EXPLANATORY MEMORANDUM TO

THE EUROPEAN UNION (DEFINITION OF TREATIES) (SECOND AGREEMENT AMENDING THE COTONOU AGREEMENT) ORDER 2012

2012 No. 797

1. This explanatory memorandum has been prepared by the Department for International Development and is laid in draft before Parliament by Command of Her Majesty.

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

2. Purpose of the Instrument

2.1 This Order would specify that the Agreement amending for the second time the 2000 Partnership Agreement between the Members of the African, Caribbean and Pacific (ACP) Group of States, of the one part, and the European Community and its Member States, of the other part, (the Cotonou Agreement), signed in Luxembourg on 22 June 2010 (the Second Amending Agreement) is to be regarded as an EU Treaty as defined in section 1(2) of the European Communities Act 1972 as amended.

2.2 The provisions of section 2 of the European Communities Act 1972 (which provide for the general implementation of EU Treaties) would then apply in relation to the Second Amending Agreement; they could be used for the implementation of the provisions of the agreement and would allow for financial commitments made by the United Kingdom as a contribution to EU cooperation with the ACP States pursuant to the Cotonou Agreement, to be met out of the Consolidated Fund.

3. Matters of special interest to the Joint Committee on Statutory Instruments

None.

4. Legislative Context

4.1 The Second Amending Agreement has been signed by the EU and all of its Member States, and must be ratified by each Member State as well as by the EU (and at least two-thirds of the ACP States) before it can come into force.

4.2 The Government intends, subject to the making of this Order, to ratify the Second Amending Agreement on behalf of the United Kingdom. The United Kingdom must be in a position to implement all of the provisions of the Second Amending Agreement before it may ratify it. The Order would provide the necessary powers, under section 2 of the European Communities Act 1972.

The Second Amending Agreement has been published in full in Command Paper 8025.

5. Territorial Extent and Application

This instrument applies to the whole of the United Kingdom.

6. European Convention on Human Rights

The Secretary of State for International Development has made the following statement regarding the Second Amending Agreement's compatibility with human rights:

"In my view the provisions of the European Union (Definition of Treaties) (Agreement amending for the second time the Cotonou Agreement) Order 2011 is compatible with the Convention rights".

7. Policy background

7.1 The Cotonou Agreement was signed on 23 June 2000 and was concluded for a period of 20 years. It covers political and trade relations and development co-operation and has, as its central objective, the reduction and eventual eradication of poverty in the ACP Group of States. It was specified as a Community Treaty (now an EU Treaty) under S.I. No. 3935/2001. The Cotonou Agreement is subject to review every five years and was amended for the first time on 25 June 2005, that amendment entering into force on 1 July 2008.

The second review of the Cotonou Agreement was conducted between May 2009 and March 2010. Following the review and further negotiations, the parties signed the Second Amending Agreement on 22 June 2010 in Burkina Faso. The revisions aim to help better reflect changing political and security concerns, trade relations, economic and development co-operation strategies and implementation procedures between the parties to the original Agreement.

7.2 <u>Political Dimension, institutional issues and sector specific policies</u>

The revised text provides for greater coherence between regional initiatives such as the EU/Africa Strategy and the Cotonou Agreement. ACP Parliaments and non-State actors have also gained enhanced recognition, as has the African Union as a key interlocutor in peace and stability matters. Language in Article 11 of the Cotonou Agreement has also been updated to reflect the need to tackle changing security threats - ranging from piracy to exogenous shocks - the security/development nexus, violence against women and children in war, and the need for the active participation of women in reconciliation processes.

Other changes have been made to allow for improved information exchange between the ACP Secretariat and the EU before, during and after the closure of political discussions as part of Article 96 procedures, where intense

dialogue and appropriate measures are applied in the event that a State party fails to uphold the essential elements of the Agreement. Article 8 of the Cotonou Agreement on political dialogue has also been updated to include language on non-discrimination drawn from the Universal Declaration on Human Rights, and the subjects open for discussion under political dialogue have been expanded.

New references to Climate Change (Article 32a), HIV/AIDS (Article 31a) and a commitment to accelerate efforts to meet the Millennium Development Goals have also been included. The Cotonou Agreement has also been amended to incorporate an ACP request to hold high level consultations on fisheries (Article 23a) to enhance coherence between fisheries policies and development, and strengthen wording on food security and agriculture. The revised Agreement does not include changes to Article 13 on migration but does incorporate a Joint Declaration (Declaration II) which commits the EU and ACP to further negotiations on enhanced cooperation in this area.

