

*Draft Order laid before Parliament under section 10(1) of the International Organisations Act 1968,
for approval by resolution of each House of Parliament.*

DRAFT STATUTORY INSTRUMENTS

2021 No. XXX

**INTERNATIONAL IMMUNITIES
AND PRIVILEGES**

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

Made - - - - *****

Coming into force in accordance with article 1(2)

At the Court at Windsor Castle, the ***** day of *****

Present,

The Queen's Most Excellent Majesty in Council

In accordance with section 10(1) of the International Organisations Act 1968(1), a draft of this Order was laid before, and approved by a resolution of, each House of Parliament.

Accordingly, Her Majesty, in exercise of the powers conferred by section 4B(2) of that Act, is pleased, by and with the advice of Her Privy Council, to order as follows:

PART 1

General

Citation, commencement, extent and application

1.—(1) This Order may be cited as the European Union and European Atomic Energy Community (Immunities and Privileges) Order 2021.

(2) This Order comes into force on the day after the day on which it is made, or the day on which the Agreement enters into force for the United Kingdom, whichever is the later.

(1) 1968 c. 48.

(2) Section 4B was inserted by section 5 of the International Organisations Act 2005 (c. 20) and amended by section 27 of the European Union (Future Relationship) Act 2020 (c. 29).

(3) This Order extends to England and Wales, Scotland and Northern Ireland.

(4) In Scotland, articles 3 to 36 of this Order do not apply in so far as they would, if included in an Act of Scottish Parliament, be within the legislative competence of that Parliament.

Interpretation

2. In this Order—

“Agreement” means the Agreement between the European Union, the European Atomic Energy Agency and the United Kingdom of Great Britain and Northern Ireland on the Establishment and the Privileges and Immunities of the Delegation of the European Union to the United Kingdom⁽³⁾;

“Archives” means official correspondence, documents, manuscripts, photographs, films, recordings, computer and media data, and any other similar material belonging to or held by the Delegation, and all other information contained therein on the territory of the United Kingdom;

“Delegation” means the European Union in so far as it and Euratom are represented externally in the United Kingdom in respect of their Official Activities;

“Diplomatic Agent” means, unless the context otherwise requires, the Head of the Delegation and those Staff Members who have been notified to the Foreign, Commonwealth and Development Office in accordance with Article 24 of the Agreement as carrying out diplomatic functions;

“Euratom” means the European Atomic Energy Agency;

“Family Members” means the following persons who form part of a Staff Member’s household in the United Kingdom and have been notified to the Foreign, Commonwealth and Development Office in accordance with Article 24 of the Agreement—

- (a) a spouse or civil partner;
- (b) children under 18 years of age;
- (c) children aged between 18 and up to 25 years of age who are financially dependent on the Staff Member and are in full time education (course duration and attendance as defined by United Kingdom Home Office rules) at an educational establishment registered with the United Kingdom Government;

“Head of Delegation” means the head of the Delegation who has taken up their functions in accordance with Article 3 of the Agreement;

“High Representative” means the High Representative of the Union for Foreign and Security Policy as referred to in Articles 18 and 27 of the Treaty on European Union⁽⁴⁾ and in Council [Decision 2010/427/EU](#) establishing the organisation and functioning of the European Action Service⁽⁵⁾;

“Official Activities” means all activities undertaken by Staff Members representing the European Union and Euratom pursuant to the Treaty on European Union, Treaty on the Functioning of the European Union⁽⁶⁾ and the Treaty establishing the European Atomic Energy Community⁽⁷⁾, as well as the acts adopted thereunder, and in establishing and running the Delegation to fulfil that role;

“Official Correspondence” means all correspondence of the Delegation relating to its Official Activities;

(3) The Agreement will be published on the relevant page on UK Treaties Online which can be found at this link <http://www.gov.uk/uk-treaties>.

(4) OJ No. C 326, 26.10.2012, pp.13-390.

