EXPLANATORY MEMORANDUM TO

THE FLEGT LICENSING SCHEME (COUNCIL REGULATION (EC) NO 2173/2005) (AMENDMENT) REGULATIONS 2021

2021 No. 2

1. Introduction

1.1 This Explanatory Memorandum has been prepared by the Department for Environment, Food and Rural Affairs ("Defra") and is laid before Parliament by Command of Her Majesty.

1.2 This Memorandum contains information for the Secondary Legislation Scrutiny Committee ("SLSC") and the Joint Committee on Statutory Instruments ("JCSI").

2. Purpose of the instrument

2.1 This instrument lists Indonesia as a 'Partner Country' for the purpose of the Great Britain ("GB") Forest Law Enforcement, Governance and Trade ("FLEGT") licensing scheme, enabling the continued supply of legally harvested timber and timber products into the United Kingdom ("UK") from Indonesia, after the end of the Implementation Period.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments and the Secondary Legislation Scrutiny Committee

3.1 It is a convention that an instrument should not normally be laid before Parliament less than 21 days before it comes into force. It is not possible to observe the 21-day rule for this instrument because we do not have the regulation-making powers required until the end of the Implementation Period. This instrument will come into force on the day following laying. This is necessary to ensure the UK can continue accepting FLEGT licences as proof of legally sourced timber for Indonesian imports following the end of the Implementation Period. A delay to this instrument coming into force would mean operators importing timber from Indonesia would, in the meantime, be required to comply with due diligence requirements of the Timber Regulation (Regulation (EU) No 995/2010) ("the UK Timber Regulation") putting additional financial and administrative burdens on these businesses.

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 As this instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is Great Britain.

4.2 The territorial application of this instrument is Great Britain.

5. European Convention on Human Rights

5.1 The Minister of State Lord Goldsmith has made the following statement regarding Human Rights:

"In my view the provisions of the FLEGT Licensing Scheme (Council Regulation (EC) No. 2173/2005) (Amendment) Regulations 2021 are compatible with the Convention rights."

6. Legislative Context

6.1 The Timber and Timber Products and FLEGT (EU Exit) Regulations 2018 (Statutory Instrument No.1025/2018) ("the 2018 Regulations") ensures that EU and UK legislation establishing the regime that prohibits the placing of illegally harvested timber on the market and establishing a licensing scheme to improve the supply of legally harvested timber, will continue to be operable after the end of the Implementation Period. These Regulations have been amended by the Timber and Timber Products and FLEGT (Amendment) (EU Exit) Regulations 2020 (Statutory Instrument No. 2020/1315) in order that the 2018 Regulations remain correct in relation to The Protocol on Ireland/Northern Ireland ("the Protocol"), whereby direct EU law will apply in Northern Ireland.

6.2 At the time the 2018 Regulations were made, the UK did not have a bilateral FLEGT Voluntary Partnership Agreement ("VPA") in place with Indonesia. It was therefore necessary to remove Indonesia from the Annex of the FLEGT Regulation (Council Regulation 2173/2005) ("the FLEGT Regulation"), until such time that a UK-Indonesia VPA concluded. As the UK-Indonesia VPA is now in effect, Indonesia can be re-listed in the FLEGT Regulation as a 'Partner Country' to enable UK to continue to accept FLEGT licences for Indonesian timber imports after the end of the Implementation Period.

7. Policy background

What is being done and why?

7.1 The FLEGT Regulation, and the associated EU and UK implementing legislation, has been amended under the European Union (Withdrawal) Act 2018 to ensure operability after the end of the Implementation Period. Accordingly, the Timber and Timber Products and FLEGT (EU Exit) Regulations 2018, the Environment and Wildlife (Legislative Functions) (EU Exit) Regulations 2019 (Statutory Instrument No. 2019/473) and the Timber and Timber Products and FLEGT (Amendment) (EU Exit) Regulations 2020 have been made and will come into force at the end of the Implementation Period.

7.2 The FLEGT Regulation establishes a licensing scheme to improve the supply of legal timber. The regulation is underpinned by Voluntary Partnership Agreements ("VPAs"), which are bilateral trade agreements between the UK and a timber-exporting country (e.g. the Republic of Indonesia ("Indonesia")). Under a VPA, the timber-producing country ("Partner Country") develops a strengthened regulatory system to generate evidence that all timber production is legally compliant, and through a licence provides that assurance for all exports. Once partner countries' control systems have been reinforced, demonstrating conditions of good governance as set out in the VPA, the UK may accept FLEGT licences for all timber imports, which verify their legality. Once the FLEGT licensing system is operational, all

timber imports from that partner country require a FLEGT licence; anything else is prohibited. FLEGT-licensed timber is always considered legal, serving as an approved means for timber importers to meet due diligence under the UK Timber Regulations. The VPA requires independent third-party systems audits once the FLEGT licensing is operational. These audits provide reassurance both domestically and to international markets that the controls systems are working effectively.

7.3 The aim of a VPA is to guarantee that any wood exported from a timber-producing country to the UK comes from legal sources and to help the partner country stop illegal logging by improving forest governance and regulation.

