

Criminal Justice Committee

**4th Meeting, 2021 (Session 6), Wednesday,
15 September 2021**

Subordinate legislation

Note by the clerk

Purpose of the paper

1. This paper invites the Committee to consider the following affirmative instruments:
 - [The Conference of the Parties to the United Nations Framework Convention on Climate Change \(Immunities and Privileges\) \(Scotland\) Order 2021 \[draft\]](#)
 - [The European Union and European Atomic Energy Community \(Immunities and Privileges\) \(Scotland\) Order 2021 \[draft\]](#)

The Conference of the Parties to the United Nations Framework Convention on Climate Change (Immunities and Privileges) (Scotland) Order 2021 [draft]

2. The above instrument is proposed to be made in exercise of the powers conferred by sections and 5A of the International Organisations Act 1968.
3. The purpose of the Order is to confer immunities and privileges, insofar as they are within devolved competence, in relation to the Conference of the Parties to the United Nations Framework Convention on Climate Change (“the COP”). The Conference of the Parties to the UNFCCC (“the COP”) is an organisation of which the United Kingdom and another sovereign Power are members.
4. The Order gives relevant people immunity from suit and legal process except where immunity is expressly waived by the respective party. It provides for immunity from suit and legal process in respect of things done or omitted to be done by these people while exercising their official functions in connection with

the Glasgow Conference and during their journeys to and from the Glasgow Conference, and also provides for immunity from personal arrest or detention. It also provides exemptions and privileges in respect of their personal baggage, any private residence used by the representative in connection with the Glasgow Conference and exemption or relief from taxes and rates (other than customs and excise duties, car tax and value added tax).

The European Union and European Atomic Energy Community (Immunities and Privileges) (Scotland) Order 2021 [draft]

5. The above instrument is proposed to be made in exercise of the powers conferred by sections 4B of the International Organisations Act 1968.
6. The purpose of the Order is to confer immunities and privileges, insofar as they are within devolved competence, upon the Delegation of the European Union and the European Atomic Energy Community (“Euratom”) and their staff members, diplomatic agents and family members.
7. Further details on the purpose of each of the instruments can be found in the policy notes attached in the Annex.

Delegated Powers and Law Reform Committee Consideration

8. The Delegated Powers and Law Reform Committee considered the instruments at its meeting on 31 August 2021. The DPLR Committee agreed that it did not need to draw either of them to the attention of the Parliament on any grounds within its remit.

Criminal Justice Committee Consideration

9. The orders have been drafted in consultation with the UK Government and require to be considered by the Privy Council in the week commencing 4 October. **The Committee is, therefore, required to report to the Parliament by 22 September 2021.**

CJ/S6/21/4/1

10. Motions S6M-00926 and S6M-00931 have been lodged proposing that the Committee recommends approval of the instruments. The Minister for Community Safety is due to attend the meeting on 15 September to answer any questions on the instruments and to move the motions for approval.
11. **It is for the Committee to decide whether or not to agree to the motions, and then to report to the Parliament. Thereafter, the Parliament will be invited to approve the instruments.**
12. **The Committee is asked to delegate to the Convener authority to approve short, factual reports on the instruments for publication.**

Clerks to the Committee
10 September 2021

POLICY NOTE
THE CONFERENCE OF THE PARTIES TO THE UNITED NATIONS FRAMEWORK
CONVENTION ON CLIMATE CHANGE (IMMUNITIES AND PRIVILEGES)
(SCOTLAND) ORDER 2021
SSI 2021/

1. The above instrument is proposed to be made in exercise of the powers conferred by sections 1 and 5A of the International Organisations Act 1968 and all other powers enabling Her Majesty to do so.

2. **The purpose of this instrument** is to confer immunities and privileges, insofar as they are within devolved competence, in relation to the Conference of the Parties to the United Nations Framework Convention on Climate Change (“the COP”). The Conference of the Parties to the UNFCCC (“the COP”) is an organisation of which the United Kingdom and another sovereign Power are members.

3. These privileges and immunities are conferred, insofar as they are within devolved competence, in accordance with a Host Country Agreement (CP 454), which has been negotiated between Her Majesty’s Government and the UNFCCC secretariat (as defined in article 2 of the Order). This Order will give effect to that Agreement. The date on which the Host Country Agreement enters into force for the United Kingdom will be published on the relevant page of UK Treaties Online which can be found at this link: <https://www.gov.uk/uktreaties>.

Policy Objectives

4. The Host Country Agreement (“the HCA”) obliges the United Kingdom to abide by the terms of the Agreement including the Protocol on Privileges and Immunities of the COP, and to confer legal capacity and privileges and immunities on the COP and on specified categories of individuals connected with the COP.

5. The privileges and immunities conferred by the Order reflect those that have been agreed by Her Majesty’s Government and the UNFCCC secretariat

6. The Order deals only with those matters which are within the legislative competence of the Scottish Parliament. There is a related instrument, which deals with reserved matters as regards Scotland and with other UK jurisdictions, that is subject to consideration by the UK Parliament.

