EXPLANATORY MEMORANDUM TO

THE KIMBERLEY PROCESS CERTIFICATION SCHEME (AMENDMENT) (EU EXIT) REGULATIONS 2019

2019 No. 844

1. Introduction

1.1 This explanatory memorandum has been prepared by the Foreign and Commonwealth Office and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 The Kimberley Process Certification Scheme (Amendment) (EU Exit) Regulations 2019 ensure that the European Union (EU) and UK legislation enacting the Kimberley Process Certification Scheme in the UK will continue to be operable after the UK leaves the EU.

2.2 The UK and EU have provisionally agreed that during the implementation period, the UK is to be treated as a Member State for the purposes of international agreements, including the Kimberley Process. This Statutory Instrument therefore would only apply in the event that the Withdrawal Agreement with the EU is not concluded, or after any implementation period.

2.3 The UK currently participates in the Kimberley Process by virtue of EU membership, and UK participation will therefore cease once the UK is no longer bound by EU law.

2.4 These Regulations are required as part of the UK's overall preparations to achieve full independent participant status to the Kimberley Process after we leave the EU and to ensure an effectively functioning statute book, even if the UK is not immediately an independent participant on Exit or after any implementation period.

Explanations

What did any relevant EU law do before exit day?

2.5 Council Regulation (EC) No. 2378/2002, adopted by the Council of the European Union on 20th December 2002, ("the EU Regulation") implemented the Kimberley Process certification scheme for the international trade in rough diamonds across the EU. The Kimberley Process certification scheme is a multilateral set of regulatory principles agreed between like-minded Participant states and designed to ensure that Kimberley Process Participants do not allow for the international trade in rough diamonds that might have come from conflict zones. The EU Regulation provided for EU Member States' imports and exports of rough diamonds to be in accordance with the Kimberley Process certification scheme.

Why is it being changed?

2.6 This instrument makes technical amendments to the existing legislation to ensure that it is operable after the UK leaves the EU, so that the UK, as an independent participant in due course, has a domestic framework which appropriately enacts the Kimberley Process certification scheme. The changes include amending references to the EU, EU Member States, and the role of the EU Commission to the UK or

equivalent processes in the UK; as well as minor textual changes to the current domestic fee legislation.

What will it now do?

2.7 These Regulations amend the EU Regulation so that, as retained EU law, it applies geographically only to the UK, and transfers the European Commission's oversight in respect of UK nationals or companies involved in the trade in rough diamonds, to the Secretary of State. This includes providing for the Secretary of State to publish the Kimberley Process's list of Participants, competent authorities, and self-regulating diamond organisations (which will be published by Exit Day), and for the detention of shipments of rough diamonds that are not compliant with the Kimberley Process. It allows for the Secretary of State to provide relevant information to the Chair of the Kimberley Process, and it provides for the issuing and use of UK Kimberley Process Certificates, as opposed to EU Kimberley Process Certificates, that will enable UK companies to export their rough diamond shipments. It also provides for the Secretary of State to further amend the EU Regulation by statutory instrument, where the Secretary of State considers that the Regulation is no longer effective to ensure that the law of the United Kingdom is consistent with the international Kimberley Process requirements.

2.8 The practical effect of this instrument on Exit Day will depend on whether the UK is recognised as an independent participant in the Kimberley Process by that date. Under the internationally agreed Kimberley Process rules, Participants are not to trade rough diamonds other than with other Kimberley Process Participants. Therefore if the UK is not an independent Participant we would not expect there to be any trade in rough diamonds to or from the UK.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

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 This entire instrument applies to England, Scotland, Wales and Northern Ireland only and is a financial instrument for the purposes of Standing Order No. 83T of the Standing Orders of the House of Commons relating to Public Business.

3.3 In the view of the Department, for the purposes of House of Commons Standing Order No. 83P of the Standing Orders of the House of Commons relating to Public Business, the subject-matter of this instrument would not be within the devolved legislative competence of any of the Northern Ireland Assembly as a transferred matter, the Scottish Parliament or the National Assembly for Wales if equivalent provision in relation to the relevant territory were included in an Act of the relevant devolved legislature.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is the United Kingdom.

4.2 The territorial application of this instrument is set out in Section 3 under "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)".

5. European Convention on Human Rights

5.1 Sir Alan Duncan, Minister of State at the Foreign and Commonwealth Office, has made the following statement regarding Human Rights:

"In my view the provisions of the Kimberley Process Certification Scheme (Amendment) (EU Exit) Regulations 2019 are compatible with the Convention rights."

6. Legislative Context

6.1 The UK is leaving the EU and the related retained EU legislation and EU related domestic legislation will not be operable in the UK without the amendments made by this instrument.