7.4 Specifically, a VPA will contribute to tackling the serious economic, environmental and social problems caused by deforestation and forest degradation. The benefits of a VPA can include reduced corruption, strengthened forest sector governance, support for forest-dependent people's livelihoods, avoided deforestation and associated greenhouse gas emissions and biodiversity loss, and avoided loss of government revenues through illegal activity. Whilst VPAs are voluntary for timber-exporting countries, a VPA is legally binding on both sides once it has entered into force.

7.5 By reinstating Indonesia as a Partner Country under the GB FLEGT licensing scheme, the UK will continue to accept FLEGT licences for imports from Indonesia as evidence of legally harvested timber and timber products. This will enable businesses to continue trading with Indonesia without any additional administrative or financial burdens, after the end of the Implementation Period.

7.6 The regulation-making power for this instrument only becomes available to the Secretary of State at the end of the Implementation Period, meaning the earliest date the instrument can be laid is January 4th, to come into force the day after. This will leave a small air gap between the end of the Implementation Period and when this instrument is laid. During this period The Office for Product Safety and Standards ("OPSS") will consider a FLEGT licence as meeting the due diligence requirement for the import of timber. This will ensure continuity for businesses and reassure Indonesia, who will want to provide certainty to their own timber industry.

7.7 At the end of the Implementation Period, in accordance with the Protocol, direct EU law will apply in Northern Ireland and retained EU law will apply in the rest of Great Britain. As such, this instrument extends only to Great Britain.

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

8.1 This instrument is not being made under the European Union (Withdrawal) Act 2018 but relates to the withdrawal of the United Kingdom from the European Union because it is required to ensure that the UK can continue to accept FLEGT licences for imports of timber from Indonesia as evidence of legally harvested timber and timber products, under a bilateral UK-Indonesia FLEGT VPA, following the UK's withdrawal from the EU.

9. Consolidation

9.1 The Department does not intend to consolidate the relevant legislation at this time.

10. Consultation outcome

10.1 As there is no policy change resulting from this instrument, no public consultation was required. The purpose of this instrument is solely to enable the current FLEGT regime, in relation to imports of timber from Indonesia, to remain unchanged by the withdrawal of the UK from the EU.

10.2 The implementation of the FLEGT licensing system is a reserved matter under the UK devolution settlements. The FLEGT Regulation is currently enforced UK wide by the OPSS, who will continue this function after the end of the Implementation Period. Defra has consulted the Devolved Administrations on its approach to the VPA. The final VPA text, Explanatory Memorandum and related legislative instruments will be shared with the Devolved Administrations.

10.3 The implications of the UK's withdrawal from the EU in terms of the FLEGT regime, the underpinning VPA with Indonesia, and more generally timber trade have been discussed with interested parties, including the UK's Timber Expert Panel. OPSS, the body responsible for carrying out due diligence checks and verifying FLEGT licences, has been working with companies involved in the timber trade to keep them informed about what they will need to do at the end of the Implementation Period. A press release has been issued - https://www.gov.uk/government/news/businesses-trading-timber-urged-to-prepare-for-change - along with direct engagement with stakeholders and engagement work is ongoing.

11. Guidance

11.1 No new guidance will be produced specifically as a result of this instrument – guidance on how to comply with the FLEGT regime is already available at https://www.gov.uk/guidance/eu-timber-regulation-guidance-for-business-and-industry. There are no new obligations placed on stakeholders or enforcement agencies as a result of this instrument. This instrument will ensure continuity with the current FLEGT regime in relation to timber imports from Indonesia.

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 no impact on the private, public or voluntary sectors are foreseen. This instrument will enable continuation of the current FLEGT regime after the end of the Implementation Period and there will be no change to monitoring or enforcement.

13. Regulating small business

13.1 This instrument applies to activities that are undertaken by small businesses.

13.2 No specific action is proposed to minimise regulatory burdens on small businesses.

13.3 No mitigating action is proposed as no new impacts on small businesses are foreseen - this instrument ensures continuity with the current FLEGT regime after the end of the Implementation Period.

14. Monitoring & review

14.1 A review clause is not appropriate for this instrument because review mechanisms are built into the associated Agreement. The reports and findings of a periodic evaluator and an independent market monitor will be used to evaluate the implementation and effectiveness of the VPA. The VPA will remain in force for a period of five years (extended for consecutive periods of five years, unless either Party renounces the extension by notifying the other in writing).

15. Contact

15.1 Matt Coughlan, at the Department for Environment, Food and Rural Affairs, 07469 905165, email: matthew.coughlan@defra.gov.uk can answer any queries regarding this instrument.

15.2 Tamsin Ballard and Emma Donnelly, Deputy Directors for International Nature, Climate and Development, at the Department for Environment, Food and Rural Affairs can confirm that this Explanatory Memorandum meets the required standard.

15.3 Minister of State Lord Goldsmith at the Department for Environment, Food and Rural Affairs can confirm that this Explanatory Memorandum meets the required standard.