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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

2023 No.

INTERNATIONAL IMMUNITIES AND PRIVILEGES

The International Organisations (Immunities and Privileges) (Scotland) Amendment (No. 2) Order 2023

Made - - - - *****

Coming into force in accordance with article 1(2)

At the Court at Buckingham Palace, the ***** day of *****

Present,

The King's Most Excellent Majesty in Council

This Order is made in exercise of the powers conferred by section 1 of the International Organisations Act 1968(1) (“the 1968 Act”) and all other powers enabling His Majesty to do so.

In accordance with section 10(1) of the 1968 Act, a draft of this instrument has been laid before and approved by resolution of the Scottish Parliament(2).

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

Citation and commencement

1.—(1) This Order may be cited as the International Organisations (Immunities and Privileges) (Scotland) Amendment (No. 2) Order 2023.

(1) 1968 c. 48. Section 1 was amended by section 1 of the International Organisations Act 1981 (c. 9), and S.I. 2005/3542.
(2) 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 a reference to the Scottish Parliament, 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. Section 118(4) accordingly includes the powers exercisable by His Majesty in Council.

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

Amendment of the International Organisations (Immunities and Privileges) (Scotland) Order 2009

2.—(1) The International Organisations (Immunities and Privileges) (Scotland) Order 2009⁽³⁾ is amended as follows.

(2) After schedule 1 (International Mobile Satellite Organisation), insert schedule 1A (International Atomic Energy Agency) set out in the schedule of this Order.

Name
Clerk of the Privy Council

⁽³⁾ S.S.I. 2009/44 as amended by S.S.I. 2010/186, S.S.I. 2015/421, S.S.I. 2017/431, S.S.I. 2017/447, S.S.I. 2020/322, S.S.I. 2021/69, S.S.I. 2022/374 and S.S.I. 2023/208.

SCHEDULE

Article 2(2)

“SCHEDULE 1A

INTERNATIONAL ATOMIC ENERGY AGENCY

Interpretation

1. In this schedule—

“the 1961 Convention Articles” means the Articles (being certain Articles of the Vienna Convention on Diplomatic Relations signed in 1961) which are set out in schedule 1 of the Diplomatic Privileges Act 1964⁽⁴⁾,

“the Agency” means the International Atomic Energy Agency,

“devolved or local taxes” means any devolved taxes or 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),

“the Statute of the Agency” means the Statute of the International Atomic Energy Agency which was approved on 26 October 1956 by the Conference on the Statute of the Agency⁽⁵⁾.

The Agency

2.—(1) Subject to sub-paragraph (2), except in so far as in any particular case it has expressly waived its immunity, the Agency has immunity from suit and legal process.

(2) No waiver of immunity will be deemed to extend to any measure of execution.

Inviolability of archives and premises

3. The official archives and premises of the Agency has the like inviolability as, in accordance with the 1961 Convention Articles, is accorded in respect of official archives and premises of a diplomatic mission.

Taxes

4. The Agency—

(a) has the like relief from non-domestic rates on the premises of the Agency as, in accordance with Article 23 of the 1961 Convention Articles, is accorded in respect of the premises of a diplomatic mission, and

(b) is otherwise, exempt from all devolved or local taxes as is accorded to a foreign sovereign Power.

Customs treatment

5.—(1) The Agency is exempt from all prohibitions and restrictions on the importation or exportation of goods imported or exported by the Agency for its official use and in the case of any publications of the Agency imported or exported by it.

(2) Sub-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.

⁽⁴⁾ 1964 c. 81. Schedule 1 was amended by the Diplomatic and Consular Premises Act 1987 (c. 46).

⁽⁵⁾ The Statute of the International Atomic Energy Agency came into force on 29 July 1957. It has been subsequently amended. The amended text can be found at The Statute of the IAEA | IAEA.

Representatives of members

6.—(1) Except in so far as in any particular case any privilege or immunity is waived by the government of the member which they represent, representatives of members on the Board of Governors and at meetings of the General Conference, at any international conference, symposium, seminar or panel convened by the Agency and on any organ, committee or other subordinate body of the Agency (including any sub-committee or other subordinate body of a subordinate body) enjoy—

- (a) immunity from suit and legal process in respect of things done or omitted to be done by them in their official capacity,
- (b) while exercising their functions and during their journeys to and from the place of meeting, the like immunity from personal arrest or detention and from seizure of their personal baggage and the like inviolability for all papers and documents as is accorded a diplomatic agent, and
- (c) while exercising their functions and during journeys to and from the place of meeting, the like exemptions and privileges in respect of their personal baggage as in accordance with Article 36 of the 1961 Convention Articles are accorded to a diplomatic agent.

(2) Where the incidence of any form of devolved or local taxes depends upon residence, a representative is not deemed to be resident in the United Kingdom during any period when the representative is present in the United Kingdom for the discharge of their duties.