7. This Order and the parallel UK Order are necessary to give effect to the terms of the HCA and secure compliance with international obligations.

Effect of Order

8. This Order implements the Protocol on Privileges and Immunities of the COP, in respect of matters which are within the legislative competence of the Scottish Parliament. Privileges and Immunities are conferred on representatives of UNFCCC members and other representatives in attendance at the 26th Conference of the

Parties to the United Nations Framework Convention on Climate Change to be held in Glasgow between 31st October and 12th November 2021. This includes the 16th session of the Conference of the Parties serving as the meeting of the Parties to the Kyoto Protocol, the third session of the Conference of the Parties serving as the meeting of the Parties to the Paris Agreement, and all pre-sessional and other additional meetings convened in the United Kingdom in connection with the Conference.

9. Reserved matters are dealt with in the parallel UK Order.

10. Article 3 provides that representatives of parties to the UNFCCC, Kyoto Protocol and Paris Agreement will have immunity from suit and legal process except where immunity is expressly waived by the respective party. It provides for immunity from suit and legal process in respect of things done or omitted to be done by representative of said parties while exercising their official functions in connection with the Glasgow Conference and during their journeys to and from the Glasgow Conference, and also provides for immunity from personal arrest or detention. It also provides exemptions and privileges in respect of their personal baggage, any private residence used by the representative in connection with the Glasgow Conference and exemption or relief from taxes and rates (other than customs and excise duties, car tax and value added tax).

11. Article 4 provides similar immunities and privileges for representatives of observer states who are, or are to be, representatives at the Conference, except where immunity is expressly waived by the respective observer states.

12. Article 5 provides immunity from suit and legal process for representatives of the Executive Board of the Clean Development Mechanism who are, or are to be, representatives at a meeting hosted by the Executive Board forming part of the Conference. Immunity is provided while exercising their official functions in connection with the meeting except where it is expressly waived by the Secretary General of the United Nations.

13. Article 6 provides immunity from suit and legal process for the executive heads (or an official acting on behalf of an executive head) of the specialised agencies of the United Nations while participating in or performing functions in relation to the Glasgow Conference, except where it is expressly waived by or on behalf of the specialised agency concerned. It provides exemptions and privileges in respect of their personal baggage, inviolability of any private residence used by the executive head and exemption or relief from taxes and rates (other than customs and excise duties, car tax and value added tax). It also provides relief to the executive head of the specialised agency in respect of hydrocarbon oil.

14. Article 6 also provides immunity from suit and legal process for officers of the specialised agencies of the United Nations (other than those who are locally recruited and assigned to hourly rates of pay) and for experts performing missions for a specialized agency, who are, or are to be, representatives at the Conference whilst participating in or performing official functions in connection with the Conference except where it is expressly waived by or on behalf of the specialised

agency concerned. It also provides exemption from income tax in respect of emoluments received by them and provides exemption from customs duties and taxes on the importation of articles for their personal use where the articles were in their ownership or which they were under contract to purchase, immediately before they entered the United Kingdom. Specialised agencies of the United Nations are specifically defined in the Order.

15. Article 7 provides immunity from suit and legal process to core officials of the Adaptation Fund, the Green Climate Fund or the Global Environment Facility who are, or are to be, representatives at the Conference. Immunity is provided while exercising their official functions in connection with the Conference except where it is expressly waived by the Secretary General of the United Nations. Core officials are specifically defined in the Order.

16. Article 8 and 9 provides for disapplication of immunity and privileges in respect of certain persons.

17. 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 and devolved taxes – the making of orders under section 1 of the 1968 Act to meet those obligations is subject to procedure in the Scottish Parliament, given the terms of paragraph 7(2) of Part I of schedule 5 of 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 1998 is that a power to make an Order in Council in a precommencement enactment (i.e. an Act preceding the Scotland Act 1998) 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 Her Majesty under section 1 of the 1968 Act, so far as they are within devolved competence, are subject to approval by the Scottish Parliament.

Consultation

18. This instrument has been prepared in consultation with the Foreign, Commonwealth and Development Office and other relevant United Kingdom Government Departments. No external consultation was undertaken as this Order implements provisions of an international agreement to which the United Kingdom will be obliged to give effect as a matter of international law once the Host Country Agreement enters into force. This is consistent with the general practice on Orders made under the International Organisations Act 1968.

Impact Assessments

19. 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

20. The Cabinet Secretary for Justice and Veterans 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
August 2021

POLICY NOTE
THE EUROPEAN UNION AND EUROPEAN ATOMIC ENERGY COMMUNITY
(IMMUNITIES AND PRIVILEGES) (SCOTLAND) ORDER 2021
SSI 2021/

1. The above instrument is proposed to be made in exercise of the powers conferred by sections 4B of the International Organisations Act 1968 and all other powers enabling Her Majesty to do so.