7.3 Economic Co-operation, regional integration and trade

Trade provisions have been significantly updated to account for the change in trading arrangements from the former system of unilateral tariff preferences that applied from 2001 to 2007, under which the EU granted unilateral duty-free quota-free access for ACP exports, to the new system of Economic Partnership Agreements (EPA), which provide duty-free quota-free access in a manner compatible with the rules of the WTO. Articles 34 to 39 cover both technical and procedural necessities and set out principles around EPA implementation, consultation and regional cooperation. The Second Amending Agreement has also introduced the concept of 'Aid for Trade' in Article 35. The Second Amending Agreement has in addition recognised the challenge which the erosion of preferential terms of trade with the EU would pose for ACP States (Article 37). The Articles on regional cooperation and integration have been strengthened in recognition of the increased regional differentiation within the ACP grouping and to ensure consistency with the 2008 Communication on Regional Integration (particularly Articles 20, 23, 29 and 30).

Article 33 (taxation) has been revised to include a strong focus on helping ACP States to provide support for domestic revenue-raising through enhanced tax administration. The Article also promotes the ACP's participation in international tax cooperation and compliance with international standards in this area.

7.4 Development Finance Co-operation, including humanitarian and emergency assistance and new development advances in aid programming and management

The negotiations in this area focused on improving the programming and implementation of aid. In particular a role has been added for ACP States' national parliaments in the programming of aid, and further detail has been provided on 'Intra-ACP programming' in order to harmonise it with

programming at the national and regional levels (Annex IV). Provisions have been introduced to encourage greater flexibility in responding to 'unforeseen needs' at the regional level (in 'B envelopes' within the European Development Fund), as well as flexibility to increase allocations in response to crisis situations (in 'A and B envelopes' of the Fund).

The Second Amending Agreement has also added a greater emphasis to humanitarian, emergency and post-emergency assistance financing under the multi annual financial framework (Article 72).

7.5 Finally, the revised agreement reflects the entry into force of the Lisbon Treaty on 1 December 2009. As the European Union has replaced and succeeded the European Community, references to 'the European Community' in the text of the Agreement are, where appropriate, to be read as 'the European Union'. The Cotonou Agreement as amended now states in Declaration III that "the European Union will propose to the ACP States an Exchange of Letters with the aim of bringing the Agreement into conformity with the institutional changes in the European Union resulting from the entry into force of the Treaty of Lisbon".

8. Consultation Outcome

8.1 The EU Parliamentary Committees were consulted on the revisions included in the Second Amending Agreement. Given the tight deadlines surrounding these decisions which coincided with UK Parliamentary Purdah, scrutiny override was used to ensure that the agreement amending the Cotonou Agreement for the second time was signed at the ACP-EU Joint Council of Ministers meeting held in Ouagadougou on 22 June 2010. However, the revisions subsequently cleared scrutiny in the House of Commons on 25 January 2011[1] and in the House of Lords on 1 July 2010.[2]

9. Guidance

9.1 Not relevant in the context of this instrument

10. Impact

10.1 An Impact Assessment has not been prepared for this instrument as an initial assessment determined that the costs and benefits for business, the voluntary sector and public finances in the United Kingdom are expected to be negligible.

10.2 No impact on the public sector is foreseen. The internal agreement governing funding of this instrument has been agreed up to 2013. An agreement on

[1] http://www.publications.parliament.uk/pa/cm/cmeudoc/cmeudoc.htm

[2] See the Progress of Scrutiny Report 2nd Edition of session 2010-11 http://www.parliament.uk/business/committees/committees-a-z/lords-select/eu-select-committee-/publications/.

subsequent funding of the European Development Fund from 2014-2020 will be discussed in the context of negotiations on the next Multi-Annual Financial Framework.

11. Regulating Small Business

11.1 The legislation does not apply to small business in the United Kingdom.

12. Monitoring and review

12.1 The 2000 ACP-EU Partnership Agreement is revised every five years; the next opportunity to review the accord will be in 2014.

12.2 The European Development Fund is the main financing instrument which supports EU aid programmes in Africa, Caribbean and Pacific (ACP) countries, and is used to implement the 2000 ACP-EC Partnership Agreement. The current EDF cycle, EDF 10, runs from 2008 - 2013 and there is likely to be a replenishment process starting later this year for EDF 11. This will provide an opportunity to review progress and set future objectives.

12.3 The European Commission conducts annual reviews of all of their external development cooperation programmes, including the performance of the European Development Fund (EDF). These are presented by the European Commission as External Action Management Reports, which are scrutinised by the UK as well as the European Parliament and the European Court of Auditors. The UK will also be monitoring closely the Mid-Term Review and End of Term Review of EDF 10 .

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