

*Draft Order in Council laid before the Scottish Parliament under section 10(1) of the International Organisations Act 1968 for approval by resolution of the Scottish Parliament.
This draft Order replaces the draft Order laid on 12th February 2010 and published on 22nd February 2010 and is being issued free of charge to all known recipients of that draft.*

DRAFT SCOTTISH STATUTORY INSTRUMENTS

2010 No.

**INTERNATIONAL IMMUNITIES
AND PRIVILEGES**

**The International Organisations (Immunities and
Privileges) (Scotland) Amendment Order 2010**

Made - - - - 2010

Coming into force in accordance with article 1

At the Court at Buckingham Palace, the day of
Present,
The Queen's Most Excellent Majesty in Council

This Order is made in exercise of the powers conferred by section 1(2) of the International Organisations Act 1968(1) 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(2).

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

Citation and commencement

1. This Order may be cited as the International Organisations (Immunities and Privileges) (Scotland) Amendment Order 2010 and comes into force on the day after the day it is made.

(1) 1968 c.48; section 1 was amended by the International Organisations Act 1981 (c.9), section 1 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, in relation to the exercise of a devolved function by a person other than a Minister of the Crown, a member of the Scottish Executive 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.

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

2. In the International Organisations (Immunities and Privileges) (Scotland) Order 2009⁽³⁾—
- (a) in Schedule 6 (UNESCO⁽⁴⁾), in paragraph 7(1) (high and other officials)—
 - (i) omit “and” after paragraph (b); and
 - (ii) at the end of paragraph (c) insert—
 - “; and
 - (d) 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 as is accorded to a diplomatic agent”.
 - (b) after Schedule 13, insert Schedule 14 (European Union Military Staff) set out in Schedule 1 to this Order; and
 - (c) after Schedule 14, insert Schedule 15 (European Organisation for Astronomical Research in the Southern Hemisphere) set out in Schedule 2 to this Order.

Date

Name
Clerk of the Privy Council

⁽³⁾ S.S.I. 2009/44.

⁽⁴⁾ The United Nations Educational, Scientific and Cultural Organisation, of which the United Kingdom is a member.

SCHEDULE 1

Article 2(b)

“SCHEDULE 14

Article 2

EUROPEAN UNION MILITARY STAFF

General

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 to the Diplomatic Privileges Act 1964⁽⁵⁾;

“the Agreement” means the Agreement between the Member States of the European Union concerning the status of military and civilian staff seconded to the institutions of the European Union, of the headquarters and forces which may be made available to the European Union in the context of the preparation and execution of the tasks referred to in Article 17(2) of the Treaty on European Union, including exercises, and of the military and civilian staff of the Member States put at the disposal of the European Union to act in this context⁽⁶⁾;

“the EUMS” means the Military Staff of the European Union, established under the Council Decision of 22nd January 2001 on the establishment of the Military Staff of the European Union, which forms part of the General Secretariat of the Council of the European Union;

“experts” means persons who are military or civilian staff seconded to the European Union institutions in accordance with Article 1 of the Agreement;

“the Organisation” means the European Union established under Article 1 of the Treaty on European Union 1992; and

“the Treaty on European Union” means the Treaty on European Union signed at Maastricht on 7th February 1992 (as amended by the Treaty of Lisbon Amending the Treaty on European Union and the Treaty Establishing the European Community signed at Lisbon on 13th December 2007)⁽⁷⁾.

Experts

2. Except in so far as in any particular case any immunity or privilege is waived under Article 8(3) of the Agreement, experts shall enjoy immunity from suit and legal process, in respect of things done or omitted to be done in the course of the performance of official duties, even after their secondment to the European Union institutions has ceased.

The Organisation

3. The Organisation shall have the like inviolability of official archives as, in accordance with the 1961 Convention Articles, is accorded in respect of the official archives of a diplomatic mission, where the official archives are kept in premises used by the EUMS or are in the possession of a properly authorised member of the EUMS.”

(5) 1964. c.81.

(6) The EU Status of Forces Agreement was signed by representatives of the governments of the Member States of the European Union on 17th November 2003. It is published at O.J. No. C321, 31.12.2003, p.6.

(7) A consolidated version of the Treaty of Union is published at O.J. No. C115, 9.5.2008, p.13. The Lisbon Treaty is published at O.J. No. C306, 17.12.2007, p.1.

SCHEDULE 2

Article 2(c)

“SCHEDULE 15

Article 2

EUROPEAN ORGANISATION FOR ASTRONOMICAL
RESEARCH IN THE SOUTHERN HEMISPHERE

General

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 to the Diplomatic Privileges Act 1964;

“the Convention” means the Convention establishing a European Organisation for Astronomical Research in the Southern Hemisphere done at Paris on 5th October 1962⁽⁸⁾;

“the Organisation” means the European Organisation for Astronomical Research in the Southern Hemisphere; and

“the Protocol” means the Multilateral Protocol on the Privileges and Immunities of the European Organisation for Astronomical Research in the Southern Hemisphere done at Paris on 12th July 1974⁽⁹⁾.

