

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

DRAFT SCOTTISH STATUTORY INSTRUMENTS

2021 No.

INTERNATIONAL IMMUNITIES AND PRIVILEGES

EXITING THE EUROPEAN UNION

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

Made - - - - 2021

Coming into force - - 2021

At the Court at Windsor Castle, the day of October 2021

Present,

The Queen's Most Excellent Majesty in Council

This Order is made in exercise of the powers conferred by section 4B of the International Organisations Act 1968(a) and all other powers enabling Her Majesty to do so.

In accordance with section 10(1) of that Act, a draft of this instrument has been laid before and approved by resolution of the Scottish Parliament(b).

Accordingly, Her Majesty is pleased, by and with the advice of Her Privy Council, to order as follows.

(a) 1968 c.48. 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).

(b) The function of approving a draft of an Order in Council under section 10 of that Act has transferred to the Scottish Parliament under section 118 of the Scotland Act 1998 (c.46) in so far as the function is exercisable within devolved competence. Section 118(4) of that Act provides that any reference in a pre-commencement enactment to a requirement for a draft instrument to be approved by either or both Houses of Parliament (as specified in section 118(2)) is to be taken to be, in relation to the exercise of a devolved function by a person other than a Minister of the Crown, a member of the Scottish Government or a Scottish public authority with mixed functions or no reserved functions, a reference to the Scottish Parliament. Section 118(4) accordingly includes the powers exercisable by Her Majesty in Council.

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) (Scotland) Order 2021.

(2) This Order comes into force on the day after the day on which it is made.

(3) This Order extends to Scotland only.

(4) This Order applies only to the extent that the immunities and privileges conferred by it are not conferred by any other enactment.

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^(a),

“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 Community,

“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,

“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^(b) and the Treaty establishing the European Atomic Energy Community^(c), 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,

“Premises” means the buildings, parts of buildings and land or facilities ancillary thereto, including installations owned, made available to, maintained, occupied or used by the

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

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

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

Delegation on a permanent or temporary basis, in order to carry out its Official Activities, subject as necessary to the Secretary of State's consent, and

“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

Immunity from jurisdiction

3. Within the scope of the Delegation's Official Activities, the European Union and Euratom have immunity from criminal, civil and administrative jurisdiction.

Inviolability of premises

4.—(1) The Premises are inviolable.

(2) Any person having the authority to enter any place under any legal provision must 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 must, if so requested by the Head of Delegation or other designated Staff Member, leave the Premises immediately.

Inviolability of archives

5.—(1) The Archives of the Delegation are inviolable.

(2) In paragraph (1), “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.

Immunity of property

6. The property and assets of the Delegation, wherever they are located in Scotland and by whoever they are held, are immune from search, requisition, confiscation, expropriation and any other form of interference or taking or foreclosure by executive or legislative action.

Taxes and duties

7.—(1) The Delegation is, within the scope of their Official Activities, exempt from all direct devolved and local taxes on its assets, property, income, gains, operations and transactions, except in respect of charges for necessary public services, including fire protection and street lighting.

(2) In paragraph (1), “devolved and local taxes” means devolved taxes and local taxes to fund local authority expenditure (within the meaning of the exceptions to Section A1 (fiscal, economic and monetary policy) of Part 2 of schedule 5 of the Scotland Act 1998(a)).

(a) 1998 c.46. The exception for devolved taxes was added by section 23(5) of the Scotland Act 2012 (c.11).

8.—(1) The Delegation is exempt 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) Paragraph (1) does not apply as respects the matters reserved by virtue of Section C5 (import and export control) of Part 2 of schedule 5 of the Scotland Act 1998(a).

PART 3

Staff Members, Diplomatic Agents and their Family Members

Immunity from jurisdiction

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

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

(2) The immunity provided for in paragraph (1) does 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
- (c) an action relating to any professional or commercial activity exercised by the Diplomatic Agent or Family Member outside their Official Activities.

11. 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

12.—(1) Diplomatic Agents and their Family Members are not obliged to give evidence as a witness.

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

13.—(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(b),

(a) 1998 c.46. Section C5 was amended by S.I. 2000/3252 and S.I. 2014/1559.

(b) 1964 c.81.

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

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

14. 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.

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

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

Exemption from export

17.—(1) The furniture and personal effects, including at least one motor vehicle, of a Staff Member where such items are for the personal use of the Staff Member or their Family Members, are exempt from export prohibitions and restrictions on goods on the termination of the Staff Member's functions.

(2) Paragraph (1) does not apply as respects the matters reserved by virtue of Section C5 (import and export control) of Part 2 of schedule 5 of the Scotland Act 1998(a).

(3) The exemption provided for in paragraph (1) is subject to general restrictions applied in the United Kingdom to imports and exports.

Entitlement to benefits

18.—(1) Staff Members are not entitled to any benefits paid in the exercise of functions relating to devolved social security matters from the date of their appointment to the Delegation.

(2) In paragraph (1), “devolved social security matters” means matters which are within the legislative competence of the Scottish Parliament by virtue of exceptions 1 to 10 in Section F1 (social security schemes) of Part 2 of schedule 5 of the Scotland Act 1998(b).

Council tax

19. Staff Members who discharge their functions in the United Kingdom are 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.

British nationals and permanent residents

20.—(1) The privileges and immunities referred to in articles 17, 18 and 19 of this Order do not apply to any Staff Member or Family Member if they are—

(a) 1998 c.46. Section C5 was amended by S.I. 2000/3252 and S.I. 2014/1559.

(b) 1998 c.46. Section F1 was amended by schedule 5 of the Welfare Reform Act 2012 (c.5) and Part 3 of the Scotland Act 2016 (c.11).

(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 United Kingdom at the time of notification in accordance with Article 24 of the Agreement, or

(b) a permanent resident of the United Kingdom.

(2) The privileges and immunities referred to in articles 10 and 12 of this Order do 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.

(3) The privileges and immunities referred to in articles 15 and 16 do 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 United Kingdom 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

21.—(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, 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 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 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 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 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 11 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

22.—(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 precludes 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 is not be held to imply waiver of immunity in respect of the execution of the judgement, for which a separate waiver is necessary.

PART 5

Cessation and saving of retained EU rights

23. Subject to article 24 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(a), 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(b),

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 21(3)(a), 21(3)(b), 21(4), or 21(5) of this Order.

24. Nothing in article 23 of this Order affects 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.

Name
Clerk of the Privy Council

(a) 2018 c.16. Section 4 is amended, and section 7A added, by sections 25(3)(a) and 5, respectively, of the European Union (Withdrawal Agreement) Act 2020 (c.1).
(b) OJ No. C 326, 26.10.2012, pp.47-390.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order confers immunities and privileges, insofar as they are within devolved competence, upon the Delegation of the European Union and the European Atomic Energy Agency (“Euratom”) and their Staff Members, Diplomatic Agents and their Family Members.

It 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. The Agreement is published on the relevant page on UK Treaties Online which can be found at this link <http://www.gov.uk/uk-treaties>. This Order should be read together with the European Union and European Atomic Energy Community (Immunities and Privileges) Order 2021 (S.I. 2021/881) which confers additional immunities and privileges.

Part 1 provides for the commencement, extent and application of the Order.

Part 2 affords the Delegation and Euratom privileges and immunities.

Part 3 affords Staff Members and their Family Members 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.

© Crown copyright 2021

Printed and published in the UK by The Stationery Office Limited under the authority and superintendence of Jeff James, the Queen’s Printer for Scotland.

£6.90

<http://www.legislation.gov.uk/id/sdsi/2021/9780111050903>

ISBN 978-0-11-105090-3



9 780111 050903