

Criminal Justice Committee  
Wednesday 15 May 2024  
18th Meeting, 2024 (Session 6)

## Note by the Clerk on the International Organisations (Immunities and Privileges) (Scotland) Amendment Order 2024 (SSI/Draft)

### Overview

1. At this meeting, the Committee will take evidence from the Cabinet Secretary for Justice and Home Affairs and her officials on the International Organisations (Immunities and Privileges) (Scotland) Amendment Order 2024 before debating a motion in the name of the Cabinet Secretary inviting the Committee to recommend approval of the instrument.
2. This is a draft Scottish Statutory Instrument (SSI), which requires approval by resolution of the Parliament before it can become law. More information about the instrument is summarised below:

**Title of instrument:** [International Organisations \(Immunities and Privileges\) \(Scotland\) Amendment Order 2024](#) (SSI/Draft)

**Laid under:** [International Organisations Act 1968](#) (s1 and s10(3))

**Laid on:** 3 April 2024

**Procedure:** Affirmative

**Lead committee to report by:** 24 May 2024

**Commencement:** If approved, the Order contained in this instrument comes into force on the day after the day on which it is made.

### Procedure

3. Under the affirmative procedure, an instrument must be laid in draft and cannot be made (or come into force) unless it is approved by resolution of the Parliament.
4. Once laid, the instrument is referred to:
  - the Delegated Powers and Law Reform (DPLR) Committee, for scrutiny on various technical grounds, and
  - a lead committee, whose remit includes the subject-matter of the instrument, for scrutiny on policy grounds.
6. The lead committee, taking account of any recommendations made by the DPLR Committee (or any other committee), must report within 40 days of the instrument being laid.

7. The normal practice is to have two agenda items when an affirmative instrument is considered by the lead committee:
  - an evidence session with the Minister and officials, followed by
  - a formal debate on a motion, lodged by the Minister, inviting the lead committee to recommend approval of the instrument.
8. Only MSPs may participate in the debate, which may not last for more than 90 minutes. If there is a division on the motion, only committee members may vote. If the motion is agreed to, it is for the Chamber to decide, at a later date, whether to approve the instrument

## Delegated Powers and Law Reform Committee consideration

9. The DPLR Committee considered the instrument on 30 April and reported on it in its [Subordinate Legislation Considered by the Delegated Powers and Law Reform Committee on 30 April](#)
10. The DPLR Committee made various recommendations to the Parliament in relation to the instrument. These are set out in **Annexe B** of this paper.

## Purpose of the instrument

11. The purpose of this instrument is twofold.
12. Firstly to amend the International Organisations (Immunities and Privileges) (Scotland) Order 2009 by adding a new schedule 1B to give effect to the obligations relating to immunities and privileges contained within the agreement between the United Kingdom and the European Space Agency concerning the European Space Agency's Sites and Facilities in the United Kingdom signed on 13 June 2013.
13. Secondly, to amend schedule 15 of the International Organisations (Immunities and Privileges) (Scotland) Order 2009 to fully reflect the provisions contained within the Protocol on the privileges and immunities of the European Organisation for Astronomical Research in the Southern Hemisphere. This Order deals only with those matters which are within the legislative competence of the Scottish Parliament.
14. The Policy Note accompanying the instrument is included in **Annexe A**. It includes a summary of consultation undertaken on the instrument, impact assessments carried out, and the anticipated financial effects.

## Report

15. Following today's proceedings, a draft report will be prepared by the clerks.
16. **As the reporting deadline falls before the Committee's next meeting when this could be looked at, the Committee is asked to delegate to the Convener**

**CJ/S6/24/18/2**

**authority to approve a short, factual report on the instrument for publication.**

**Clerks to the Committee  
May 2024**

## **Annexe A: Scottish Government Policy Note**

The International Organisations (Immunities And Privileges) (Scotland) Amendment Order 2024 SSI 2024/Draft is made in exercise of the powers conferred by section 1 and section 10(3) of the International Organisations Act 1968 and all other powers enabling His Majesty to do so.

The instrument is subject to affirmative – order in council procedure.

### **Policy Objectives**

#### **European Space Agency (“ESA”)**

1. The European Space Agency (Immunities and Privileges) Order 1978 (“the 1978 Order”) implements Annex I of the Convention for the Establishment of a European Space Agency, which entered into force on 30 October 1980.
2. An Agreement between the United Kingdom and the ESA concerning the ESA’s Sites and Facilities in the United Kingdom signed on 13 June 2013 provides for the establishment and operation of an Agency Centre at Harwell Science and Innovation

