EXPLANATORY MEMORANDUM TO

THE TRADE ACT 2021 (POWER TO IMPLEMENT INTERNATIONAL TRADE AGREEMENTS) (EXTENSION TO EXPIRY) REGULATIONS 2025

2025 No. [XXXX]

1. Introduction

1.1 This Explanatory Memorandum has been prepared by the Department for Business and Trade and is laid before Parliament by Command of His Majesty.

2. Declaration

2.1 Chris Bryant, Minister of State at the Department for Business and Trade confirms that this Explanatory Memorandum meets the required standard.

2.2 Deeya Sawhney, Deputy Director for Parliamentary, Policy and Strategy, at the Department for Business and Trade confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Ed Butcher at the Department for Business and Trade, email: ed.butcher@businessandtrade.gov.uk, can be contacted with any queries regarding the instrument. Alternatively, the department can be contacted by telephone: +44 (0) 20 4551 0011.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 This Statutory Instrument (SI) extends the power in section 2(1) of the Trade Act 2021, which will expire at 23:00 on 31 December 2025 unless an SI is laid in accordance with the provisions of section 2(10)(b) and section 2(11). Sections 2(10)(b) and 2(11) allow for the Secretary of State to extend the time to use the power in section 2(1) for up to five years at a time. Accordingly, this SI will extend the time within which an appropriate authority can use the power in section 2(1) for five years and therefore will expire at 23:00 on 31 December 2030.

4.2 Section 2(1) of the Trade Act 2021 ensures that the UK's trade agreements with countries that the EU had a free trade agreement (FTA) with, or with which it had an international agreement that relates to trade other than an FTA ("International Trade Agreement"), prior to 31 January 2020 ("Partner Countries") can be implemented domestically, section 2(1) of the Trade Act 2021 gives an appropriate authority (a Minister of the Crown and Scottish Ministers, Welsh Ministers or a Northern Ireland department) the power to make regulations to implement non-tariff provisions in International Trade Agreements that the UK makes with Partner Countries.

4.3 Regulations made under section 2(1) in relation to certain areas must be consistent with statutory protections in those areas. The relevant areas include: the protection of human, animal or plant life or health; animal welfare; environmental protection; employment and labour; data protection and the protection of children and vulnerable

adults online. Regulations containing provision about health services must also be consistent with maintaining publicly funded clinical healthcare services.

4.4 Schedule 2 of the Act sets out the procedures which must be followed before regulations are made by a Minister of the Crown or a Devolved Authority (Devolved Government) under section 2(1) of the Trade Act. Paragraph 4 covers scrutiny when a Minister of the Crown or Devolved Authority is acting alone and Paragraph 5 when they act jointly. In either case the Regulations will be subject to the relevant affirmative procedure meaning they cannot be made unless Parliament, the Scottish Parliament, Senedd Cymru or the Northern Ireland Assembly (as the case may be) has debated and approved the making of them.

Where does the legislation extend to, and apply?

4.5 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is the United Kingdom (England and Wales, Scotland, and Northern Ireland).

4.6 The territorial application of this instrument (that is, where the instrument produces a practical effect) is the United Kingdom (England and Wales, Scotland, and Northern Ireland).

5. Policy Context

What is being done and why?

5.1 His Majesty's Government (HMG) has previously relied on the power granted under section 2(1) of the Trade Act 2021 to implement International Trade Agreements that the UK signed with Partner Countries. This is the first time the power in section 2(1) has been extended.

5.2 Not extending the power in section 2(1) presents significant policy risks relating to the ability of the UK to domestically implement and manage key aspects of relevant international agreements in a timely manner.

5.3 A 5-year extension to this power will enable HMG and the Devolved Governments (DGs) to implement key aspects of finalised agreements from our ongoing trade negotiation programme with Partner Countries and support the ongoing management of existing agreements with Partner Countries. For example, resulting changes to an International Trade Agreement from a review process carried out under the treaty may require the power in section 2(1) if changes to domestic legislation are required to implement such changes domestically.

