

# Criminal Justice Committee

**17th Meeting, 2022 (Session 6), Wednesday, 31 May 2023**

## 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 2023 \[draft\]](#)

## Introduction

2. The instrument was laid before the Parliament on 25 April 2023 and is subject to the affirmative procedure.
3. The purpose of the Order is to amend the International Organisations (Immunities and Privileges) (Scotland) Order 2009 to confer immunities and privileges, insofar as they are within devolved competence, upon the International Criminal Police Organisation-Interpol (“[INTERPOL](#)”) and accord certain privileges and immunities to INTERPOL officials, experts and country representatives in accordance with a Host Country Agreement.
4. 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

5. The Delegated Powers and Law Reform Committee considered the instrument at its meeting on 9 May 2023.
6. In its [report on the instrument](#), the DPLR Committee noted, that the Order states that the term “Member Country” has the meaning it has in the Constitution of INTERPOL. However, this term does not appear in INTERPOL’s Constitution. It does appear in the [Agreement between the UK and INTERPOL](#), which is referred

to in the Order. There is also [an Explanatory Memorandum](#) from the UK Government which accompanies the Agreement.

7. In response to a query from the DPLR Committee, the Scottish Government advised that the use of the term “Member Country” was intentional; that it has been used for consistency with the terms of the Agreement and with the related UK statutory instrument; and that this term has evolved into general use by INTERPOL.
8. The DPLR Committee considered nonetheless that the meaning of the term in the instrument could be clearer given that the instrument defines the term by reference to a document in which the term does not appear.
9. The DPLR Committee has therefore drawn the instrument to the attention of the Parliament on reporting ground (h) on account that the meaning of the term “Member Country” could be clearer.

## **Criminal Justice Committee Consideration**

- 10. The Committee is required to report to the Parliament by 3 June 2023.**
11. Motion S6M-08712 has been lodged proposing that the Committee recommends approval of the instrument. The Cabinet Secretary for Justice and Home Affairs is due to attend the meeting on 31 May to answer any questions on the instrument and to move the motion for approval.
- 12. 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.**
- 13. The Committee is asked to delegate to the Convener authority to approve the report on the instrument for publication.**

**Clerks to the Committee  
May 2023**

# Annex

## Policy Note

### The International Organisations (Immunities and Privileges) (Scotland) Amendment Order 2023

#### SSI 2023/

The above instrument is proposed to be made in exercise of the powers conferred by section 1 of the [International Organisations Act 1968](#) (the “1968 Act”) and all other powers enabling His Majesty to do so.

The purpose of this instrument is to amend the International Organisations (Immunities and Privileges) (Scotland) Order 2009 to confer immunities and privileges, insofar as they are within devolved competence, upon the International Criminal Police Organisation-Interpol (“INTERPOL”) and accords certain privileges and immunities to INTERPOL officials, experts and country representatives in accordance with a Host Country Agreement.

#### Policy Objectives

1. INTERPOL is a global law enforcement organisation whose objective is to facilitate transnational police cooperation in the fight against crime. The UK is a member of INTERPOL.
2. The Home Office has made a successful bid to host the INTERPOL General Assembly in the United Kingdom in 2024. INTERPOL require that the Host Country of the General Assembly and its associated meetings grants INTERPOL and relevant participants in those meetings appropriate privileges and immunities.
3. Additionally, in order to enhance collaboration between the UK and INTERPOL more broadly, it is necessary to grant INTERPOL the relevant privileges and immunities required to operate effectively across Great Britain and Northern Ireland on an ongoing basis.
4. The Home Office, with Foreign, Commonwealth and Development Office (“FCDO”) support, has negotiated a Host Country Agreement (HCA) with INTERPOL to grant appropriate privileges and immunities to INTERPOL and its officials, employees and country representatives.
5. The privileges and immunities conferred by this Order reflect those that have been agreed by His Majesty’s Government and INTERPOL. This 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 the other UK jurisdictions, that is subject to consideration by the UK Parliament.

6. This Order and the parallel UK Order are necessary to abide by the terms of the Host Country Agreement and secure compliance with international obligations.

### **Effect of Order**

7. This Order amends the International Organisations (Immunities and Privileges) (Scotland) Order 2009 (“the principal Order”) by adding a new schedule 20.

8. The amendments are being made to implement the Host Country Agreement, in respect of matters which are within the legislative competence of the Scottish Parliament. Reserved matters are dealt with in the [parallel UK Order](#).

9. The Host Country Agreement will enter into force once the UK Order and the Scottish Order have been approved and made. In particular, the Agreement obliges the UK to confer legal personality on INTERPOL; to grant certain privileges and immunities to INTERPOL, including immunity from jurisdiction within the scope of its official activities and inviolability of its premises and archives; and to grant certain privileges and immunities to INTERPOL officials and experts, members of INTERPOL bodies such as the Executive Committee or Commission for the Control of Files, and to representatives of INTERPOL Member Countries (or countries undergoing the INTERPOL membership admission process). The Agreement provides for exceptions to immunity in respect of road traffic offences and accidents.

10. There was previously no law granting privileges and immunities to INTERPOL in the UK. This order grants INTERPOL the privileges and immunities, insofar as they are within devolved competence, necessary for their increased and facilitated operation in the UK and with UK partners. In particular, these privileges and immunities are a requirement for the UK to host the INTERPOL General Assembly in 2024.

11. As with other international organisations of which the UK is a member, INTERPOL will enjoy certain privileges and immunities in the UK.

### **European Union Withdrawal and Future Relationship**

12. This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act 2018.

### **Scotland Act**

13. Under the Scotland Act 1998, international relations (including relations with international organisations) is reserved to the UK 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.

14. 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 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.

### **Consultation**

15. The instrument has been prepared in consultation with the FCDO, the Home 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 1968 Act.

### **Impact Assessments**

16. No 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. This instrument enhances existing cooperation with a trusted law enforcement partner.

### **Financial Effects**

17. The Cabinet Secretary for Justice and Home Affairs confirms that no Business and regulatory impact assessment is necessary as no financial effects on the Scottish Government, local government or on business are foreseen.

Scottish Government  
Justice Directorate  
April 2023