

Criminal Justice Committee

29th Meeting, 2022 (Session 6), Wednesday, 23 November 2022

Subordinate legislation

Note by the clerk

Purpose of the paper

1. This paper invites the Committee to consider the following affirmative instrument:
 - [The International Organisations \(Immunities and Privileges\) \(Scotland\) Amendment Order 2022 \[draft\]](#)

Introduction

2. The above instrument is proposed to be made in exercise of the powers conferred by sections 1 of the International Organisations Act 1968.
3. **The purpose of the instrument is to confer legal privileges and immunities on The Inter-American Investment Corporation (IIC), and on persons associated with that organisation, so far as this is within devolved competence of the Scottish Parliament.**
4. The privileges and immunities conferred by the instrument in respect of devolved matters reflect those that have been conferred, or are in the course of being conferred, in relation to the IIC by a related order that is subject to consideration by the UK Parliament as it relates to reserved matters.
5. This is being done to help secure compliance by the United Kingdom with its international obligations and to enable the organisations to operate effectively.
6. Further details on the purpose of the instrument can be found in the policy note attached in the **Annex**.

Delegated Powers and Law Reform Committee Consideration

7. The Delegated Powers and Law Reform Committee considered the instrument at its meeting on 25 October 2022. The DPLR Committee agreed that it did not need to draw it to the attention of the Parliament on any grounds within its remit.

Criminal Justice Committee Consideration

8. **The Committee is required to report to the Parliament by 2 December 2022.**
9. Motion S6M-06291 has been lodged proposing that the Committee recommends approval of the instrument. The Cabinet Secretary for Justice and Veterans is due to attend the meeting on 23 November to answer any questions on the instrument and to move the motion for approval.
10. **It is for the Committee to decide whether to agree to the motion, and then to report to the Parliament. Thereafter, the Parliament will be invited to approve the instrument based on the Committee's recommendation.**
11. **The Committee is asked to delegate to the Convener authority to approve the report on the instrument for publication.**

**Clerks to the Committee
November 2022**

Annex

Policy Note

The International Organisations (Immunities and Privileges) (Scotland) Amendment Order 2022

SSI 2022/XXX

The above instrument is proposed to be made in exercise of the powers conferred by sections 1 of the International Organisations Act 1968. The instrument is subject to affirmative resolution procedure.

Summary

The purpose of the instrument is to confer legal privileges and immunities on The Inter-American Investment Corporation (IIC), and on persons associated with that organisation, so far as this is within devolved competence of the Scottish Parliament.

Policy Objectives

The privileges and immunities conferred by the instrument in respect of devolved matters reflect those that have been conferred, or are in the course of being conferred, in relation to the IIC by a related order that is subject to consideration by the UK Parliament as it relates to reserved matters.

This is being done in order to help secure compliance by the United Kingdom with its international obligations and to enable the organisations to operate effectively.

Effect of Order

The Inter-American Development Bank (IDB) is a Multilateral Development Bank which provides development finance to countries across Latin America and the Caribbean. The IIC is the main private sector arm of the Inter-America Development Bank Group (“the Bank”), which comprises the Bank which lends to governments and the IIC. The Agreement establishing it as part of the Bank was signed by 45 countries in the mid-1980s not including the UK. The IIC was officially inaugurated on 23rd March 1986.

In 2015, the UK was part of a unanimous vote of the Bank's shareholders to merge all the Bank's private sector operations into a single entity, the IIC. This took effect in January 2016, formalised by the Agreement signed by members who were providing new capital at that time. The UK opted to join as part of an agreed capital transfer from the Bank to the IIC which started in 2018 and will span 8 years. The transfer of 431 UK shares valued at US\$6.981 million over a period of 8 years will ultimately give the UK a 0.22% shareholding in the IIC. The IIC currently provides around \$6bn of annual finance to businesses within Latin America, with a focus on small-and-medium-sized enterprises. Once the UK becomes a member of IIC, we will be able to work with other shareholders and the Bank to influence the allocation of this finance to align with UK priorities.

The Agreement was signed by the UK and IIC in April 2018 and presented to Parliament the following July (Cm. 9659) and can now be ratified.

The conferral of legal capacity and privileges and immunities as set out in the Agreement is necessary to ensure that the IIC can function as an international organisation in the United Kingdom.

The Order grants the IIC immunity from suit and legal process within the scope of its official activities, inviolability of archives and premises and exemption from devolved taxation. It also grants personal privileges to the IIC's officers and employees - immunity from legal process with respect to official acts and exemption from devolved or local taxes. This tax exemption does not apply to British citizens.

Article VII of the Agreement requires members to take such action as is necessary to make effective in its own territories the principles set out in that Article. This Order is required to ensure that the UK fully complies with its obligations under the Agreement, and the immunities and privileges granted are no greater in extent than those required to fulfil these obligations. It is standard practice for the UK to confer privileges and immunities on multi-lateral development banks and other international organisations of which it is a member.

The P&Is to be conferred by the Order reflect those in the equivalent UK order. The amendments to the 1990 Order will exclude various classes of British citizens and permanent residents from the provisions in the Order.

Section 1 of the International Organisations Act 1968 empowers His Majesty to make Orders in Council to confer legal personality and/or privileges and immunities on certain international organisations, representatives to those organisations, staff members and experts on missions.

Under the Scotland Act 1998, international relations (including relations with international organisations) is reserved to the Westminster 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 taxes – the making of orders under section 1 of the 1968 Act to meet those obligations should be subject to procedure in the Scottish Parliament.

That conclusion was based on the terms of paragraph 7(2) of Part I of Schedule 5 to the Scotland Act 1998, under which the observance and implementation of international obligations is a devolved matter. The effect of section 118(4) of the Scotland Act is that a power to make an Order in Council in a pre-commencement enactment (i.e. an Act preceding the Scotland Act) 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.

The International Organisations (Immunities and Privileges) (Scotland) Order 2009 provided the immunities and privileges within devolved areas so as to ensure that the UK is observing and implementing its international obligations. The intention was that, where the privileges and immunities to be conferred in relation to an international organisation involve both devolved and reserved matters, appropriate separate orders will be made. This Order does that in respect of the IIC.

Consultation

The instrument has been prepared in consultation with the Foreign and Commonwealth Office and other relevant United Kingdom Government Departments.

Impact Assessments

No equality 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

The Minister for Community Safety confirms that no BRIA is necessary as no financial effects on the Scottish Government, local government or on business are foreseen.

Scottish Government
Justice Directorate
October 2022