EXPLANATORY MEMORANDUM TO

THE EXTRATERRITORIAL US LEGISLATION (SANCTIONS AGAINST CUBA, IRAN AND LIBYA) (PROTECTION OF TRADING INTERESTS) (AMENDMENT) (EU EXIT) REGULATIONS 2022

2022 No. [XXXX]

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department for International Trade and is laid before Parliament by Command of His Majesty.

2. Purpose of the instrument

2.1 This instrument amends the Extraterritorial US Legislation (Sanctions against Cuba, Iran and Libya) (Protection of Trading Interests) Order 1996 ("the 1996 Order") to correct deficiencies arising from the UK's withdrawal from the EU by updating a cross-reference to section 30(3) of the Small Business, Enterprise and Employment Act 2015 ("the 2015 Act") and removing an obsolete reference to Council Regulation (EC) No 2271/96 protecting against the effects of the extra-territorial application of legislation adopted by a third country, and actions based thereon or resulting therefrom ("the EC Counter-measures Regulation").

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Extent and Territorial Application

4.1 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is the whole of the United Kingdom.

4.2 The territorial application of this instrument (that is, where the instrument produces a practical effect) is the whole of the United Kingdom.

5. European Convention on Human Rights

5.1 Parliamentary Under Secretary of State at the Department for International Trade, Nigel Huddleston MP, has made the following statement regarding human rights:

"In my view the provisions of the Extraterritorial US Legislation (Sanctions against Cuba, Iran and Libya) (Protection of Trading Interests) (Amendment) (EU Exit) Regulations 2022 are compatible with the Convention rights."

6. Legislative Context

6.1 Article 4(4) of the 1996 Order cross-references section 30(3) of the 2015 Act. Section 30(3) was amended by paragraph 36 of Schedule 8 to the European Union (Withdrawal) Act 2018 ("EUWA 2018") following the UK's withdrawal from the EU. This instrument updates the cross-reference in article 4(4) accordingly. In the process, it removes an obsolete reference to the EC Counter-measures Regulation, which no longer applies in the UK following the UK's withdrawal from the EU.

6.2 The 1996 Order was amended following the UK's withdrawal from the EU by the Protecting against the Effects of the Extraterritorial Application of Third Country Legislation (Amendment) (EU Exit) Regulations 2020. Those Regulations did not address the deficiencies rectified by this instrument.

7. Policy background

What is being done and why?

7.1 This instrument amends the 1996 Order to address inoperabilities and deficiencies of retained EU law arising from the UK's withdrawal from the EU, by updating a cross reference to section 30(3) of the 2015 Act and removing an outdated reference to the EC Counter-measures Regulation (which no longer applies in the UK). This will ensure consistency across the statute book and remove the need for the Secretary of State to have regard to measures related to the EC Counter-measures Regulation when carrying out a regulatory review under article 4 of the 1996 Order.

Explanations

What did any law do before the changes to be made by this instrument?

7.2 Article 4 of the 1996 Order sets out the requirements for regulatory review of the regulatory provisions contained in that Order in accordance with certain requirements of the 2015 Act. Article 4(4) includes a cross-reference to section 30(3) of that Act.

Why is it being changed?

7.3 Section 30(3) of the 2015 Act was amended by paragraph 36 of Schedule 8 to the EUWA 2018. The updated wording in section 30(3) as amended had yet to be reflected in the cross-reference in article 4(4) of the 1996 Order. Article 4(4) also continued to reference the EC Counter-measures Regulation, which no longer applies in the UK. The change is needed to ensure consistency with regulatory review provisions of the 2015 Act as amended by EUWA 2018, and to remove obsolete references to EU law following the UK's withdrawal from the EU.

What will it now do?

7.4 The Order will update the cross-reference in article 4(4) of the 1996 Order to reflect the wording of section 30(3) of the 2015 Act as amended by the EUWA 2018, and remove the reference to the EC Counter-measures Regulation.

8. European Union Withdrawal and Future Relationship

8.1 This instrument is being made using the power in section 8 of the EUWA 2018 in order to address failures of retained EU law to operate effectively or other deficiencies arising from the withdrawal of the UK from the EU. The instrument is also made under the power in paragraph 21 of Schedule 7 to the EUWA 2018. In accordance with the requirements of that Act the Minister has made the relevant statements as detailed in Part 2 of the Annex to this Explanatory Memorandum.

9. Consolidation

9.1 There are currently no plans to consolidate the legislation being amended by this statutory instrument.

10. Consultation outcome

10.1 This instrument provides for the technical amendment of a deficiency arising from the UK's withdrawal from the EU. No consultation was necessary.

11. Guidance

11.1 Guidance on the UK's protection of trading interests legislation, including the 1996 Order, is available on GOV.UK.

12. Impact

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

12.2 The impact on the public sector is that, in accordance with section 30(3) of the 2015 Act, when carrying out a review under article 4(4) of the 1996 Order (as amended) of any regulatory provision which implements the UK's international obligations, DIT will have regard to how the obligation is implemented in other countries which are subject to the obligation. Future reviews need not have regard to the rules on penalties applicable to infringements of the EC Counter-measures Regulation or the measures taken to implement them in EU Member States.

12.3 An Impact Assessment has not been prepared for this instrument because it has no significant impact on the private or voluntary sector.

13. Regulating small business

13.1 These Regulations do not apply to activities that are undertaken by small businesses.

14. Monitoring & review

14.1 The approach to monitoring of this legislation is to closely monitor any representations that are received. Any issues that are raised will be fully investigated with a view to finding an acceptable solution.

14.2 As this instrument is made under the EUWA 2018, no review clause is required.

15. Contact

15.1 Lisa Fraser at the Department for International Trade. Email: lisa.fraser@trade.gov.uk can be contacted with any queries regarding the instrument.

