

POLICY NOTE

THE EUROPEAN UNION AND EUROPEAN ATOMIC ENERGY COMMUNITY (IMMUNITIES AND PRIVILEGES) (SCOTLAND) ORDER 2021

SSI 2021/347

1. The above instrument is proposed to be made in exercise of the powers conferred by sections 4B of the International Organisations Act 1968 and all other powers enabling Her Majesty to do so.

2. **The purpose of this instrument** is to confer immunities and privileges, insofar as they are within devolved competence, upon the Delegation of the European Union and the European Atomic Energy Community (“Euratom”) and their staff members, diplomatic agents and family members.

3. On the United Kingdom’s departure from the European Union (“EU”) and Euratom on 31 January 2020, the European Commission Representation in London became the European Union Delegation to the United Kingdom (“the EU Delegation”). Commission Representations only exist in EU Member States. EU delegations exist in over 140 countries outside the EU around the world. The EU negotiates establishment agreements with the countries in which it has delegations in order to regulate their status, privileges and immunities.
4. The United Kingdom Foreign, Commonwealth and Development Office has negotiated an establishment agreement between the European Union, Euratom and the United Kingdom on the Establishment and the Privileges and Immunities of the EU Delegation to the United Kingdom (“the Agreement”). The Agreement entered into force on 21 July 2021 and is published on the relevant page of UK Treaties Online which can be found at this link: <https://www.gov.uk/uk-treaties>.
5. The EU Delegation will also represent Euratom in the United Kingdom.

Policy Objectives

6. The Agreement obliges the United Kingdom to abide by the terms of the Agreement, and to confer legal capacity and privileges and immunities on the EU Delegation and Euratom and on staff members, diplomatic agents and their respective family members.
7. The draft Order confers such privileges and immunities on the EU Delegation and its staff members, diplomatic agents and their respective family members and reflect those that have been agreed by the parties to the Agreement.
8. This Order deals only with those matters which are within the legislative competence of the Scottish Parliament. The related UK instrument, the European Union and European

Atomic Energy Community (Immunities and Privileges) Order 2021 (S.I. 2021/881), deals with reserved matters as regards Scotland and in respect of other UK jurisdictions.

9. This Order and the parallel UK Order are necessary to give effect to the terms of the Agreement and help secure compliance with international obligations.

Effect of Order

10. This Order implements the privileges and immunities provisions of the Agreement, in respect of matters which are within the legislative competence of the Scottish Parliament. In particular, it accords functional (“official act”) immunity on EU Delegation “staff members” from the criminal, civil and administrative jurisdiction of Scotland. There is a complete carve out from this immunity, as well as inviolability, for any alleged road traffic accidents and offences. The Order also accords immunity from the criminal, civil and administrative jurisdiction of Scotland on those staff members notified to the FCDO as “diplomatic agents”. The same complete carve out is made from this immunity in respect of any alleged road traffic accidents and offences. Certain fiscal exemptions are also provided for the EU Delegation in the exercise of its functions, and for staff members. Reserved matters are dealt with in the parallel UK Order.
11. Part 2 of the Order affords privileges and immunities on the EU Delegation and Euratom. It provides that premises of the Delegation are inviolable and sets out the permissions required to enter the premises under both normal and emergency situations. Part 2 also provides for immunity of Delegation property and assets; inviolability of archives and relief from certain duties and taxes.
12. Part 3 affords staff members, diplomatic agents and their family members with privileges and immunities. Included in these are (so far as relevant) inviolability of residence, papers and correspondence; exemption from giving evidence as a witness; exemption from devolved and local taxes and, while exercising their functions, immunity from personal arrest or detention and from inspection of their personal baggage. Part 3 specifically provides that no immunity will be conferred in relation to road traffic offences and damages caused by a motor vehicle belonging to or driven by these parties and that no privileges and immunities shall apply to British Nationals and permanent residents of the United Kingdom. Part 3 also details when entitlement to privileges and immunities commence and terminate.
13. Part 4 provides for the waiver of privileges and immunities afforded by the Order.
14. Part 5 provides that any rights, powers, liabilities, obligations, restrictions, remedies and procedures under section 4(1) and 7A of the European Union (Withdrawal) Act 2018 and under Protocol 7 of the Treaty on the Functioning of the European Union, as recognised and available under domestic law, cease to apply while a person otherwise benefits from privileges and immunities under the Order.
15. Under the Scotland Act 1998, international relations (including relations with international organisations) is a matter 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 and devolved taxes – the making of orders under section 4B 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. 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 Her Majesty under section 4B of the 1968 Act, so far as they are within devolved competence, are subject to approval by the Scottish Parliament.

Consultation

16. The instrument has been prepared in consultation with the Foreign, Commonwealth and Development Office 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 will be obliged to give effect to as a matter of international law once the Agreement comes into force. This is consistent with the general practice on Orders made under the International Organisations Act 1968.

Impact Assessments

17. No equality 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

18. The Cabinet Secretary for Justice and Veterans confirms that no BRIA is necessary as no financial effects on the Scottish Government, local government or on business are foreseen.

Scottish Government
Justice Directorate
August 2021