EXPLANATORY MEMORANDUM TO

THE PROHIBITION ON QUANTITATIVE RESTRICTIONS (EU EXIT) REGULATIONS 2020

2020 No. XXXX

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department for Business, Energy and Industrial Strategy and is laid before Parliament by Command of Her Majesty.

1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

2.1 The purpose of this instrument is to end the application of the rights flowing from the EU Treaty provisions which prohibit the imposition of quantitative restrictions and equivalent measures on imports or exports within the EU after the end of the transition period. The Treaty provisions in question are found in Articles 34 to 36 of the Treaty on the Functioning of the EU (TFEU). They apply to all goods not otherwise subject to EU harmonised legislation (the non-harmonised goods sector). The SI also makes provision in respect of similar provisions in the EEA agreement and in agreements between the EU and Switzerland and the EU and Turkey.

Explanations

What did any relevant EU law do before exit day?

2.2 Articles 34 and 35 TFEU prohibit the imposition of quantitative restrictions or equivalent measures (such as regulatory requirements) on imports and exports by Member States, unless justified under Article 36 in the interests of, for example, public security; the protection of health and life of humans, animals or plants; the protection of national treasures; possessing artistic, historic or archaeological value; or the protection of industrial and commercial property. Article 36 itself also prohibits any restrictions that constitute a means of arbitrary discrimination or a disguised restriction on trade. The provisions encourage the free movement of goods within the EU by prohibiting a Member State imposing quantitative restrictions or an equivalent measure which would result in barriers to trade in goods between Member States.

Why is it being changed?

2.3 The rights flowing from Articles 34 to 36 TFEU, as well as the equivalent provisions in the EEA agreement and the agreements with Switzerland and Turkey, will become retained EU law pursuant to section 4 of the European Withdrawal Act 2018 (EUWA) at the end of the transition period. It is not entirely clear what rights they would give rise to when the UK is outside the EU Single Market, but it is clear that they would not receive reciprocity from the EU as they were originally conceived. For clarity, as the GB intends to have its own regulatory regime after the transition period, these rights are being disapplied as it is no longer appropriate for them to coexist and pose some risk of challenge if we decide to diverge from EU law. In respect of the

movement of goods between NI and GB, the UKIM Bill will make provision for unfettered access for NI Qualifying Goods ("NIQGs") to the GB market and for the application of the market access principles of mutual recognition and non-discrimination (and the concept of NIQGs will be defined in regulations made under the European Union (Withdrawal) Act 2018).

What will it now do?

2.4 The SI will end the application of the Rights derived from Articles 34 to 36 of the TFEU in GB. The intention of removing these provisions is to ensure that there is no barrier to diverging from EU rules should GB chose to do so, such as new administrative or legislative measures that could create barriers to trade that infringe the free movement Articles. Divergence may also occur where GB chooses not to reflect or keep pace with new or updated EU legislation.

3. Matters of special interest to Parliament

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 England, Wales and Scotland.

3.3 For the purposes of Standing Order No 83P, the instrument does not apply to England only, or England and Wales only.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is England, Wales and Scotland.

4.2 The territorial application of this instrument is England, Wales and Scotland.

5. European Convention on Human Rights

5.1 Nadhim Zahawi, Parliamentary Under Secretary of State, Minister for Business and Industry has made the following statement regarding Human Rights:

"In my view the provisions of The Prohibition on Quantitative Restrictions (EU Exit) Regulations 2020 are compatible with the Convention rights."

6. Legislative Context

6.1 The rights flowing from Articles 34 to 36 of the TFEU, as well as the provisions in the EEA agreement and in the agreements with Switzerland and Turkey, are directly effective treaty rights in the UK by virtue of the European Communities Act 1972 and will become retained EU law pursuant to section 4 of the EUWA at the end of the implementation period.

7. Policy background

What is being done and why?

7.1 GB intends to have its own regulatory regime for goods after the end of the implementation period. However the treaty rights of Articles 34 and 35 in the TFEU could be cited by manufacturers or importers seeking to raise a legal challenge if we were to diverge from EU goods law in a way that creates a barrier to trade between

GB and the EU. Disapplying these rights mitigates the risk of challenge and supports our ability to diverge from EU requirements in future as we see fit.

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

8.1 This instrument is being made using the power in section 8 of the European Union (Withdrawal) Act 2018 in order to address failures of retained EU law to operate effectively or other deficiencies arising from the withdrawal of the United Kingdom from the European Union. 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.