15.2 Ros Lynch, Deputy Director for Sanctions and Protection of Trading Interests at the Department for International Trade, can confirm that this Explanatory Memorandum meets the required standard.

15.3 Nigel Huddleston MP at the Department for International Trade can confirm that this Explanatory Memorandum meets the required standard.

Annex

Statements under the European Union (Withdrawal) Act 2018

Part 1

Table of Statements under the 2018 Act

This table sets out the statements that may be required under the 2018 Act.

Statement	Where the requirement sits	To whom it applies	What it requires
Sifting	Paragraphs 3(3), 3(7) and 17(3) and 17(7) of Schedule 7	Ministers of the Crown exercising sections 8(1) or 23(1) to make a Negative SI	Explain why the instrument should be subject to the negative procedure and, if applicable, why they disagree with the recommendation(s) of the SLSC/Sifting Committees
Appropriate-Ness	Sub-paragraph (2) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1) or 23(1) or jointly exercising powers in Schedule 2	A statement that the SI does no more than is appropriate.
Good Reasons	Sub-paragraph (3) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1) or 23(1) or jointly exercising powers in Schedule 2	Explain the good reasons for making the instrument and that what is being done is a reasonable course of action.
Equalities	Sub-paragraphs (4) and (5) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1) or 23(1) or jointly exercising powers in Schedule 2	Explain what, if any, amendment, repeals or revocations are being made to the Equalities Acts 2006 and 2010 and legislation made under them. State that the Minister has had due regard to the need to eliminate discrimination and other conduct prohibited under the Equality Act 2010.
Explanations	Sub-paragraph (6) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1) or 23(1) or jointly exercising powers in Schedule 2 In addition to the statutory obligation the Government has made a political commitment to include these statements alongside all EUWA SIs	Explain the instrument, identify the relevant law before IP completion day, explain the instrument's effect on retained EU law and give information about the purpose of the instrument, e.g., whether minor or technical changes only are intended to the EU retained law.
Criminal offences	Sub-paragraphs (3) and (7) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1) or 23(1) or jointly exercising	Set out the 'good reasons' for creating a criminal offence, and the penalty attached.

		powers in Schedule 2 to create a criminal offence	
Sub-delegation	Paragraph 30, Schedule 7	Ministers of the Crown exercising section 8 or part 1 of Schedule 4 to create a legislative power exercisable not by a Minister of the Crown or a Devolved Authority by Statutory Instrument.	State why it is appropriate to create such a sub-delegated power.
Urgency	Paragraph 34, Schedule 7	Ministers of the Crown using the urgent procedure in paragraphs 5 or 19, Schedule 7.	Statement of the reasons for the Minister's opinion that the SI is urgent.
Scrutiny statement where amending regulations under 2(2) ECA 1972	Paragraph 14, Schedule 8	Anybody making an SI after IP completion day under powers conferred before the start of the 2017-19 session of Parliament which modifies subordinate legislation made under s. 2(2) ECA	Statement setting out: a) the steps which the relevant authority has taken to make the draft instrument published in accordance with paragraph 16(2), Schedule 8 available to each House of Parliament, b) containing information about the relevant authority's response to— (i) any recommendations made by a committee of either House of Parliament about the published draft instrument, and (ii) any other representations made to the relevant authority about the published draft instrument, and, c) containing any other information that the relevant authority considers appropriate in relation to the scrutiny of the instrument or draft instrument which is to be laid.
Explanations where amending regulations under 2(2) ECA 1972	Paragraph 15, Schedule 8	Anybody making an SI after IP completion day under powers outside the European Union (Withdrawal) Act 2018 which modifies subordinate legislation made under s. 2(2) ECA	Statement explaining the good reasons for modifying the instrument made under s. 2(2) ECA, identifying the relevant law before IP completion day, and explaining the instrument's effect on retained EU law.

Part 2

Statements required under the European Union (Withdrawal) 2018 Act

1. Appropriateness statement

1.1 Parliamentary Under Secretary of State at the Department for International Trade, Nigel Huddleston MP, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

"In my view the Extraterritorial US Legislation (Sanctions against Cuba, Iran and Libya) (Protection of Trading Interests) (Amendment) (EU Exit) Regulations 2022 do no more than is appropriate".

1.2 This is the case because these Regulations make limited technical amendments to correct deficiencies of retained EU law arising from the withdrawal of the UK from the EU.

2. Good reasons

2.1 Parliamentary Under Secretary of State at the Department for International Trade, Nigel Huddleston MP, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

"In my view there are good reasons for the provisions in this instrument, and I have concluded they are a reasonable course of action".

2.2 These are that they ensure that a cross-reference in article 4(4) of the Extraterritorial US Legislation (Sanctions against Cuba, Iran and Libya) (Protection of Trading Interests) Order 1996 is consistent with amendments made to section 30(3) of the Small Business, Enterprise and Employment Act 2015 by paragraph 36 of Schedule 8 to the European Union (Withdrawal) Act 2018, and they remove an obsolete reference to the EC Counter-measures Regulation. This is set out in more detail in paragraphs 7.1 to 7.4.

3. Equalities

3.1 Parliamentary Under Secretary of State at the Department for International Trade, Nigel Huddleston MP, has made the following statement:

"The draft instrument does not amend, repeal or revoke a provision or provisions in the Equality Act 2006 or the Equality Act 2010 or subordinate legislation made under those Acts."

3.2 Parliamentary Under Secretary of State at the Department for International Trade, Nigel Huddleston MP, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

"In relation to the draft instrument, I, Nigel Huddleston MP, have had due regard to the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010."

4. Explanations

4.1 The explanations statement has been made in section 7 of the main body of this explanatory memorandum.