#### **Campus in the United Kingdom.**

3. The European Organisation for Astronomical Research in the Southern Hemisphere and the European Space Agency (Immunities and Privileges) (Amendment) Order 2018 (“the 2018 Order”) was intended to enable His Majesty’s Government to give effect to its obligations relating to privileges and immunities under the Agreement.
4. However, the 2018 Order failed to correctly reflect the status of the Agency’s Head of the Harwell Centre as a high officer or provide that up to seven high-ranking officials in addition to the Director General and the Head of the Harwell Centre are high officers with limited privileges and immunities.
5. Due to these discrepancies being identified, the Scottish Government did not elect to take forward an equivalent order in 2018 for those matters which are within the legislative competence of the Scottish Parliament.
6. Reduced capacity, primarily as a result of emergency work required to deal with the Covid pandemic delayed the resolution of these issues. However, His Majesty’s Government has now taken corrective action through the European Organisation for Astronomical Research in the Southern Hemisphere and the European Space Agency (Immunities and Privileges) (Amendment) Order 2024. This Order takes forward equivalent action for those matters which are within the legislative competence of the Scottish Parliament.
7. The Order amends the International Organisations (Immunities and Privileges) (Scotland) Order 2009 to insert a new schedule 1B to restate the provisions of the 1978 Order, as amended by the European Organisation for Astronomical Research in the Southern Hemisphere and the European Space Agency (Immunities and Privileges) (Amendment) Order 2018 (itself as amended by the European Organisation for Astronomical Research in the Southern Hemisphere and the European Space Agency (Immunities and Privileges) (Amendment) Order 2024)

insofar as they would, if included in an Act of the Scottish Parliament, be within the legislative competence of that Parliament.

8. Schedule 1B includes the Head of Harwell Centre as a high officer. It also provides that up to 7 high-ranking officials, in addition to the Director General and the Head of the Harwell Centre, are high officers but limits their immunities and privileges.

9. In addition it provides that all officers are exempt from social security contributions.

### **European Organisation for Astronomical Research in the Southern Hemisphere (ESO).**

10. Schedule 15 of the 2009 Order was added by the International Organisations (Immunities and Privileges) (Scotland) Amendment Order 2010 to implement the Protocol on the privileges and immunities of the ESO which entered into force for the UK on 25th September 2012 (“the Protocol”). It provides privileges and immunities to the ESO and to its representatives and members of staff.

11. Subsequently His Majesty’s Government have identified discrepancies between the Protocol and the corresponding privileges and immunities orders. This Order corrects those discrepancies for those matters which are within the legislative competence of the Scottish Parliament.

12. Paragraphs 7 and 8 of schedule 15 make provision for privileges and immunities conferred by the Protocol on the officers of the ESO.

13. This Order amends paragraph 7 to ensure that, if the Director General or person appointed to act instead of the Director General of the ESO 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 ESO, and from exemptions relating to social security.

14. This Order amends paragraph 8 to provide that any officer of the ESO (other than 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 ESO, and from exemptions relating to social security.

15. Article 3 of this Order revokes the provisions of the 1978 Order so far as they apply in or regards Scotland.

### **Scotland Act**

16. 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.

17. 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**

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

### **Consultation**

19. 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**

20. 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**

21. 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  
April 2024

## **Annexe B: Instrument drawn to the attention of the Parliament by the Delegated Powers and Law Reform Committee**

1. This draft instrument is made under the powers in section 1 of the International Organisations Act 1968, which enables His Majesty to make Orders in Council to confer privileges and immunities on certain international organisations, its representatives and members of staff.
2. This Order amends the International Organisations (Immunities and Privileges) (Scotland) Order 2009 (“the 2009 Order”) by:
  - adding a new schedule 1B to give effect to the obligations relating to immunities and privileges in the Agreement between the United Kingdom and the European Space Agency concerning the European Space Agency’s Sites and Facilities in the United Kingdom; and
  - amending schedule 15 to reflect the provisions contained within the Protocol on the privileges and immunities of the European Organisation for Astronomical Research in the Southern Hemisphere.
3. In [correspondence with the Scottish Government](#), the Committee queried discrepancies between the instrument and the Explanatory Note in respect of:
  1. **the Director General’s, or the person appointed to act instead of the Director General’s, entitlement to benefit from exemptions relating to social security; and**
  2. **the immunities and benefits afforded to other officers, and not just to officers with a form of British nationality.**
4. In its [response](#), the Scottish Government explains that the draft instrument has omitted to provide for the Director General’s, or the person appointed to act instead of the Director General’s, entitlement to benefit from exemptions relating to social security; and that they intend to rectify this at the earliest opportunity.
5. **The Committee draws the instrument to the attention of the Parliament on reporting ground (i) – defective drafting – on the basis that new paragraph 7 of schedule 15 of the International Organisations (Immunities and Privileges) (Scotland) Order 2009 (substituted by article 2(5) of the instrument) does not operate as the policy intended in that a Director General, or a person acting in their place, who has a form of British nationality, does not benefit from exemptions relating to social security as is intended.**
6. **The Committee welcomed that the Scottish Government intends to rectify the error at the earliest opportunity, which is anticipated to be in the autumn of this year.**
7. The Scottish Government acknowledged that the Explanatory Note is incorrect in suggesting that the instrument affords immunities and benefits only to officers who have British nationality. It advised that it intends to correct the text of the Explanatory Note.

- 8. The Committee draws the instrument to the attention of the Parliament on the general reporting ground, in respect of an error contained in the Explanatory Note.**
- 9. The Committee is content with the Scottish Government's proposal to correct the text of the Explanatory Note.**