EXPLANATORY MEMORANDUM TO

THE KIMBERLEY PROCESS CERTIFICATION SCHEME (AMENDMENT) (EU EXIT) REGULATIONS 2020

2020 No. 1473

1. Introduction

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

2. Purpose of the instrument

2.1 This instrument amends the Kimberley Process Certification Scheme (Amendment) (EU Exit) Regulations 2019 ("the 2019 Regulations"), to substitute two references to "exit day" with "IP completion day". This instrument makes provision for smooth transition from the UK's involvement in the Kimberley Process Certification Scheme ("the KPCS") through the EU's participation, to the UK being an independent Participant in the KPCS in its own right.

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 As the 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 the United Kingdom.

4.2 The territorial application of this instrument is the United Kingdom.

5. European Convention on Human Rights

5.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

6. Legislative Context

6.1 This instrument amends the 2019 Regulations, which were made under the European Union (Withdrawal) Act 2018 to correct deficiencies in retained EU law (Council Regulation (EC) No. 2378/2002, adopted by the Council of the European Union on 20th December 2002, ("the EU Regulation")), ensuring that it will continue to be operable in the UK. The 2019 Regulations will come into force on IP completion day. This instrument will come into force immediately before IP completion day and will ensure that provisions in the 2019 Regulations which currently refer to "exit day" will be operable.

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. 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. 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 KPCS"). The KPCS core document sets out the requirements for controlling rough diamond production and trade. The UK has been actively involved in the KPCS, through the EU participation, since the EU framework was agreed in 2002. The UK intends to be an active Participant in its own right after the Transition Period, and to uphold its commitment to this important conflict prevention measure.

7.2 This instrument substitutes a reference to "exit day" in the 2019 Regulations to ensure that certificates issued during the Transition Period by EU "Community authorities" (provided they are still valid) will be valid for rough diamond exports after IP completion day.

7.3 Exporters of rough diamonds can benefit under the EU Regulation from membership of "self-regulating organisations". Signed declarations by members are accepted as conclusive evidence of lawful import. Organisations representing traders in rough diamonds may apply to be recognised as self-regulating organisations provided those organisations have certain rules in place for members. One rule is that members must undertake to instruct independent auditors to certify that any "non-compliant" transactions have been reported to an appropriate Community authority or (as amended by the 2019 Regulations), if prior to exit day, a competent authority. This instrument substitutes this reference to "exit day" with "IP completion day", so that rules requiring the reporting to a competent authority during the Transition Period will meet requirements for listing as a self-regulating organisation.

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

8.1 This instrument is not being made to address a deficiency in retained EU law but relates to the withdrawal of the United Kingdom from the European Union because it is being made under section 41(1) of the European Union (Withdrawal Agreement) Act 2020

9. Consolidation

9.1 This instrument does not consolidate previous instruments.

10. Consultation outcome

10.1 No consultation was undertaken. The amendments made by this instrument do not change policy. They are required to ensure that certain provisions of retained EU law are operable from IP completion day.

11. Guidance

11.1 Guidance on trading rough diamonds after 1 January 2021 has been published on Gov.uk, https://www.gov.uk/government/publications/trading-internationally-in-rough-diamonds-from-1-january-2021/trading-internationally-in-rough-diamonds-from-1-january-2021. This guidance will be further updated to include details of how the Kimberley Process will be implemented in Northern Ireland with respect to the Ireland/Northern Ireland Protocol when discussions with the EU have concluded.

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 is foreseen. This instrument ensures that certain provisions of retained EU law are operable from the date at which it comes into effect.

13. Regulating small business

13.1 The legislation 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 The basis for the final decision on what action to take to assist small businesses was that we do not foresee a significant impact on them as a result of this instrument. This instrument ensures that certain provisions of retained EU law are operable from the date at which it comes into effect. The UK's rough diamond sector consists of a small number of business who are located almost exclusively in London. The amendments this instrument makes to the 2019 Regulations will have little, if any impact, on how they currently operate.

14. Monitoring & review

14.1 As this instrument makes consequential amendment to an instrument made under the EU Withdrawal Act 2018, no review clause is required.

15. Contact

15.1 Daniel Elphick at the Foreign, Commonwealth and Development Office Telephone: 07724 426233 or email: daniel.elphick@fcdo.gov.uk can be contacted with any queries regarding the instrument.

15.2 Neil Briscoe, Deputy Director for UN and Multilateral Department, at the Foreign, Commonwealth and Development Office can confirm that this Explanatory Memorandum meets the required standard.

15.3 Lord (Tariq) Ahmad of Wimbledon, Minister of State at the Foreign, Commonwealth and Development Office can confirm that this Explanatory Memorandum meets the required standard.