(5) OJ No. L 201, 3.8.2010, pp.30-40.

(6) OJ No. C 326, 26.10.2012, pp.47-390.

(7) OJ No. C 327, 26.10.2012, pp.1-107.

“Premises” means the building(s), parts of building(s) and land or facilities ancillary thereto, including installations owned, made available to, maintained, occupied or used by the Delegation in the United Kingdom on a permanent or temporary basis, in order to carry out its Official Activities, subject as necessary to the Secretary of State consent;

“Staff Members” means the Head of Delegation, the Diplomatic Agents and the other members of the staff of the Delegation, who have been appointed by the European Union and notified to the Foreign Commonwealth and Development Office in accordance with Article 24 of the Agreement.

PART 2

The European Union and Euratom

Legal personality

3. The European Union and Euratom shall each have the legal capacities of a body corporate.

Immunity from jurisdiction

4. Within the scope of the Delegation’s Official Activities, the European Union and Euratom shall have immunity from criminal, civil and administrative jurisdiction in the United Kingdom.

Inviolability of the premises

- 5.—(1) The Premises shall be inviolable.

(2) Any person having the authority to enter any place under any legal provision shall not exercise that authority in respect of the Premises unless permission to do so has been given by the Head of Delegation or by another designated Staff Member acting on behalf of the Head of the Delegation.

(3) For the purpose of paragraph (2), permission may be presumed in the event of fire or other emergencies requiring prompt protective action.

(4) Any person who has entered the Premises with the presumed permission of the Head of Delegation or other designated Staff Member shall, if so requested by the Head of Delegation or other designated Staff Member, leave the Premises immediately.

Inviolability of archives

6. The Archives of the Delegation shall be inviolable.

Immunity of property

7. The property and assets of the Delegation, wheresoever located in the United Kingdom and by whomsoever held, shall be immune from search, requisition, confiscation, expropriation and any other form of interference or taking or foreclosure by executive or legislative action.

Taxes and duty

8. The Delegation shall be exempt from all direct taxation on its assets, property, income, gains, operations and transactions, except in respect of charges for necessary public services, including fire protection and street lighting.

9. The Delegation shall have relief under arrangements made by the Commissioners for Her Majesty’s Revenue and Customs by way of refund on value added tax paid on the purchase of any

goods or services which are of substantial value and which are used for official purposes of the Delegation and which are strictly necessary for the exercise of the Delegation's Official Activities.

10. The Delegation shall have relief under arrangements made by the Commissioners for Her Majesty's Revenue and Customs by way of refund on insurance premium tax, paid in the course of activities in pursuit of the Delegation's official purposes and which activities are strictly necessary for the exercise of the Delegation's Official Activities.

11. The Delegation shall have relief under arrangements made by the Commissioners for Her Majesty's Revenue and Customs by way of refund of duty (whether customs or excise) paid on imported hydrocarbon oil (within the meaning of the Hydrocarbon Oil Duties Act 1979⁽⁸⁾) or value added tax paid on the importation of such oil which is bought in the United Kingdom and which is used for the official purposes of the Delegation, and which is strictly necessary for its Official Activities.

12.—(1) The Delegation shall have relief under arrangements made by the Commissioners for Her Majesty's Revenue and Customs from all import and export duties and taxes and from all import or export prohibitions and restrictions on goods (including publications), materials and equipment imported or exported by the Delegation, which are necessary for the exercise of its Official Activities.

(2) If the Delegation sells or gives away the goods, materials or equipment imported with relief from duties and taxes under the terms of paragraph (1), it shall provide the Commissioners for Her Majesty's Revenue and Customs with the respective import declarations and pay the applicable taxes and duties.

(3) In paragraph (2) the value of the goods, materials or equipment to be declared is the value of such goods, materials and equipment at the time of their disposal.