2. **The purpose of this instrument** is to confer immunities and privileges, insofar as they are within devolved competence, upon the Delegation of the European Union and the European Atomic Energy Community (“Euratom”) and their staff members, diplomatic agents and family members.

3. On the United Kingdom’s departure from the European Union (“EU”) and Euratom on 31 January 2020, the European Commission Representation in London became the European Union Delegation to the United Kingdom (“the EU Delegation”). Commission Representations only exist in EU Member States. EU delegations exist in over 140 countries outside the EU around the world. The EU negotiates establishment agreements with the countries in which it has delegations in order to regulate their status, privileges and immunities.

4. The United Kingdom Foreign, Commonwealth and Development Office has negotiated an establishment agreement between the European Union, Euratom and the United Kingdom on the Establishment and the Privileges and Immunities of the EU Delegation to the United Kingdom (“the Agreement”). The Agreement entered into force on 21 July 2021 and is published on the relevant page of UK Treaties Online which can be found at this link: <https://www.gov.uk/uk-treaties>.

5. The EU Delegation will also represent Euratom in the United Kingdom.

Policy Objectives

6. The Agreement obliges the United Kingdom to abide by the terms of the Agreement, and to confer legal capacity and privileges and immunities on the EU Delegation and Euratom and on staff members, diplomatic agents and their respective family members.

7. The draft Order confers such privileges and immunities on the EU Delegation and its staff members, diplomatic agents and their respective family members and reflect those that have been agreed by the parties to the Agreement.

8. This Order deals only with those matters which are within the legislative competence of the Scottish Parliament. The related UK instrument, the European Union and European Atomic Energy Community (Immunities and Privileges) Order 2021 (S.I. 2021/881), deals with reserved matters as regards Scotland and in respect of other UK jurisdictions.

9. This Order and the parallel UK Order are necessary to give effect to the terms of the Agreement and help secure compliance with international obligations.

Effect of Order

10. This Order implements the privileges and immunities provisions of the Agreement, in respect of matters which are within the legislative competence of the Scottish Parliament. In particular, it accords functional (“official act”) immunity on EU Delegation “staff members” from the criminal, civil and administrative jurisdiction of Scotland. There is a complete carve out from this immunity, as well as inviolability, for any alleged road traffic accidents and offences. The Order also accords immunity from the criminal, civil and administrative jurisdiction of Scotland on those staff members notified to the FCDO as “diplomatic agents”. The same complete carve out is made from this immunity in respect of any alleged road traffic accidents and offences. Certain fiscal exemptions are also provided for the EU Delegation in the exercise of its functions, and for staff members. Reserved matters are dealt with in the parallel UK Order.

11. Part 2 of the Order affords privileges and immunities on the EU Delegation and Euratom. It provides that premises of the Delegation are inviolable and sets out the permissions required to enter the premises under both normal and emergency situations. Part 2 also provides for immunity of Delegation property and assets; inviolability of archives and relief from certain duties and taxes.

12. Part 3 affords staff members, diplomatic agents and their family members with privileges and immunities. Included in these are (so far as relevant) inviolability of residence, papers and correspondence; exemption from giving evidence as a witness; exemption from devolved and local taxes and, while exercising their functions, immunity from personal arrest or detention and from inspection of their personal baggage. Part 3 specifically provides that no immunity will be conferred in relation to road traffic offences and damages caused by a motor vehicle belonging to or driven by these parties and that no privileges and immunities shall apply to British Nationals and permanent residents of the United Kingdom. Part 3 also details when entitlement to privileges and immunities commence and terminate.

13. Part 4 provides for the waiver of privileges and immunities afforded by the Order.

14. Part 5 provides that any rights, powers, liabilities, obligations, restrictions, remedies and procedures under section 4(1) and 7A of the European Union (Withdrawal) Act 2018 and 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.

15. Under the Scotland Act 1998, international relations (including relations with international organisations) is a matter 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 and devolved taxes – the making of orders under section 4B of the 1968 Act to meet those obligations is subject to procedure in the Scottish Parliament, given the terms of paragraph 7(2) of Part I of schedule 5 of 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 1998 is that a power to make an Order in

Council in a pre-commencement enactment (i.e. an Act preceding the Scotland Act 1998) 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 Her Majesty under section 4B of the 1968 Act, so far as they are within devolved competence, are subject to approval by the Scottish Parliament.

Consultation

16. The instrument has been prepared in consultation with the Foreign, Commonwealth and Development Office and other relevant United Kingdom Government Departments. No external consultation was undertaken as this Order implements provisions of an international agreement to which the United Kingdom will be obliged to give effect to as a matter of international law once the Agreement comes into force. This is consistent with the general practice on Orders made under the International Organisations Act 1968.

Impact Assessments

17. 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

18. The Cabinet Secretary for Justice and Veterans confirms that no BRIA is necessary as no financial effects on the Scottish Government, local government or on business are foreseen.

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