

Delegated Powers and Law Reform Committee
Tuesday, 30th April 2024
14th Meeting, 2024 (Session 6)

Instrument Responses

International Organisations (Immunities and Privileges) (Scotland) Amendment Order 2024 (SSI 2024/Draft)

On Friday 19th April, the Committee asked the Scottish Government:

Schedule 15 - European Organisation for Astronomical Research in the Southern Hemisphere

1 The Explanatory Note states that:

“Article 2(5) of this Order amends paragraph 7 to ensure that, if the Director General or person appointed to act instead of the Director General of the Organisation has a form of British nationality, that person will benefit from immunity from suit and legal process in respect of official acts (not including motor vehicle offences or damage), from exemption from devolved or local taxes on emoluments received as an officer of the Organisation, and from exemptions relating to social security.”

Substituted paragraphs 7(5) to 7(7) state that:

- (5) *Subject to sub-paragraphs (6) and (7), sub-paragraph (1)(a) to (c) does not apply to any person who is a British citizen, British overseas territories citizen, British Overseas citizen, British National (Overseas) or permanent resident of the United Kingdom.*”

- (6) *Sub-paragraph (1)(a)(i) [immunity from suit and legal process] applies to any person who is a British citizen, British overseas territories citizen, British Overseas citizen, British National (Overseas) or permanent resident of the United Kingdom, in respect of things done or omitted to be done by them in the course of performance of official duties, except in the case of motor traffic offences committed by them or of damage caused by a motor vehicle belonging to or driven by them.*

- (7) *Sub-paragraph (1)(a)(iii) [exemption or relief from devolved or local taxes] applies to any person who is a British citizen, British overseas territories citizen, British Overseas citizen, British National (Overseas) or permanent resident of the United Kingdom only in respect of exemption from devolved or local taxes on emoluments received as an officer of the Organisation, provided that nothing in this sub-paragraph is to be interpreted as precluding such emoluments from being taken into account for the purposes of assessing the amount of taxation to be applied to income from other sources..*

Accordingly, paragraphs 7(6) and 7(7) provide for benefits from immunity from suit and legal process and exemption from devolved or local taxes if the Director

General or person appointed to act instead of the Director General of the Organisation has a form of British nationality but do not provide for exemptions relating to social security – sub paragraph 7(1)(c).

Could an explanation be provided for what appears to be a discrepancy between the instrument and the Explanatory Note?

2 The Explanatory Note states that:

“Article 2(6) of this Order amends paragraph 8 to provide that any officer of the Organisation (other than an officer falling within paragraph 7 (high officers)) who has a form of British nationality will benefit from immunity from suit and legal process in respect of official acts, from exemption from devolved or local taxes in respect of emoluments received as an officer of the Organisation, and from exemptions relating to social security.”

Substituted paragraph 8(1) states:

..... the members of staff of the Organisation, other than high officers to whom paragraph 7 applies, enjoy—

(a) immunity from suit and legal process in respect of things done or omitted to be done by them in the course of performance of official duties, except in the case of motor traffic offences committed by them or of damage caused by a motor vehicle belonging to or driven by them,

(b) exemption from devolved or local taxes in respect of emoluments received as an officer or servant of the Organisation, provided that nothing in this paragraph is to be interpreted as precluding such emoluments from being taken into account for the purposes of assessing the amount of taxation to be applied to income from other sources,

(c) exemptions whereby for the purposes of the enactments relating to social security.....

In comparing previous versions of paragraph 8 this amendment provides that any officer of any nationality, and not just any officer who has a form of British nationality, will now benefit from (b) exemption from devolved or local taxes and (c) exemptions relating to social security as well continuing to benefit from (a) immunity from suit and legal process. Officers who have a form of British nationality have benefitted from (a) immunity from suit and legal process in line with officers of any other nationality since 14 December 2017.

Could an explanation be provided for what appears to be a discrepancy between the instrument and the Explanatory Note?

3 Please confirm whether any corrective action is proposed, and if so, what action and when.

On Tuesday 23rd April, the Scottish Government responded:

On the first question, there is an incorrect cross reference in article 2(5) of the Order which substituted new paragraph 7 of schedule 15 of the International Organisations (Immunities and Privileges) (Scotland) Order 2009. The cross-reference in new paragraph 7(5) should not include a reference to sub-paragraph (c).

As a result, the draft Order has omitted to provide for a Director General, or a person acting in their place, who has a form of British nationality to benefit from exemptions relating to devolved social security. This omission will have little practical effect as it only applies to 2 potential individuals (the Director General and anyone acting in their place if they have a form of British nationality), because carrying on their official duties in Scotland is likely to be infrequent, and because there are currently no examples of the types of contributory social security benefits covered by paragraph 7 in the devolved social security system. The Scottish Government intends to rectify the omission at the earliest opportunity, which is anticipated to be in the autumn of this year as a further Privileges and Immunities Order is anticipated.

On the second question, the penultimate paragraph of the Explanatory Note is incorrect. As the Explanatory Note is not part of the instrument, it is the intention to correct the text as a minor obvious error.

We thank the Committee for bringing these errors to the Government's attention.