5.4 As the timeframe for completion of these negotiations is uncertain and management of existing agreements can be ongoing, it is prudent to extend the section 2(1) power for the full five years allowed to provide confidence to this process.

5.5 If domestic legislation is required to enable the UK to give effect to its obligations under a treaty, it is FCDO practice that the legislation should be in place before the treaty comes into force to ensure the UK is compliant with the relevant international agreement at that time.

5.6 Without the power in place, the UK and DGs would likely need separate primary legislation, which will prove demanding and costly on resourcing and parliamentary time.

What was the previous policy, how is this different?

5.7 The policy remains the same as within the original legislation. This SI simply extends the time within which an appropriate authority can use the power within section 2(1) of the original legislation for five years (expiring at 23:00 on 31st December 2030).

6. Legislative and Legal Context

How has the law changed?

6.1 Section 2(10) of the Trade Act 2021 makes the power in section 2(1) subject to a sunset requirement. This means that the power will cease to have effect five years after IP completion day (31 December 2020). However, section 2(10)(b) and s.2(11) provide that this period can be extended by the Secretary of State with the approval of both Houses of Parliament through an affirmative SI, for further periods of up to five years at a time.

Why was this approach taken to change the law?

6.2 Considering the appropriate approach, it has been determined that an extension of the power within section 2(1) for a period of five years to be the most effective and proportionate course of action.

6.3 Not extending the power within section 2(1) reduces our flexibility to effectively manage and domestically implement International Trade Agreements with Partner Countries, resulting in high degrees of uncertainty for business that rely on clear and consistent approaches in order to export their goods and services to Partner Countries and make use of the benefits of the associated FTAs.

6.4 A five-year extension provides confidence in negotiations with Partner Countries that the UK will be able to swiftly implement relevant domestic legislation to abide by its commitments and without needing to allocate parliamentary time for primary legislation if that would otherwise be required.

6.5 Limiting the extension to less than five years will not give the UK the certainty needed to continue to efficiently implement international trade agreements that the UK signs with Partner Countries. Furthermore, there is uncertainty about how often the UK will need to make SI's to address unforeseen issues during the ongoing management of our agreements with Partner Countries and thus will help maintain legal certainty for businesses wishing to trade under the provisions of these International Trade Agreements.

6.6 Furthermore, the power in section 2(1) will not normally be used in an area of devolved competence without that consent of the DGs and never without consulting them.

7. Consultation

Summary of consultation outcome and methodology

HMG has informed the DGs of its intention to extend it the power under section 2(1) and has given them the opportunity to raise any questions and comments on this instrument.

8. Applicable Guidance

8.1 Not applicable.

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 A full Impact Assessment has not been prepared for this instrument because the low level of impact per business and would not meet the criteria requiring an assessment.

Impact on businesses, charities and voluntary bodies

9.2 There is no, or no significant, impact on business, charities or voluntary bodies because this SI extends the time within which an appropriate authority can use the power within section 2(1) of the original legislation for five years.

9.3 The legislation does not impact small or micro businesses.

9.4 There is no, or no significant, impact on the public sector because this SI extends the time within which an appropriate authority can use the power within section 2(1) of the original legislation for five years.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 We are seeking to extend the power within section 2(1) of the Trade Act 2021 through an affirmative SI for a further five years. There will be a review at the end of the extension period to determine whether a further extension is necessary.

10.2 The instrument does not include a statutory review clause and, in line with the requirements of the Small Business, Enterprise and Employment Act 2015, Chris Bryant, Minister of State at the Department for Business and Trade, has made the following statement:

"There is no expected significant annualised net impact on business and existing review plans are already in place."

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 None.

12. European Convention on Human Rights

12.1 The Minister of State has made the following statement regarding Human Rights:

"In my view the provisions of The Trade Act 2021 (Power to Implement International Trade Agreements) (Extension to Expiry) Regulations 2025 are compatible with the Convention rights."

13. The Relevant European Union Acts

13.1 This instrument is not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 ("relevant European Union Acts").