8.2 The instrument was submitted to the sifting committees on 13 July in accordance with paragraph 1(3) and 3 of Schedule 7 to the Act and on 28 July the SLSC decided that the instrument should be subject to the affirmative procedure. The instrument is being laid in accordance with that procedure to satisfy the requirements of the sifting committee.

9. Consolidation

9.1 There is no earlier relevant legislation to consolidate. Accordingly, this SI does not make consolidation of earlier instruments.

10. Consultation outcome

10.1 Minister Nadhim Zahawi wrote to his counterparts in the Devolved Administrations in Scotland and Wales to seek their consent as some goods potentially affected by this SI fall under devolved competence. Consent from Wales has been obtained. Scotland have not yet sent consent but agreed at official level we can lay and get consent before debate.

10.2 No public consultation was undertaken. This is because revoking the Treaty rights does not, in itself, have any effect. The effect will arise out of any other measures that may be taken in the future and which may impose some limits on free movement of goods into GB .

11. Guidance

11.1 There is no specific guidance relating to this SI. However, guidance relating to placing goods on the market can be found on gov.uk.

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 disapplying the treaty Rights will not in itself result in any changes for businesses or goods regulation. The correct place to prepare an impact assessment would be in respect of any future measures that do result in such changes.

13. Regulating small business

13.1 No steps have been taken to minimise the impact of the requirements on small businesses (employing up to 50 people), as no new requirements are being introduced. The purpose of the instrument is to support the ability to diverge from EU rules in the future and mitigate against a risk of challenge by addressing inoperability and deficiencies arising as a result of the UK leaving the EU, including a lack of reciprocity once the UK is no longer a Member State.

14. Monitoring & review

14.1 As this instrument is made under the EU Withdrawal Act 2018, no review clause is required.

15. Contact

15.1 Charlotte Clancy at the Department for Business, Energy and Industrial Strategy Telephone: (0)20 7215 3800 or email: charlotte.clancy@beis.gov.uk can be contacted with any queries regarding the instrument.

15.2 Giles Hall at the Department for Business, Energy and Industrial Strategy can confirm that this Explanatory Memorandum meets the required standard.

15.3 The Minister for Business and Industry, Nadhim Zahawi, at the Department for Business, Energy and Industrial Strategy 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 clauses 8(1), 9 and 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/ESIC
Appropriate-ness	Sub-paragraph (2) of paragraph 28, Schedule 7	Ministers of the Crown exercising clauses 8(1), 9 and 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 clauses 8(1), 9 and 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 clauses 8(1), 9 and 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 77	Ministers of the Crown exercising clauses 8(1), 9 and 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 exit 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 clauses 8(1), 9, and 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 clauses 10(1), 12 and 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 4 or 14, Sch 7.	Statement of the reasons for the Minister's opinion that the SI is urgent.
Explanations where amending regulations under 2(2) ECA 1972	Paragraph 13, Schedule 8	Anybody making an SI after exit 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 exit day, and explaining the instrument's effect on retained EU law.
Scrutiny statement where amending regulations under 2(2) ECA 1972	Paragraph 16, Schedule 8	Anybody making an SI after exit day under powers outside the European Union (Withdrawal) Act 2018 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.

Part 2

Statements required when using enabling powers under the European Union (Withdrawal) 2018 Act

1. Appropriateness statement

1.1 The Minister for Business and Industry, Nadhim Zahawi, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

1.2 "In my view the Minister for Business and Industry, Nadhim Zahawi, The Prohibition on Quantitative Restrictions (EU Exit) Regulations 2020 do no more than is appropriate."

This is the case because the Instrument makes only changes necessary to address deficiencies arising from the retention of reciprocal EU treaty Rights that are no longer appropriate once the UK is no longer a member State. This Instrument does no more than is necessary to cease directly effective rights of the free movement of goods. Further details are provided in paragraph 2.3 of this explanatory memorandum.

2. Good reasons

2.1 The Minister for Business and Industry, Nadhim Zahawi, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

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

This is the case because the Instrument makes provision to correct deficiencies in retained EU law (that retained EU law no longer being appropriate).

3. Equalities

3.1 The Minister for Business and Industry, Nadhim Zahawi, has made the following statement

3.2 "The 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.

3.3 The Minister for Business and Industry, Nadhim Zahawi has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

3.4 "In relation to the instrument, I, Nadhim Zahawi, 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

The explanations statement has been made in paragraph 2 of the main body of this explanatory memorandum.