

EXPLANATORY MEMORANDUM TO

THE UNIFIED PATENT COURT (IMMUNITIES AND PRIVILEGES) ORDER 2018

2018 No. 184

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Foreign and Commonwealth Office and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

- 2.1 This instrument confers legal status on the United Patent Court and privileges and immunities on the Court, its judges and staff.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

Other matters of interest to the House of Commons

- 3.2 Apart from article 9 (which does not extend to Scotland), and the application of articles 5 to 8, 11, 16, 17 and 18 so far as they fall within the legislative competence of the Scottish Parliament, the territorial extent and application of this Order includes Scotland and Northern Ireland.

4. Legislative Context

- 4.1 Section 1 of the International Organisations Act 1968 (“the 1968 Act”) allows Her Majesty, by Order in Council, to confer on an international organisation, of which the United Kingdom (and any other sovereign Power) is a member, the legal capacities of a body corporate and to grant certain immunities and privileges to the international organisation and its officers and employees.
- 4.2 Section 5 of the 1968 Act allows Her Majesty to confer on judges, registrars and members of international tribunals such privileges and immunities as are required to give effect to any agreement to which the United Kingdom is a party.
- 4.3 Section 10(1) of the 1968 Act provides that no recommendation shall be made to Her Majesty in Council to make the Order unless a draft of the Order has been laid before Parliament and approved by a resolution of each House of Parliament.

5. Extent and Territorial Application

- 5.1 This Order applies to the whole of the UK, but some provisions do not extend to, or apply in, Scotland. A separate Scottish Order in Council has been prepared to deal with those provisions within the legislative competence of the Scottish Parliament and will be laid before the Scottish Parliament.

6. European Convention on Human Rights

- 6.1 The Minister of State at the Foreign and Commonwealth Office, Rt Hon Sir Alan Duncan KCMG MP, has made the following statement regarding Human Rights:

“In my view the provisions of the Unified Patent Court (Immunities and Privileges) Order 2017 are compatible with the Convention rights.”

7. Policy background

What is being done and why

- 7.1 On 19th February 2013, the UK Government signed an intergovernmental Agreement to provide for a Unified Patent Court within participating European countries (Cm 8653). The Unitary Patent and Translation Regulations were published in the Official Journal of the European Union on 17th December 2012.
- 7.2 The Protocol on Privileges and Immunities was done in Brussels on 29th June 2016. The UK signed it on 14th December 2014 (Cm 9405). It gives privileges and immunities to the Court, its Judges, Representatives and Staff.
- 7.3 Both the Agreement and Protocol have been approved by Parliament in accordance with Part 2 of Constitutional Reform and Governance Act 2010.
- 7.4 This Order gives effect to the Protocol on Privileges and Immunities and is required to enable the United Kingdom to ratify the Agreement and Protocol.
- 7.5 It will come into force when the Protocol comes into force. This will be 30 days after the last of France, Germany, Luxembourg and the United Kingdom have deposited their instrument of ratification.
- 7.6 The conferral of legal capacity and immunities and privileges is necessary to enable the Court to function as an international organisation in the United Kingdom.
- 7.7 In order for Her Majesty’s Government to give effect to its obligations under the Protocol it is necessary to make this Order alongside a parallel Order which will be laid before the Scottish Parliament.
- 7.8 This Order:
- Confers the legal capacities of a body corporate on the Court.
 - Provides for immunity from suit and legal process for the Court and its Judges Registrar and Deputy-Registrar. It provides immunity from suit and legal process for representatives and staff of the court while exercising their official functions. This immunity may be waived by the Court. Further, unless they are British nationals, tax may not be levied on the salaries of such persons, nor, where the Court establishes a social security and health system, are they liable for national insurance contributions. Judges of the Court, the Registrar and Deputy-Registrar also enjoy an exemption from duties and taxes on the importation of furniture and effects and the importation of a motor car for personal use.
 - Provides that the Court does not enjoy immunity from suit and legal process in respect of civil actions in connection with respect to contractual liability brought by persons other than the Judges, the Registrar and Deputy-Registrar or the staff of the court and non-contractual liability except where the claim is based on the Court’s jurisprudence or brought against it by a third party for damages arising from a motor vehicle accident.
 - Provides that the archives and premises of the Court are inviolable.
 - Provides that the Court is exempt from all direct taxation in relation to its official activities. This includes:

- relief from non-domestic rates on its premises.
- exemption or relief from duties on the importation of goods for its official purposes and other prohibitions and restrictions on imports or exports of any goods for official purposes.
- relief from car tax, value added tax on goods and services and duties or value added tax on the importation of hydrocarbon oil.

Consolidation

7.9 The Foreign and Commonwealth Office will keep the need for consolidation under review.

8. Consultation outcome

8.1 No external consultation was undertaken as this Order implements the provisions of an international agreement to which the UK is obliged to give effect.

9. Guidance

9.1 No guidance will be issued.

10. Impact

10.1 There is no impact on business, charities or voluntary bodies in the United Kingdom.

10.2 There is no impact on the public sector in the United Kingdom.

10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

11.1 The legislation does not apply to activities that are undertaken by small businesses in the United Kingdom.

12. Monitoring & review

12.1 This Order will be reviewed and amended as appropriate following any modifications to the Protocol by States parties.

13. Contact

13.1 Anna Powick at the Foreign and Commonwealth Office can answer any queries regarding the instrument, by telephone (020 7008 4068) or email (anna.powick@fco.gov.uk).