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## **Justice Committee Comataidh a' Cheartais**

# **International Organisations (Immunities and Privileges) (Scotland) Amendment (No. 2) Order 2017**



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# Justice Committee

To consider and report on matters falling within the responsibility of the Cabinet Secretary for Justice.



<http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/justice-committee.aspx>



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**Ben Macpherson**  
Scottish National Party



**Fulton MacGregor**  
Scottish National Party



**Liam McArthur**  
Scottish Liberal  
Democrats



**Stewart Stevenson**  
Scottish National Party

# Report

The Committee reports to the Parliament as follows—

## INTERNATIONAL ORGANISATIONS (IMMUNITIES AND PRIVILEGES) (SCOTLAND) AMENDMENT (No. 2) ORDER 2017 [DRAFT]

### Introduction

1. The draft International Organisations (Immunities and Privileges) (Scotland) Amendment (No. 2) Order 2017 was referred in September 2017 to the Justice Committee as lead Committee. It is subject to the affirmative procedure.

### The draft instrument

2. The draft instrument was made under powers conferred by Section 1(2) of the International Organisations Act 1968 and all other enabling powers.
3. This Order amends the International Organisations (Immunities and Privileges) (Scotland) Order 2009 (“the principal Order”) by adding a new schedule 17. The amendments are being made to ensure that the principal Order properly implements the Protocol on Privileges and Immunities of the Unified Patent Court (“the court”) done in Brussels on 29th June 2016. The UK signed it on 14th December 2016 (Cm 9405). It gives privileges and immunities to the Court, its Judges, Representatives and Staff. The Protocol requires States party to the Protocol to grant a number of privileges and immunities to the Organisation and to its officers and staff. The majority of these relate to reserved matters and are dealt with not in the principal Order but in the parallel United Kingdom Order.<sup>1</sup>
4. The Scottish Government's Policy Note accompanying the instrument explains that the Order has been brought forward to help secure compliance by the UK with its international obligations.<sup>2</sup>

### Scrutiny by the Delegated Powers and Law Reform Committee

5. The Delegated Powers and Law Reform Committee considered this instrument at its meeting on 19 September 2017 and agreed that it did not need to draw it to the attention of the Parliament on any grounds within its remit.

### Justice Committee consideration

6. The Justice Committee took evidence on the instrument on 26 September 2017, hearing from the Minister for Community Safety and Legal Affairs and officials. The

Minister set out the privileges and immunities afforded to the court and its officials by the Order, stating that "the conferral of immunities and privileges is, in effect, a condition of membership and is necessary to enable the court to function as an international organisation in the UK".<sup>3</sup>

7. At that meeting, the issue of whether the court would have premises in Scotland, and if so, whether these would be inviolable (meaning that agents of the state, such as the Police, cannot enter without permission), was raised. The Minister confirmed that there are no current plans for a local division of the court in Scotland, but that the Scottish Government will continue to press for a local division, which the Law Society of Scotland would support.<sup>4</sup>
8. The Minister stated that the court "would not have inviolability [of premises in Scotland] in the circumstances that we foresee in the initial years", given that there are no current plans for permanent premises, but that it is possible that the court may sit in Scotland in the initial year of its operation. Officials confirmed that, under the enabling powers for the Order, "neither the Scottish nor the UK Government can go further than the protocol enables them to go", and that the inviolability provision therefore does not apply to occasional or temporary premises. Officials also confirmed that both the Foreign Office and the court are aware of this.<sup>5</sup> However, in response to a question, the Minister pointed out that the official archives and papers of the court would be inviolable even in an occasional or temporary premise which does not have this status, "according to general international principles".<sup>6</sup>
9. The Committee also questioned whether the sum of devolved and local taxes to which the court and its officials would be exempt had been quantified by the Scottish Government. The Minister stated that these figures would be "difficult to quantify", but that "there is no direct impact at this time" and that she would be happy to ask her officials to look into the matter and write to the Committee about the number of individuals anticipated to be covered by this Order.<sup>7</sup>
10. The Committee also raised the lack of a business regulatory impact assessment for the order, and questioned whether this made it difficult to assess whether there would be a financial impact on the Scottish Government. The Minister referred to the UK Government's impact assessment, which she described as "fairly extensive".<sup>8</sup> A request was made of the Scottish Government to share the detail and findings from any impact assessment, even if the impact assessment was not undertaken by the Scottish Government, for similar instruments in the future. The Minister said she would be happy to do so.<sup>9</sup>
11. The Minister also committed to asking her officials to investigate whether patents could be submitted to the court in Gaelic.<sup>10</sup>
12. At the conclusion of evidence taking, the Minister for Community Safety and Legal Affairs moved the motion in her name:

S5M-07771: That the Justice Committee recommends that the International Organisations (Immunities and Privileges) (Scotland) Amendment (No. 2) Order 2017 [draft] be approved.

13. No debate followed on the motion, which was agreed to (by division: For 10, Against 1, Abstentions 0) <sup>11</sup> .

## **Recommendation**

The Justice Committee therefore recommends to the Parliament that it approve the draft instrument, having regard to the explanations provided in evidence by the Scottish Government.



- 1 Scottish Government Policy Note - available at: [http://www.legislation.gov.uk/sdsi/2017/9780111036426/pdfs/sdsipn\\_9780111036426\\_en.pdf](http://www.legislation.gov.uk/sdsi/2017/9780111036426/pdfs/sdsipn_9780111036426_en.pdf)
- 2 Scottish Government Policy Note - available at: [http://www.legislation.gov.uk/sdsi/2017/9780111036426/pdfs/sdsipn\\_9780111036426\\_en.pdf](http://www.legislation.gov.uk/sdsi/2017/9780111036426/pdfs/sdsipn_9780111036426_en.pdf)
- 3 Scottish Parliament Justice Committee. Official Report 26 September 2017 Col 2. Available at: <http://www.parliament.scot/parliamentarybusiness/report.aspx?r=11113&mode=pdf>
- 4 Scottish Parliament Justice Committee. Official Report 26 September 2017 Col 4. Available at: <http://www.parliament.scot/parliamentarybusiness/report.aspx?r=11113&mode=pdf>
- 5 Scottish Parliament Justice Committee. Official Report 26 September 2017 Col 4. Available at: <http://www.parliament.scot/parliamentarybusiness/report.aspx?r=11113&mode=pdf>
- 6 Scottish Parliament Justice Committee. Official Report 26 September 2017 Col 6. Available at: <http://www.parliament.scot/parliamentarybusiness/report.aspx?r=11113&mode=pdf>
- 7 At the time of publication, this information had not yet been provided, but it will be published on the Committee's [webpage](#) once received.
- 8 Scottish Parliament Justice Committee. Official Report 26 September 2017 Col 5. Available at: <http://www.parliament.scot/parliamentarybusiness/report.aspx?r=11113&mode=pdf>
- 9 Scottish Parliament Justice Committee. Official Report 26 September 2017 Col 6. Available at: <http://www.parliament.scot/parliamentarybusiness/report.aspx?r=11113&mode=pdf>
- 10 At the time of publication, this information had not yet been provided, but it will be published on the Committee's [webpage](#) once received. Scottish Parliament Justice Committee. Official Report 26 September 2017 Col 6. Available at: <http://www.parliament.scot/parliamentarybusiness/report.aspx?r=11113&mode=pdf>
- 11 For: Margaret Mitchell (Convener), Rona Mackay (Deputy Convener), Maurice Corry, Mary Fee, Mairi Gougeon, Liam Kerr, Ben Macpherson, Liam McArthur, Fulton MacGregor, Stewart Stevenson. Against: John Finnie