13. The exemptions and reliefs granted in articles 8 to 12 of this Order are to be subject to compliance with such conditions as the Commissioners for Her Majesty's Revenue and Customs may prescribe for the protection of the Revenue.

PART 3

Staff Members, Diplomatic Agents and their Family Members

Immunity from jurisdiction

14.—(1) Staff Members who discharge their functions in the United Kingdom shall 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) shall extend to words written and spoken.

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

(2) The immunity provided for in paragraph (1) shall 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

(8) 1979 c. 5.

(c) an action relating to any professional or commercial activity exercised by the Diplomatic Agent or Family Member outside their Official Activities.

16. 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

17.—(1) Diplomatic Agents and their Family Members shall not be obliged to give evidence as a witness.

(2) The right conferred by paragraph (1) shall 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

18.—(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⁽⁹⁾;

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

(3) The inviolability conferred by paragraph (1) shall 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.

19. 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.

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

21.—(1) The personal baggage of Diplomatic Agents and their Family Members shall be 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 shall be conducted only in the presence of the Diplomatic Agent or Family Member concerned, or their authorised representative.

Immigration

22. Staff Members who discharge their functions in the United Kingdom, together with their Family Members, shall be exempt from any provision of the Immigration Act 1971⁽¹⁰⁾ relating to those who are not patrial except any provision relating to deportation.

⁽⁹⁾ 1964 c. 81.

⁽¹⁰⁾ 1971 c. 77.

Relief from Duties

23.—(1) At the time of taking up their appointment, a Staff Member shall have relief from customs duties on the importation of furniture and personal effects, including at least one motor vehicle, that such items are for the personal use of the Staff Member or their Family Members. They shall also have the right to export such furniture and personal effects on the terminations of the Staff Member's functions.

(2) The right to relief provided for in paragraph (1) is subject to the conditions governing the disposal of goods imported into the United Kingdom under relief and to general restrictions applied in the United Kingdom to imports and exports.

24. In addition to the relief granted in article 23 of this Order, Diplomatic Agents and their Family Members shall have relief from duties (whether of customs or excise) and taxes, and related charges other than charges for storage, cartage and similar services, on the importation of articles for his or her personal use, including articles intended for their establishment.

Income Tax

25. Provided that the persons concerned are liable to pay tax for the benefit of the European Union on their salaries and emoluments paid to them by the European Union, Staff Members shall be exempt from national taxation on salaries and emoluments paid by the European Union.

Compulsory contributions

26.—(1) Staff Members shall be exempt with respect to their employment with the Delegation from all compulsory contributions to domestic social security bodies.

(2) Staff Members shall not be entitled to any benefits paid by domestic social security bodies from the date of their appointment to the Delegation.

Capital Gains Tax

27. Diplomatic Agents and their Family Members shall be exempt from capital gains tax, except in respect of such tax imposed in respect of—

- (a) immovable property not occupied by them as a principal residence; and
- (b) investments in commercial undertakings in the United Kingdom.

Council Tax

28. Staff Members who discharge their functions in the United Kingdom shall be 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.

Motor vehicles

29. Diplomatic Agents and their Family Members shall have relief from motor vehicle tax and Value Added Tax in respect of the purchase of new motor vehicles, under arrangements made by the Commissioners for Her Majesty's Revenue and Customs.

Relief in respect of oil

30. Diplomatic Agents and their Family Members shall have relief under arrangements made by the Commissioners for Her Majesty's Revenue and Customs by way of refund of duty (whether customs or excise) paid on imported hydrocarbon oil (within the meaning of the Hydrocarbon Oil

Duties Act 1979) or value added tax paid on the importation of such oil which is bought in the United Kingdom by or on behalf of the Diplomatic Agent or their Family Member.

Relief from VAT for the Head of Delegation

31. Unless they are a British nationals or permanent residents of the United Kingdom, the Head of Delegation will have relief from value added tax on the supply of fine quality goods of United Kingdom manufacture purchased on a substantial scale for the furnishing of their principal residence as is accorded by the United Kingdom to or in respect of the head of a diplomatic mission.

