
DRAFT SCOTTISH STATUTORY INSTRUMENTS

2021 No.

The European Union and European Atomic Energy
Community (Immunities and Privileges) (Scotland) Order 2021

PART 3

Staff Members, Diplomatic Agents and their Family Members

Immunity from jurisdiction

9.—(1) Staff Members who discharge their functions in the United Kingdom enjoy immunity from criminal, civil and administrative jurisdiction in respect of the exercise of their functions within the scope of Official Activities during their appointment to the Delegation.

(2) The immunity provided for in paragraph (1) extends to words written and spoken.

10.—(1) Diplomatic Agents, and their Family Members, have immunity from criminal, civil and administrative jurisdiction including any measures of execution.

(2) The immunity provided for in paragraph (1) does not apply in respect of—

- (a) a real action relating to private immovable property situated in the territory of the United Kingdom, unless held on behalf of the European Union for the purposes of the Delegation,
- (b) an action relating to succession in which the Diplomatic Agent or Family Member is involved as executor, administrator, heir or legatee as a private person and not on behalf of the European Union, or
- (c) an action relating to any professional or commercial activity exercised by the Diplomatic Agent or Family Member outside their Official Activities.

11. No immunity conferred on a person by this Order applies in relation to—

- (a) a road traffic offence, including an alleged road traffic offence, or
- (b) a civil action brought against the person by a third party for damages resulting from an accident caused by a motor vehicle belonging to, or operated by or on behalf of, the person.

The giving of evidence as a witness

12.—(1) Diplomatic Agents and their Family Members are not obliged to give evidence as a witness.

(2) The right conferred by paragraph (1) does not apply in relation to—

- (a) a road traffic offence, including an alleged road traffic offence, or
- (b) a civil action brought against the person by a third party for damages resulting from an accident caused by a motor vehicle belonging to, or operated by or on behalf of, the person.

Inviolability

13.—(1) Staff Members enjoy the like immunity from personal arrest or detention as is accorded to a diplomatic agent under the Diplomatic Privileges Act 1964⁽¹⁾,

(2) The inviolability conferred by paragraph (1) only applies to Staff Members in respect of the exercise of their functions within the scope of Official Activities.

(3) The inviolability conferred by paragraph (1) does not apply in relation to—

- (a) a road traffic offence, including an alleged road traffic offence, or
- (b) a civil action brought against the person by a third party for damages resulting from an accident caused by a motor vehicle belonging to, or operated by or on behalf of, the person.

14. Staff Members enjoy the like inviolability, in respect of papers and correspondence related to their Official Activities, as is accorded to a diplomatic agent under the Diplomatic Privileges Act 1964.

15. Diplomatic Agents enjoy the like inviolability of their residence as is accorded to a diplomatic agent under the Diplomatic Privileges Act 1964.

16.—(1) The personal baggage of Diplomatic Agents and their Family Members is exempt from inspection, unless there are serious grounds for presuming that it contains articles other than those for their personal use or the official use of the Delegation, including articles intended for their establishment, or articles the import or export of which is prohibited by the law of the United Kingdom or controlled by its quarantine regulations.

(2) Such inspection must be conducted only in the presence of the Diplomatic Agent or Family Member concerned, or their authorised representative.

Exemption from export

17.—(1) The furniture and personal effects, including at least one motor vehicle, of a Staff Member where such items are for the personal use of the Staff Member or their Family Members, are exempt from export prohibitions and restrictions on goods on the termination of the Staff Member's functions.

(2) 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⁽²⁾.

(3) The exemption provided for in paragraph (1) is subject to general restrictions applied in the United Kingdom to imports and exports.

Entitlement to benefits

18.—(1) Staff Members are not entitled to any benefits paid in the exercise of functions relating to devolved social security matters from the date of their appointment to the Delegation.

(2) In paragraph (1), “devolved social security matters” means matters which are within the legislative competence of the Scottish Parliament by virtue of exceptions 1 to 10 in Section F1 (social security schemes) of Part 2 of schedule 5 of the Scotland Act 1998⁽³⁾.

(1) 1964 c.81.

(2) 1998 c.46. Section C5 was amended by S.I. 2000/3252 and S.I. 2014/1559.

(3) 1998 c.46. Section F1 was amended by schedule 5 of the Welfare Reform Act 2012 (c.5) and Part 3 of the Scotland Act 2016 (c.11).

Council tax

19. Staff Members who discharge their functions in the United Kingdom are accorded the same relief from council tax, as is accorded to or in respect of the head of a diplomatic mission under the Diplomatic Privileges Act 1964.

British nationals and permanent residents

20.—(1) The privileges and immunities referred to in articles 17, 18 and 19 of this Order do not apply to any Staff Member or Family Member if they are—

- (a) a British citizen, British overseas territories citizen, British Overseas citizen, British National (Overseas), unless they are also a national of a European Union state and not resident in the United Kingdom at the time of notification in accordance with Article 24 of the Agreement, or
- (b) a permanent resident of the United Kingdom.

(2) The privileges and immunities referred to in articles 10 and 12 of this Order do not apply to any Diplomatic Agent or Family Member if they are a British citizen, British overseas territories citizen, British Overseas citizen, British National (Overseas) or permanent resident of the United Kingdom.

(3) The privileges and immunities referred to in articles 15 and 16 do not apply to any Diplomatic Agent or Family Member if they are—

- (a) a British citizen, British overseas territories citizen, British Overseas citizen, British National (Overseas), unless they are also a national of a European Union state and not resident in the United Kingdom at the time of notification in accordance with Article 24 of the Agreement, or
- (b) a permanent resident of the United Kingdom.

Commencement and termination of functions

21.—(1) Every person notified to the Foreign, Commonwealth and Development Office in accordance with Article 24 of the Agreement, and who is entitled to privileges and immunities pursuant to this Order, enjoy such privileges and immunities from the moment they enter the territory of the United Kingdom for the purpose of taking up of functions, or if already in its territory, from the moment when they are so notified.

(2) In respect of Family Members who become entitled to privileges and immunities under this Order under paragraph (1), they enjoy such privileges and immunities from the time the Staff Member, to whose household they belong, becomes entitled to privileges and immunities under paragraph (1).

(3) Subject to paragraph (4), when the functions of a person enjoying privileges and immunities under this Order have come to an end, privileges and immunities cease—

- (a) at the moment when they leave the United Kingdom, or
- (b) on expiry of a reasonable period in which to do so, and subsist until that time, even in case of armed conflict.

(4) Family Members cease to be entitled to privileges and immunities when the privileges and immunities of the Staff Member, to whose household they belong, cease pursuant to paragraph (3).

(5) In case of the death of a Staff Member, Family Members continue to enjoy the privileges and immunities to which they are entitled until the expiry of a reasonable period in which to leave the United Kingdom.

(6) Subject to article 11 of this Order, a person will continue to enjoy immunity with respect to acts performed by such a person in the exercise of their official functions within the scope of Official Activities.