

EXECUTIVE NOTE

THE INTERNATIONAL ORGANISATIONS (IMMUNITIES AND PRIVILEGES) (SCOTLAND) ORDER 2009 - SSI/DRAFT

The above instrument is proposed to be made in exercise of the powers conferred by **section 1** of the **International Organisations Act 1968 (c.48)**. The instrument is subject to affirmative resolution procedure.

Policy Objectives

The purpose of the instrument is to confer legal immunities and privileges, insofar as this is within devolved competence of the Scottish Parliament, on a number of international organisations of which the United Kingdom is a member and on persons associated with those organisations. This is being done in order to help secure compliance by the United Kingdom with its international obligations and to enable the organisations to operate effectively. The privileges and immunities conferred by the instrument in respect of devolved matters reflect those that have been conferred, or are in the course of being conferred, in relation to the organisations concerned by related orders that are subject to consideration by the UK Parliament as they relate to reserved matters.

The Order confers privileges and immunities in relation to 13 organisations, which are set out in the Schedules to the Order. The privileges and immunities to be conferred by the Order are similar to those commonly referred to as “diplomatic immunity” as set out in the Vienna Convention on Diplomatic Relations 1961 and incorporated into UK law by the Diplomatic Privileges Act 1964, covering matters such as immunity from personal arrest and relief from local taxes (for example, council tax and non-domestic rates): their precise nature and scope vary for each organisation in accordance with the requirements of the relevant international convention or agreement, and are set out in the relevant Schedule.

In some cases, the privileges and immunities now sought to be made would supersede those previously conferred. Article 3 of the Order revokes other UK Orders which have not been revoked insofar as they relate to devolved matters in the relevant UK Orders.

The organisations covered by the Order are set out below.

	Organisation	Description
Schedule 1	International Mobile Satellite Organisation (“IMSO”)	An intergovernmental organization that oversees certain public satellite safety and security communication services provided via the Inmarsat satellites (which provide global mobile satellite services for use on land, at sea and in the air).

Schedule 2	International Telecommunications Satellite Organisation (“ITSO”)	An intergovernmental organization with the mission to ensure that Intelsat, Ltd. provides public telecommunications services, including voice, data and video, on a global and non-discriminatory basis.
Schedule 3	Organisation for Joint Armament Cooperation (“OCCAR”)	Organisation comprising a number of European countries, including the UK, whose aim is to provide more effective and efficient arrangements for the management of certain existing and future collaborative armament programmes.
Schedule 4	International Seabed Authority (“ISA”)	The organization through which States Parties to the UN Convention on the Law of the Sea organize and control activities, especially administration of resources, in the seabed beyond the limits of national jurisdiction.
Schedule 5	European Court of Human Rights	Adjudicates upon complaints of claimed violations of the European Convention for the Protection of Human Rights and Fundamental Freedoms.
Schedule 6	United Nations Educational, Scientific and Cultural Organization (“UNESCO”)	UN body whose aim is to contribute to peace and security by promoting collaboration among nations through education, science and culture in order to further universal respect for justice, for the rule of law and for the human rights and fundamental freedoms which are affirmed for the peoples of the world, without distinction of race, sex, language or religion, by the UN Charter.
Schedule 7	Organisation for the Prohibition of Chemical Weapons (“OPCW”)	Implementing body of the Chemical Weapons Convention. Its mandate is to achieve the object and purpose of the Convention, to ensure the implementation of its provisions, including those for international verification of compliance with it, and to provide a forum for consultation and cooperation among States Parties.

Schedule 8	International Maritime Organisation (“IMO”)	UN agency to develop and maintain a comprehensive regulatory framework for shipping; including safety, environmental concerns, legal matters, technical co-operation, maritime security and the efficiency of shipping.
Schedule 9	Preparatory Commission for the Comprehensive Nuclear-Test-Ban Treaty Organization	Carries out the necessary preparations for effective implementation of the Comprehensive Nuclear-Test-Ban Treaty, and establish a global verification regime to monitor compliance.
Schedule 10	European Police College (“CEPOL”)	An EU agency to bring together senior police officers across Europe to encourage cross-border cooperation in the fight against crime, maintenance of public security and law and order.
Schedule 11	International Tribunal for the Law of the Sea	To adjudicate disputes arising out of the interpretation and application of the United Nations Convention on the Law of the Sea.
Schedule 12	European Organization for Nuclear Research (“CERN”)	To provide for collaboration among European States in nuclear research of a pure scientific and fundamental character.
Schedule 13	International Organization for Migration (“IOM”)	Body to assist in meeting the growing operational challenges of migration management; advance understanding of migration issues; encourage social and economic development through migration; and uphold the human dignity and well-being of migrants.

Section 1 of the International Organisations Act 1968 empowers Her Majesty to make Orders in Council to confer legal personality and/or privileges and immunities on certain international organisations, representatives to those organisations, staff members and experts on missions.

Under the Scotland Act 1998, international relations (including relations with international organisations) is reserved to the Westminster Parliament. However, to the extent that the UK’s obligations in respect of international organisations fall within devolved competence –

for instance, conferral of immunity from criminal and civil proceedings, and relief from local taxes – it has been concluded that the making of orders under section 1 of the 1968 Act to meet those obligations should be subject to procedure in the Scottish Parliament.

That conclusion was based on the terms of paragraph 7(2) of Part I of Schedule 5 to the Scotland Act 1998, under which the observance and implementation of international obligations is a devolved matter. The effect of section 118(4) of the Scotland Act is that a power to make an Order in Council in a pre-commencement enactment (i.e. an Act preceding the Scotland Act) which is exercisable within devolved competence must be approved by a resolution of the Scottish Parliament rather than the UK Parliament. Consequently, Orders in Council made by Her Majesty under section 1 of the 1968 Act, so far as they are within devolved competence, are subject to approval by the Scottish Parliament.

A number of orders under section 1 of the 1968 Act have been made at Westminster after the Scotland Act came into force even though they related in part to devolved matters. Given the conclusion that such orders, in so far as they relate to Scotland and contain devolved provisions, are subject to procedure in the Scottish Parliament, this Order is necessary to provide the immunities and privileges within devolved areas so as to ensure that the UK is observing and implementing its international obligations.

It was felt that it would be unnecessarily cumbersome to have a separate order for each organisation, and so the present instrument covers all of the organisations concerned. Similarly, the existing orders will not be expressly revoked and replaced but will remain in force. The intention is that in future, where the privileges and immunities to be conferred in relation to an international organisation involve both devolved and reserved matters, appropriate separate orders will be made.

Consultation

The instrument has been prepared in consultation with the Foreign and Commonwealth Office and other relevant United Kingdom Government Departments. There has not been any public consultation by the Scottish Government on the instrument, but the UK Government has consulted relevant interests before becoming a member of some of the organisations concerned.

Financial Effects

The instrument has no appreciable financial effects on the Scottish Government, local government or on business.

Scottish Government
December 2008