(3) Part 4 (privileges and immunities of official staffs and of families of representatives, high officers and official staffs) of schedule 1 (privileges and immunities) of the 1968 Act does not operate so as to confer any privilege or immunity on—

- (a) the official staff of a representative other than alternates, advisers, technical experts and secretaries of delegations, or
- (b) the family of a representative or of a member of the official staff of a representative.

(4) Neither the provisions of this paragraph nor those of Part 4 of schedule 1 of the 1968 Act operate so as to confer any privilege or immunity on any person as the representative of the United Kingdom or as a member of the official staff of such a representative or on any person who is a British citizen, a British overseas territories citizen, a British Overseas citizen or a British National (Overseas) or who is a permanent resident of the United Kingdom.

(5) In this paragraph, “representatives of members” means all governors of the Agency’s Board of Governors and representatives, alternates, advisers, technical experts and secretaries of delegations, and references to “representative” is to be construed accordingly.

High Officers

7.—(1) Except in so far as in any particular case any privilege or immunity is waived by the Agency, and subject to the provisions of sub-paragraph (2), the Director General of the Agency, including any officer acting on behalf of the Director General during an absence from duty, and any Deputy Director General or officer of equivalent rank enjoys—

- (a) the like immunity from suit and legal process, the like inviolability of residence and the like exemption or relief from devolved or local taxes, other than customs duties and taxes on the importation of goods, and rates as are accorded to or in respect of a diplomatic agent,
- (b) the like exemption and privileges in respect of their personal baggage as in accordance with paragraph 2 of Article 38 of the 1961 Convention Articles are accorded to a diplomatic agent,
- (c) exemptions whereby, for the purposes of the enactments relating to social security—

- (i) services rendered for the Agency by the officer are deemed to be excepted from any class of employment in respect of which contributions or premiums under those enactments are payable, but
- (ii) no person is to be rendered liable to pay any contribution or premium which that person would not be required to pay if those services were not deemed to be so excepted.

(2) Sub-paragraph (1)(c) does not apply as respects the matters reserved by virtue of Head F (social security) of Part 2 of schedule 5 of the Scotland Act 1998.

(3) This paragraph does not apply to any person who is a British citizen, a British overseas territories citizen, a British Overseas citizen or a British National (Overseas) or who is a permanent resident of the United Kingdom.

(4) Part 4 of schedule 1 of the 1968 Act does not operate so as to confer any privilege or immunity on any member of the family of any officer to whom this paragraph applies other than the officer's spouse and minor children.

Officers

8.—(1) Except in so far as in any particular case any privilege or immunity is waived by the Agency, officers of the Agency (other than those who are locally recruited and assigned to hourly rates of pay) enjoy—

- (a) immunity from suit and legal process in respect of things done or omitted to be done by them in their official capacity, and
- (b) exemption from income tax in respect of emoluments received by them as officers of the Agency.

(2) Sub-paragraph (1)(b) does not apply as respects matters reserved by virtue of Section A1 (fiscal, economic and monetary policy) of Part 2 of schedule 5 of the Scotland Act 1998.

Experts

9. Except in so far as in any particular case any immunity or privilege is waived by the Agency, experts (other than officers of the Agency) serving on committees of the Agency or performing missions for the Agency, including missions as inspectors under Article XII of the Statute of the Agency or as project examiners under Article XI of that Statute enjoy—

- (a) immunity from suit and legal process in respect of things done or omitted to be done by them in the performance of their official functions,
- (b) while exercising their functions and during their journeys in connection with service on such committees or missions, the like immunity from personal arrest or detention and from seizure of their personal baggage and the like inviolability for all papers and documents accorded to a diplomatic agent, and
- (c) while exercising their functions and during journeys in connection with service on such committees or missions, the like exemptions and privileges in respect of their personal baggage as in accordance with Article 36 of the 1961 Convention Articles are accorded to a diplomatic agent.”

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends the International Organisations (Immunities and Privileges) (Scotland) Order 2009 (“the 2009 Order”) to restate provisions of the International Atomic Energy (Immunities and Privileges) Order 1974 (S.I. 1974/1256), as amended, (“the IAEA Order”) insofar as they would, if included in an Act of the Scottish Parliament, be within the legislative competence of that Parliament.

The IAEA Order implements the Agreement on the Privileges and Immunities of the International Atomic Energy Agency (“the IAEA”) (Cmnd. 1675), approved by the Board of Governors of the IAEA on 1st July 1959 (“the Agreement”). The International Atomic Energy Agency (Immunities and Privileges) (Amendment) Order (S.I. 2023/845) amended the IAEA Order to correct a discrepancy between the provisions of that Order and the Agreement. That amendment also disapplies those provisions insofar as they would be within the legislative competence of the Scottish Parliament.

In addition to restating those provisions of the IAEA Order, this Order corrects the same discrepancy by ensuring that representatives of members benefit from the privileges and immunities conferred by the Agreement when attending meetings of any international conference, symposium, seminar or panel convened by the IAEA. The definition of representatives of members in Article 1, section 1(iii) of the Agreement is inserted (paragraph 6(5) of schedule 1A).

This Order should be read with the IAEA Order, which applies across the UK and confers additional immunities and privileges.