7. Policy background

What is being done and why?

7.1 The Kimberley Process takes its name from an inaugural meeting in May 2000 at Kimberley, South Africa, when diamond-producing states met to discuss ways to stop the trade in 'conflict diamonds' and ensure that diamond purchases were not financing violence in Africa.

7.2 In December 2000, the United Nations General Assembly adopted resolution 55/56, entitled "The role of rough diamonds in fuelling conflict: breaking the link between the illicit transaction of rough diamonds and armed conflict as a contribution to prevention and settlement of conflicts", which supported the creation of an international certification scheme for rough diamonds (and can be found here: http://undocs.org/en/A/RES/55/56). By November 2002, negotiations between governments, the international diamond industry and civil society organisations resulted in the creation of the Kimberley Process Certification Scheme. The scheme's core document sets out the requirements for controlling rough diamond production and trade.

7.3 The UK is an active Participant, through the EU, in the Kimberley Process Certification Scheme, and has been since the EU framework was agreed in 2002. The UK intends to continue being an active Participant in its own right after the UK leaves the EU. This instrument will provide for that once the UK becomes an independent Participant.

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

10. Consultation outcome

10.1 As there is no policy change taking place through this instrument, no public consultation was required. The purpose of the instrument is solely to enable the current legislative and policy framework to remain operable after the UK leaves the EU.

11. Guidance

11.1 No formal guidance has been prepared, though in advance of the UK's departure from the EU administrative instructions and relevant materials will appear on the Government's website: https://www.gov.uk/guidance/export-diamonds-special-rules .

12. Impact

12.1 There is no significant impact on business as this instrument broadly replicates requirements which already exist under the EU's framework for the Kimberley Process Certification Scheme, and an Impact Assessment has not been prepared. There is no, or no significant, impact on charities or voluntary bodies.

12.2 There will be a small impact on the public sector in respect of additional staffing. The Government Diamond Office already acts as a competent authority within the EU, and will continue to do so on behalf of the Secretary of State.

12.3 An Impact Assessment has not been prepared for this instrument because this instrument relates to the maintenance of existing regulatory standards.

13. Regulating small business

13.1 The legislation applies to activities that are undertaken by small businesses. No significant impacts on small businesses is foreseen as a result of this instrument.

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 Karen Neal at the Foreign and Commonwealth Office Telephone: 020 7008 8364 or email: Karen.Neal@fco.gov.uk can be contacted with any queries regarding the instrument.

15.2 Corinne Kitsell at the Foreign and Commonwealth Office can confirm that this Explanatory Memorandum meets the required standard.

15.3 Sir Alan Duncan, Minister of State at the Foreign and Commonwealth Office 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 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	Sub-paragraphs (3) and (7)	Ministers of the Crown	Set out the 'good reasons' for creating a

offences	of paragraph 28, Schedule 7	exercising clauses 8(1), 9, and 23(1) or jointly exercising powers in Schedule 2 to create a criminal offence	criminal offence, and the penalty attached.
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 of State, Sir Alan Duncan, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

"In my view the Kimberley Process Certification Scheme (Amendment) (EU Exit) Regulations 2019 do no more than is appropriate". This is the case because: as described above in paragraph 2.5 this instrument makes textual amendments to ensure the operability of the legislative framework of the Kimberley Process Certification Scheme, which seeks to curtail the trade in rough diamonds originating in conflict zones. This instrument seeks to provide the framework for the UK's continued, independent Participation in the scheme, and does not entail any substantive policy changes.

2. Good reasons

2.1 The Minister of State, Sir Alan Duncan, 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". These are: as described above in paragraph 2.5 of this Explanatory Memorandum, textual amendments to ensure the operability of the legislative framework of the Kimberley Process Certification Scheme, which seeks to curtail the trade in rough diamonds originating in conflict zones. This instrument seeks to provide the framework for the UK's continued, independent Participation in the scheme, which is an important part of UK domestic and foreign policy.

3. Equalities

3.1 The Minister of State, Sir Alan Duncan, has made the following statement(s) "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.

3.2 The Minister of State, Sir Alan Duncan, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

"In relation to the instrument, I 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."

3.3 The technical amendments made by this instrument do not impose any new obligations or liabilities on any relevant persons, and as such do not raise any issues relevant to the public sector equality duty under section 149(1) of the Equality Act 2010.

4. Explanations

4.1 The explanations statement has been made in paragraph 2 of the main body of this Explanatory Memorandum.

5. Criminal offences

5.1 No criminal offences are created by this instrument.

6. Legislative sub-delegation

6.1 No sub-delegated powers are created by this instrument.

7. Urgency

7.1 The urgency procedure is not required for this instrument.