EXPLANATORY MEMORANDUM TO

THE CONFLICT MINERALS (COMPLIANCE) (NORTHERN IRELAND) (EU EXIT) REGULATIONS 2020

2020 No. [XXXX]

1. Introduction

1.1 This explanatory memorandum has been prepared by the Foreign, Commonwealth and Development Office and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 This instrument implements Regulation (EU) No 2017/821 of the European Parliament and of the Council of 17 May 2017 laying down supply chain due diligence obligations for Union importers of tin, tantalum and tungsten, their ores, and gold originating from conflict-affected and high risk areas (OJ No. L 130, 19.5.2017) ("the EU Regulation") to and in the UK in respect of Northern Ireland from 1 January 2021. The instrument is necessary due to the inclusion of the EU Regulation in Annex 2 of the Northern Ireland Protocol to the Agreement on the Withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community ("the Northern Ireland Protocol"). The instrument comes into force on 1 January 2021.

Explanations

What did any relevant EU law do before exit day?

2.2 The EU Regulation establishes supply chain due diligence obligations applicable to relevant importers of tin, tantalum, tungsten, their ores and gold originating from conflict-affected and high risk areas ("conflict minerals"). Whilst parts of the EU Regulation applied from 9 July 2017, its key operative provisions do not apply until 1 January 2021 (i.e. they will take effect after the expiry of the Transition Period). The provisions that apply prior to 1 January 2021 include obligations on the EU Commission to determine the scope of the EU Regulation and develop guidance. The main requirements of the EU Regulation that will apply from 1 January 2021 include the relevant due diligence obligations on business and the obligations upon Member State competent authorities to be responsible for the effective and uniform implementation of the EU Regulation throughout the Union.

Why is it being changed?

2.3 As the key operative provisions of the EU Regulation will not take effect in Great Britain and will not form an operative part of retained EU law, the instrument makes provision for the application of those operative provisions to and in the UK in respect of Northern Ireland as required under the Northern Ireland Protocol.

What will it now do?

2.4 The purpose of the EU Regulation is to break the link between conflict and the exploitation of conflict minerals and to put an end to abuses of local communities, including mine workers, often linked to violation of human rights. The instrument implements the requirements of the EU Regulation in relation to businesses importing

tin, tantalum, tungsten and gold, above specified volume thresholds, in to Northern Ireland and establishes an enforcement framework for non-compliance with its procedural requirements.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

3.2 The territorial application of this instrument is limited to Northern Ireland.

3.3 The powers under which this instrument is made (which are found in the European Union (Withdrawal) Act 2018) cover the entire United Kingdom. The territorial application of this instrument is limited to Northern Ireland.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is Northern Ireland.

4.2 The territorial application of this instrument is Northern Ireland.

5. European Convention on Human Rights

5.1 Lord (Tariq) Ahmad of Wimbledon, Minister of State at the Foreign, Commonwealth and Development Office, has made the following statement regarding Human Rights:

"In my view the provisions of the Conflict Minerals (Compliance) (Northern Ireland) (EU Exit) Regulations 2020 are compatible with the Convention rights."

6. Legislative Context

6.1 The instrument is being made to meet the UK's obligations under the Northern Ireland Protocol. The EU Regulation is listed in Annex 2 of the Protocol as one of the provisions of European Union law which shall apply to and in the UK, in respect of Northern Ireland.

7. Policy background

What is being done and why?

7.1 The mining and trading of conflict minerals has been associated with a range of deplorable practices from human rights violations and abuses to illicit financing of conflict. These minerals are key components for modern technology and under the right conditions the mining of them can build both prosperity and security for local communities. Key to addressing risks of human rights violations and abuses and illicit financing of conflict linked to mineral supply chains is for businesses to conduct due diligence on their supply chains. The EU Regulation puts the Organisation for Economic Co-operation and Development's Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas onto a mandatory footing for the largest importers of conflict minerals. Guidance of the Organisation for Economic Co-operation and Development (OECD) promotes a risk-based approach for business to develop and monitor mineral purchasing decisions and practices to help business respect human rights and avoid contributing to conflict.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

8.1 This instrument is being made under the power in section 8C(1)(a) of the European Union (Withdrawal) Act 2018 in order to implement the Protocol on Ireland/Northern Ireland in the Withdrawal Agreement.

9. Consolidation

9.1 This instrument does not consolidate previous instruments.

10. Consultation outcome

10.1 The Foreign, Commonwealth and Development Office and the Department for Business Energy and Industrial Strategy acting as the Competent Authority have been in regular contact with industry stakeholders on the EU Regulation. Round Table events were held in July 2018 and September 2019 where industry stakeholders were consulted on their views on the EU Regulation and informed of the UK's approach to it. At the second of those Round Table events, a preference emerged for UK supply chain due diligence requirements to be aligned with the EU Regulation.

11. Guidance

11.1 The OECD guidance is available on the OECD website. There is also guidance for businesses on due diligence available through the European Partnership for Responsible Minerals Due Diligence Hub, which was part funded by the UK. The Secretary of State will publish guidance on the use of civil sanctions under this instrument (Schedule, Parts 2 and 4).

12. Impact

12.1 There is no, or no significant impact on business, charities, or voluntary bodies.

12.2 There is no, or no significant, impact on the public sector.

12.3 An Impact Assessment has not been prepared for this instrument because no Impact Assessment is required in respect of statutory instruments necessary to meet the terms of the Northern Ireland Protocol. Nevertheless, a 'de minimis' assessment was conducted to understand the impacts of the regulations on business. HMRC data indicate that in 2017 there were a total of 7 NI headquartered businesses importing conflict minerals into NI. The value of such trade was £132,800. In 2018 there were a total of 9 NI headquartered businesses importing conflict minerals into NI. The value of such trade was £104,300. We therefore assess that the business cost of the instrument is not expected to go beyond the ±£5m de minimis threshold. Furthermore, industry schemes and the potential for recognition of an internationally approved list of smelters and refiners would result in the cost of implementing the instrument being very low. A full impact assessment of the EU Regulation was carried out at an EU level. A Justice Impact Test was conducted with the Department of Justice in Northern Ireland and there is no, or no significant, impact on the public sector.

13. Regulating small business

13.1 The scope of the EU Regulation is determined by 'import volume thresholds' which are set by the European Union on the basis of information provided by Member States

and are used to determine if a business is in scope and whether they should legally be required to follow due-diligence obligations. Import thresholds as set under the EU Regulation will mean small businesses are unlikely to fall in scope. Therefore, it is not anticipated that small businesses will be significantly impacted by this instrument.

14. Monitoring & review

14.1 As this instrument is made under the EU Withdrawal Act 2018, no review clause is required. However, the instrument provides for a review of the instrument within five years of coming into force and at intervals not exceeding five years thereafter. The Secretary of State will carry out the review and publish a report and the instrument may be amended accordingly.

15. Contact

15.1 Lia Suguimoto Magor at the Foreign, Commonwealth and Development Office Telephone: 07881319866 or email: lia.suguimotomagor@fcdo.gov.uk can be contacted with any queries regarding the instrument.

15.2 Neil Briscoe, Deputy Director for UN and Multilateral at the Foreign, Commonwealth and Development Office can confirm that this Explanatory Memorandum meets the required standard.

15.3 Lord (Tariq) Ahmad of Wimbledon, Minister of State at the Foreign, Commonwealth and Development Office can confirm that this Explanatory Memorandum meets the required standard.