British Nationals and Permanent Residents

32.—(1) The privileges and immunities referred to in article 22 of this Order shall not apply to any Staff Member or Family Member if they are a British citizen, British overseas territories citizen, British Overseas citizen, British National (Overseas) or a permanent resident of the United Kingdom.

(2) The privileges and immunities referred to in articles 23, 25, 26 and 28 of this Order shall 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 there 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.

(3) The privileges and immunities referred to in articles 15 and 17 of this Order shall 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.

(4) The privileges and immunities referred to in articles 20, 21, 24, 27, 29 and 30 of this Order shall 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 UK 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

33.—(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 shall 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 shall 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 shall 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 shall 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 shall 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 16 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.

PART 4

Waiver

34.—(1) The privileges and immunities provided for in this Order may be waived by the European Union upon request from the relevant United Kingdom authorities, whose request will be transmitted by the Foreign, Commonwealth and Development Office to the Delegation.

(2) A waiver under paragraph (1) must be express.

(3) The initiation of proceedings by any person enjoying immunity pursuant to this Order shall preclude them from invoking immunity from jurisdiction in respect of any counterclaim directly connected with the principal claim.

(4) Waiver of immunity from jurisdiction in respect of civil or administrative proceedings shall not be held to imply waiver of immunity in respect of the execution of the judgement, for which a separate waiver shall be necessary.

PART 5

Cessation and Saving of Retained EU Rights

35. Subject to article 36 of this Order, any rights, powers, liabilities, obligations, restrictions, remedies and procedures which—

(a) continue by virtue of sections 4(1) or 7A of the European Union (Withdrawal) Act 2018⁽¹¹⁾; and

(b) are derived from Articles 10, 11, 12 and 13 of Protocol (No 7) on the privileges and immunities of the European Union attached to the Treaty on the Functioning of the European Union;

which would, but for this article, accrue to or apply to a person to whom this Order applies, cease to be recognised and available in domestic law (and to be enforced, allowed and followed accordingly), in respect of such persons, from the time the person enjoys privileges and immunities under this Order until the time specified in articles 33(3)(a), 33(3)(b), 33(4), or 33(5) of this Order.

36. Nothing in article 35 of this Order shall affect any right to immunity derived from Articles 10 or 11(a) of Protocol 7 of the Treaty on the Functioning of the European Union, which is recognised and available in domestic law, with respect to acts performed by a person in their official capacity prior to the time the person began to enjoy privileges and immunities under this Order.

⁽¹¹⁾ 2018 c. 16. Section 4 is amended, and section 7A added, by the European Union (Withdrawal Agreement) Act 2020 (c. 1).

Name
Clerk of the Privy Council

EXPLANATORY NOTE

(This note is not part of the Order)

This Order gives effect to the Agreement between the European Union, the European Atomic Energy Agency and the United Kingdom of Great Britain and Northern Ireland on the Establishment and the Privileges and Immunities of the Delegation of the European Union to the United Kingdom will be published on the relevant page on UK Treaties Online which can be found at this link <http://www.gov.uk/uk-treaties>. This Order will enable Her Majesty's Government to give effect to that Agreement.

This Order confers legal capacity on the European Union and the European Atomic Energy Community ("Euratom"), and grants immunities and privileges to the European Union, its staff members and their family members.

Part 1 provides for commencement and application of the Order.

Part 2 confers legal capacity on the Delegation and Euratom and affords them with privileges and immunities.

Part 3 affords Staff Members and their Family Members with privileges and immunities.

Part 4 provides for waiver of privileges and immunities afforded by the Order.

Part 5 provides that certain rights 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.

An impact assessment has not been produced for this Order as no, or no significant, impact is foreseen on the private, voluntary or public sectors in the United Kingdom.