

POLICY NOTE

THE INTERNATIONAL ORGANISATIONS (IMMUNITIES AND PRIVILEGES) (SCOTLAND) AMENDMENT (NO. 2) ORDER 2023

SSI 2023/XXX

The above instrument was made in exercise of the powers conferred by section 1 of the International Organisations Act 1968 (“the 1968 Act”) and all other powers enabling His Majesty to do so. The instrument is subject to affirmative – order in council procedure.

Summary Box

The purpose of this instrument is to amend the International Organisations (Immunities and Privileges) (Scotland) Order 2009 to correct a discrepancy between the provisions of the Agreement on the Privileges and Immunities of the International Atomic Energy Agency 1959 (signed by the UK in 1961) and the International Atomic Energy Agency (Immunities and Privileges) Order 1974, which implemented the Treaty obligations into UK domestic law. This Order corrects that discrepancy for those matters which are within the legislative competence of the Scottish Parliament.

Policy Objectives

1. The UK regularly hosts International Atomic Energy Agency (IAEA) convened events and accepts as the host nation to provide the privileges and immunities set out in the Agreement on the Privileges and Immunities of the International Atomic Energy Agency 1959 (signed by the UK in 1961)
2. Where the 1959 Treaty grants privileges and immunities to representatives of Members attending UK hosted, IAEA convened international symposiums, seminars, or panels, the International Atomic Energy Agency (Immunities and Privileges) Order 1974 only grants privileges and immunities to representatives of Members attending a limited range of UK hosted IAEA convened meetings.
3. The provisions of the 1974 Order therefore need to be amended to enable the United Kingdom to fulfil its obligations to provide privileges and immunities to international delegates attending applicable IAEA convened events hosted in the UK. The International Atomic Energy Agency (Immunities and Privileges) (Amendment) Order (S.I. 2023/845) amended the 1974 Order to correct this discrepancy between the provisions of that Order and the Agreement to the extent the provisions relate to reserved matters as regards Scotland and with the other UK jurisdictions. That amendment also disapplies the provisions of the 1974 Order insofar as they would be within the legislative competence of the Scottish Parliament. This Order therefore restates the provisions of the 1974 Order, as amended to correct the discrepancy, insofar as they would, if included in an Act of the Scottish Parliament, be within the legislative competence of that Parliament. In addition, this Order sets out the meaning of ‘representatives of Members’ as defined in the 1959 Treaty.

Scotland Act

4. Under the Scotland Act 1998, international relations (including relations with international organisations) is reserved to the UK 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 and devolved taxes – the making of orders under section 1 of the 1968 Act to meet those obligations is subject to procedure in the Scottish Parliament, given the terms of paragraph 7(2) of Part I of schedule 5 of the Scotland Act 1998, under which the observance and implementation of international obligations is a devolved matter.
5. The effect of section 118(4) of the Scotland Act 1998 is that a power to make an Order in Council in a pre-commencement enactment (i.e. an Act preceding the Scotland Act 1998) 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 His Majesty under section 1 of the 1968 Act, so far as they are within devolved competence, are subject to approval by the Scottish Parliament.

EU Alignment Consideration

6. This instrument is not relevant to the Scottish Government's policy to maintain alignment with the EU.

Consultation

7. The instrument has been prepared in consultation with the Foreign, Commonwealth and Development Office, the Department for Energy Security & Net Zero and other relevant United Kingdom Government Departments. No external consultation was undertaken as this Order implements provisions of an international agreement to which the United Kingdom is obliged to give effect as a matter of international law. This is consistent with the general practice on Orders made under the 1968 Act.

Impact Assessments

8. No impact assessment has been completed as there is no effect on people other than those to whom the UK Government has afforded privileges and immunities.

Financial Effects

9. The Cabinet Secretary for Justice and Home Affairs confirms that no Business and Regulatory Impact Assessment is necessary as the instrument has no financial effects on the Scottish Government, local government or on business.

Scottish Government
Justice Directorate
September 2023