The Organisation

2.—(1) Within the scope of its official purposes, the Organisation shall enjoy immunity from suit and legal process except—

- (a) to the extent that the Director-General of the Organisation, or the person acting in the stead of the Director-General as provided for by Article VI of the Convention, shall have expressly waived such immunity in a particular case;
- (b) in respect of a civil action by a third party for damage arising from an accident caused by a motor vehicle belonging to, or operated on behalf of, the Organisation, or in respect of a motor traffic offence involving such a vehicle;
- (c) in respect of the enforcement of an arbitration award made under either Article 23 or Article 24 of the Protocol;
- (d) in respect of an attachment for debt of the wages of a member of the Organisation’s staff, provided that such attachment is the result of a final and enforceable judicial decision; and
- (e) in respect of a counter-claim relating directly to the principal claim brought by the Organisation.

(2) Sub-paragraph (1) of this paragraph shall not prevent the taking of such measures as may be permitted by law in relation to the property and assets of the Organisation in so far as they may be temporarily necessary in connection with the prevention of, and investigation into, accidents involving motor vehicles belonging to or operated on behalf of the Organisation.

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

⁽⁸⁾ Cm. 5767.

⁽⁹⁾ United Nations, Treaty Series, vol 1001, No 14697.

4. Within the scope of its official purposes, the Organisation shall have the like relief from non-domestic rates as, in accordance with Article 23 of the 1961 Convention Articles, is accorded in respect of the premises of a diplomatic mission.

5.—(1) The Organisation shall have exemption from prohibitions and restrictions on importation or exportation in the case of goods imported or exported by the Organisation for the exercise of its official purposes and in the case of any publication of the Organisation imported or exported by it.

(2) Sub-paragraph (1) shall not apply as respects the matters reserved by virtue of Section C5 (import and export control) of Part II of Schedule 5 to the Scotland Act 1998(10).

Representatives

6.—(1) Except in so far as in any particular case such immunity or privilege is waived by the Government of the member which they represent, representatives of members of the Organisation shall enjoy—

- (a) immunity from suit and legal process in respect of acts performed by them, including words spoken or written, in the exercise of their functions, and within the limits of their authority, except in the case of motor traffic offences committed by them or damage caused by motor vehicles belonging to or driven by them; and
- (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 as is accorded to a diplomatic agent, unless they are apprehended in the act of committing an offence in which case the competent authorities shall immediately inform the Director-General of the Organisation, or the representative of the Director-General, of any seizure of their personal baggage.

(2) Part IV of Schedule 1 to the 1968 Act shall not operate so as to confer any immunity or privilege on any member of the family or any member of the official staff of a representative.

(3) Neither the preceding sub-paragraphs nor Part IV of Schedule 1 to the 1968 Act shall operate so as to confer any immunity or privilege on—

- (a) persons as the representatives or as members of the official staff of such representatives, of Her Majesty's Government in the United Kingdom; or
- (b) any person who is a British citizen, a British overseas territories citizen, a British Overseas citizen or a British National (Overseas).

Officers

High Officers

7.—(1) Except in so far as in any particular case any immunity or privilege is waived by the Council of the Organisation, the Director-General of the Organisation, and the person appointed to act in the stead of the Director-General in accordance with Article VI of the Convention, shall enjoy—

- (a) the like immunity from suit and legal process as is accorded to or in respect of the head of a diplomatic mission;
- (b) the like inviolability of residence as is accorded to or in respect of the head of a diplomatic mission;

(10) 1998 c.46. Section C5 was amended by S.I. 2000/3252.

- (c) the like exemption or relief from local taxes (as described in the exception in Section A1 of Part II of Schedule 5 to the Scotland Act 1998) as is accorded to or in respect of the head of a diplomatic mission; and
- (d) 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 as is accorded to a diplomatic agent.

(2) Part IV of Schedule 1 to the 1968 Act shall not operate so as to confer any immunity or privilege on the families of the officers to whom this Article applies, except to the extent that members of families of such officers forming part of their households shall enjoy immunity from suit and legal process.

All Other Officers

8.—(1) Except in so far as in any particular case any immunity or privilege is waived by the Director-General of the Organisation, or the person appointed to act in the stead of the Director-General in accordance with Article VI of the Convention, the members of staff of the Organisation, other than high officers to whom paragraph 7 applies shall enjoy 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.

(2) This paragraph shall 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.

(3) Part IV of Schedule 1 to the 1968 Act shall not operate so as to confer any immunity or privilege on the families of the officers to whom this Article applies, except to the extent that members of families of such officers forming part of their households shall enjoy immunity from suit and legal process to the extent enjoyed by such officers under sub-paragraph (1).”

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends the International Organisations (Immunities and Privileges) (Scotland) Order 2009 to confer privileges and immunities, insofar as they are within devolved competence, on European Union Military Staff and the European Organisation for Astronomical Research in the Southern Hemisphere. The United Kingdom is a member of these organisations.

Article 2 amends the 2009 Order to include a provision on the personal baggage of high and other officials of UNESCO in Schedule 6.

Article 2 amends the 2009 Order to insert Schedules 14 and 15 into that Order. Those Schedules make provision about immunities and privileges for the purposes of the persons and organisations to which those Schedules relate. These immunities and privileges are conferred in accordance with the international obligations agreed under the European Union Status of Forces Agreement and between the Government of the United Kingdom and the European Organisation for Astronomical Research in the Southern Hemisphere.

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Draft Legislation: *This is a draft item of legislation. This draft has since been made as a Scottish Statutory Instrument: The International Organisations (Immunities and Privileges) (Scotland) Amendment Order 2010 No. 186*