EXPLANATORY MEMORANDUM TO

THE EUROPEAN UNION (DEFINITION OF TREATIES) (STRATEGIC PARTNERSHIP AGREEMENT) (CANADA) ORDER 2018

2018 No. [XXXX]

1. Introduction

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

2. Purpose of the instrument

2.1 This Order declares the Strategic Partnership Agreement between the European Union and its Member States, of the one part, and Canada, of the other part, signed at Brussels on 30th October 2016 ("the Agreement") to be an EU Treaty as defined in section 1(2) of the European Communities Act 1972 which allows for a simplified implementation process using the powers under that Act.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

Other matters of interest to the House of Commons

3.2 Disregarding minor or consequential changes, the territorial application of this instrument includes Scotland and Northern Ireland.

4. Legislative Context

4.1 The parties to the Agreement must each ratify or approve the Agreement in accordance with their internal procedures before the Agreement can enter into force. The United Kingdom must be in a position to implement all of its obligations, including its EU obligations, in respect of the Agreement before ratifying the Agreement. Declaring the Agreement to be an EU Treaty is a necessary step in ensuring that the UK is able to implement its obligations in respect of the Agreement. So far fourteen EU member states have ratified the Agreement. We anticipate that the UK will be able to ratify the Agreement shortly after the completion of this process.

5. Extent and Territorial Application

5.1 The extent of this instrument is the United Kingdom.

5.2 The territorial application of this instrument is the United Kingdom.

6. European Convention on Human Rights

6.1 The Minister of State for Europe and the Americas, Sir Alan Duncan MP, has made the following statement regarding Human Rights:

"In my view the provisions of the European Union (Definition of Treaties) (Strategic Partnership Agreement) (Canada) Order 2018 are compatible with the Convention rights."

7. Policy background

What is being done and why

7.1 The Order declares that the Agreement is to be regarded as one of the EU Treaties under the European Communities Act 1972. One of the effects of this is that certain rights and obligations under the Agreement could automatically become legally enforceable in the United Kingdom. Subordinate legislation can be made to give effect to the provisions of the Agreement, although we do not consider this will be necessary for the Agreement.

7.2 Canada is a key bilateral partner for the UK. The Agreement will update the formal framework between the EU, its Member States and Canada. The Agreement will broaden engagement, dialogue and cooperation with Canada in areas of common interest, such as: human rights and democracy, international peace and security and effective multilateralism, economic and sustainable development, and justice, freedom and security. The House of Commons European Scrutiny Committee assessed the Agreement as being "legally and politically important" on 12th October 2016.[1]

7.3 Until exit negotiations are concluded, the UK remains a full member of the European Union and all the rights and obligations of EU membership remain in force. During this period the Government will also continue to negotiate, implement and apply EU legislation and third country agreements. Although the UK is leaving the EU, the Government would not wish the UK's exit to delay ratification of agreements which are important to our EU partners and to the third countries in question.

7.4 The Government notified the House of Commons on 20 July 2017 of its decision to opt in to Article 18(2) of the Agreement, which relates to judicial cooperation in the field of civil and commercial matters and falls within Title V of Part III of the Treaty on the Functioning of the European Union.[2] The opt-in relates to Justice and Home Affairs measures, in which the UK has the option to choose to participate.

Consolidation

7.5 This Order does not amend another instrument and therefore consolidation is not relevant.

8. Consultation outcome

8.1 As this Order enables the fulfilment of an EU obligation, no public consultation has been carried out.

9. Guidance

9.1 No guidance will be published as the Agreement governs high-level commitments between state parties.

10. Impact

10.1 The impact on business, charities or voluntary bodies is negligible.

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[1] ESC 36787, 13th Report, Session 2016/17 (https://publications.parliament.uk/pa/cm201617/cmselect/cmeuleg/71-xi/7118.htm#_idTextAnchor025)
[2] 20 July 2017, Hansard Vol. 627; HCWS93 (https://hansard.parliament.uk/Commons/2017-07-20/debates/17072054000022/EU-CanadaStrategicPartnershipAgreement)

10.2 The impact on the public sector is negligible.

10.3 An Impact Assessment has not been prepared for this instrument as the Agreement governs high-level commitments between state parties.

11. Regulating small business

11.1 The legislation does not apply to activities that are undertaken by small businesses.

12. Monitoring & review

12.1 No specific monitoring or review of this Order is planned. However, the Agreement to which the Order relates provides for the establishment of a Joint Ministerial Committee and Joint Cooperation Committee which will ensure that the Agreement operates properly and monitor the developments in the strategic relationship between the parties.

13. Contact

13.1 Leon Man at the Foreign and Commonwealth Office (Telephone: 020 7008 1886 or email: leon.man@fco.gov.uk) or Susannah Leftley (Telephone: 020 7008 7400 or email: susannah.leftley@fco.gov.uk) can answer any queries regarding this instrument.