19 April 2017

Dear Margaret,

I undertook to provide the Committee with some further explanation in relation to some points which arose during my evidence to the Committee on 18 April on the draft International Organisations (Immunities and Privileges) (Scotland) Amendment Order 2017 which is subject to affirmative procedure.

These were:

The taxes in relation to which relevant persons may have an exemption under the instrument; and

The number of people domiciled in Scotland potentially affected by the instrument.

By “the instrument” I am taking this to be reference to the principal instrument – the International Organisations (Immunities and Privileges) (Scotland) Order 2009 – as it is proposed to be amended by the draft International Organisations (Immunities and Privileges) (Scotland) Amendment Order 2017. The relevant part of the principal instrument is schedule 15 and I set out in the Annex to this letter how the amended text of schedule 15 will look. The sole provision relevant to taxation (paragraph 7(1)(c)) is emboldened.

The nature of the reserved/devolved divide means that where the UK Government enters into an international agreement which requires pan-UK compliance, the Scottish Government must take an Order in Council through the Scottish Parliament for the devolved matters in Scotland (which of course do not include reserved taxation). The Scottish Government has therefore produced (in the instruments referred to) the required secondary legislation to give effect to the UK’s international obligations as regards devolved matters in Scotland. Equivalent provision for reserved matters, and devolved matters in the rest of the UK, has been conferred by legislation at Westminster. The equivalent UK Order was laid in Westminster on 22 February.

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The taxes in relation to which relevant persons may have an exemption under the instrument

The privileges and immunities to which ESO and its staff are entitled are set out in the 1974 Protocol on the Privileges and Immunities of the European Organisation for Astronomical Research in the Southern Hemisphere (otherwise known as the European Southern Observatory or ESO)\(^1\).

Article 15 of the Protocol entitles High Officers of the Organisation, i.e. the Director-General and a person appointed to act in the stead of the Director-General, to enjoy during their term of office the privileges and immunities to which diplomatic agents of comparable rank are entitled under the 1961 Vienna Convention on Diplomatic Relations. These are (so far as relevant) inviolability of residence, exemption from taxes and, while exercising their functions (and during their journeys to and from the place of meeting), immunity from personal arrest or detention and from seizure of their personal baggage.

Article 22 of the Protocol provides that a State which is party to the Protocol is not obliged to extend the privileges and immunities referred to in article 15 to its own nationals or to persons permanently resident in its territory. Article 15 has already been implemented as regards taxation by paragraph 7(1)(c) of schedule 15 of the International Organisations (Immunities and Privileges) (Scotland) Order 2009 which confers the like exemption or relief from local taxes in Scotland as is accorded to or in respect of the head of a diplomatic mission. What the new instrument does (via new paragraph 7(4) implementing article 22) is to ensure that this local tax exemption 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. In other words, the Order debated by the Justice Committee narrows rather than extends existing tax exemption.

Articles 18 and 19 make further provision for tax and officials of the ESO. But it is not within the legislative competence of the Scottish Parliament to confer any exemptions for them therefore this is a matter for the the European Organization for Astronomical Research in the Southern Hemisphere (Immunities and Privileges) Order 2009 as it is proposed to be amended by the draft European Organization for Astronomical Research in the Southern Hemisphere (Immunities and Privileges) (Amendment) Order 2017. Scottish Income Tax is an element of UK reserved Income Tax therefore this is not, for the purposes of the reserved/devolved divide, a devolved tax.

The number of people domiciled in Scotland potentially affected by the instrument.

There are 20 full time equivalent staff at the Royal Observatory Edinburgh (around 40 to 50 staff in total) who may potentially be entitled to privileges and immunities under Westminster legislation because of their work for ESO, but only in respect of that work. As mentioned, the only tax exemption that is specifically Scottish is the local tax exemption which would only be applicable to the Director General of the ESO. The present office-holder is not domiciled in Scotland.

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I hope this explanation is helpful.

ANNABELLE EWING
Schedule 15 of the International Organisations (Immunities and Privileges) (Scotland) Order 2009 as proposed to be amended by the draft International Organisations (Immunities and Privileges) (Scotland) Amendment Order 2017

SCHEDULE 15

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;

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


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.

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.

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;

(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.

(3) Sub-paragraph (1)(a) 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 things done or omitted to be done by them in the course of performance of official duties, except in the case of motor vehicle offences committed by them or damage caused by a motor vehicle belonging to or driven by them.

(4) Sub-paragraphs (1)(b) to (d) do 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.

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).