privileges) (Amendment) Order 2024

(S.I. 2024/368) insofar as they would, if included in an Act of the Scottish Parliament, be within the legislative competence of that Parliament.

The 1978 Order implements Annex 1 of the Convention for the Establishment of a European Space Agency, which entered into force on 30 October 1980 (Cm 6272). An 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 provides for the establishment and operation of an Agency centre at Harwell Science and Innovation Campus in the United Kingdom. This Order gives effect to the obligations relating to immunities and privileges under that Agreement.

New 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.

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

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 European Organisation for Astronomical Research in the Southern Hemisphere (Cm 8516) which entered into force for the UK on 25 September 2012. It provides privileges and immunities to the European Organisation for Astronomical Research in the Southern Hemisphere ("the Organisation") and to its representatives and members of staff.

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

Article 2(5) of this Order amends paragraph 7 to ensure that, if the Director General or person appointed to act instead of the Director General of the Organisation 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 Organisation, and from exemptions relating to social security.

Article 2(6) of this Order amends paragraph 8 to provide that any officer of the Organisation (other than an officer falling within paragraph 7 (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 Organisation, and from exemptions relating to social security.

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