EXPLANATORY MEMORANDUM TO

THE TIMBER AND TIMBER PRODUCTS AND FLEGT (AMENDMENT) (EU EXIT) REGULATIONS 2020

2020 No. 1315

1. Introduction

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

2. Purpose of the instrument

2.1 This instrument amends The Timber and Timber Products and FLEGT (EU Exit) Regulations 2018 ("SI 2018/1025") on the trade in timber and timber products ("the 2018 Exit regulations") for purposes relating to the implementation of the Protocol on Ireland / Northern Ireland ("the Protocol"), and for the purpose of addressing deficiencies that have arisen since the 2018 Exit regulations.

Explanations

What did any relevant EU law do before exit day?

2.2 Directly applicable EU regulations on illegal timber are: Council Regulation (EC) No 2173/2005 on the establishment of a Forest Law Enforcement Governance and Trade ("FLEGT") licensing scheme for imports of timber into the European Community, Regulation (EU) No 995/2010 of the European Parliament and of the Council of 20 October 2010 laying down the obligations of operators who place timber and timber products on the market, Commission Delegated Regulation (EU) No. 363/2012 on the procedural rules for the recognition and withdrawal of monitoring organisations as provided for in Regulation (EU) No 995/2010 of the European Parliament and the Council laying down the obligations of operators who place timber and timber products on the market, Commission Implementing Regulation (EU) No. 607/2012 on the detailed rules concerning the due diligence system and the frequency and nature of the checks on monitoring organisations as provided for in Regulation (EU) No 995/2010 of the European Parliament and of the Council laying down the obligations of operators who place timber and timber products on the market, Commission Regulation (EC) No 1024/2008 of 17 October 2008 laying down detailed measures for the implementation of Council Regulation (EC) No 2173/2005 on the establishment of a FLEGT licensing scheme for imports of timber into the European Community. There are further implementing regulations in the UK: The Timber and Timber Products (Placing on the Market) Regulations 2013 (SI 2013/233), and The Forest Law Enforcement, Governance and Trade Regulations 2012 (SI 2012/178) (including the amending regulations 2016 (SI 2013/940)).

2.3 The EU Timber Regulation (Regulation (EU) No. 995/2010) ("EUTR") applies to timber harvested in the EU and in third countries. It imposes obligations on those who place timber or timber products on the EU internal market for the first time ("operators") and those who sell or buy these goods in the course of a commercial activity ("traders"). Operators must not place illegally harvested timber on the EU

market and must carry out due diligence by using a framework of measures and procedures (a "due diligence system"). Traders have an obligation to maintain records sufficient to trace timber through the supply chain. The EUTR provides for the recognition of monitoring organisations which have developed due diligence systems for use by operators. Other EU and UK regulations implement aspects of the EUTR.

2.4 The EU has entered into voluntary partnership agreements ("VPAs") with certain partner countries in order to implement a licensing scheme to verify the legality of timber exported to the EU. The FLEGT Regulation (Council Regulation (EC) No 2173/2005) prohibits imports of particular timber products from such countries unless they are covered by a licence. A FLEGT licence covering each shipment must be available to Member State's competent authorities at the same time as the customs declaration for that shipment is presented for release for free circulation in the EU (Article 5.1 FLEGT Regulation). Other EU and UK regulations implement aspects of the FLEGT Regulation.

2.5 Timber embedded in timber products covered by the FLEGT Regulation is considered to have been 'legally harvested' for the purpose of the EUTR.

Why is it being changed?

2.6 This instrument makes minor amendments to the Timber and Timber Products and FLEGT (EU Exit) Regulations 2018 for the purpose of operating in accordance with the Protocol, and for the purpose of addressing deficiencies that have arisen since the Exit regulations were laid in 2018.

What will it now do?

2.7 This instrument will ensure that the UK legislation described above for the trade in legally harvested Timber will operate effectively in the UK, while EU legislation will operate in Northern Ireland, both for the purposes of implementing the Protocol.

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 The territorial application of this instrument includes Scotland and Northern Ireland.

3.3 The powers under which this instrument is made cover the entire United Kingdom (see section 24 of the European Union (Withdrawal) Act 2018 and the European Union (Withdrawal Agreement) Act 2020) and the territorial application of this instrument is not limited either by the Act or by the instrument.

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 United Kingdom.

4.3 The retained law listed at paragraph 2.2 above is incorporated into domestic law under the European Union (Withdrawal) Act 2018 save insofar as it applies to Northern

Ireland for the purposes of the Protocol. The Protocol instead applies the EU law provisions in Northern Ireland.

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 Timber and Timber Products and FLEGT (EU Exit) Regulations 2020 are compatible with the Convention rights."

6. Legislative Context

6.1 This instrument ensures that existing 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.

7. Policy background

What is being done and why?

7.1 The intention is to ensure the United Kingdom Timber Regulation ("UKTR") and UK FLEGT regulations that tackle illegal logging and ensure the demand for, and supply of, legally harvested timber are operable. This is being done by amending The Timber and Timber Products and FLEGT (EU Exit) Regulations 2018 on the trade in timber and timber products. EU regulations: 'Council Regulation (EC) No 2173/2005 of 20 December 2005 on the establishment of a FLEGT licensing scheme for imports of timber into the European Community', and 'Regulation (EU) No 995/2010 of the European Parliament and of the Council laying down the obligations of operators who place timber and timber products on the market, that tackle illegal logging and ensure the demand for, and supply of, legally harvested timber' will remain operable in Northern Ireland while being in conformity with the Protocol. The Timber and Timber Products and FLEGT (EU Exit) Regulations 2018 will continue to apply in England, Scotland and Wales.

7.2 FLEGT regulations (Council Regulation 2173/2005): These regulations provide for Voluntary Partnership Agreements**,** which are agreements between two States or regional organisations to implement a FLEGT licensing scheme. As such, the partnership agreement is between the United Kingdom as a State and another entity. In order to reflect this, reference to the United Kingdom has been retained here. The effect will be that Voluntary Partnership Agreements entered into by the UK with producer countries will extend to Northern Ireland.

7.3 Timber regulations (Regulation 995/2010):

- The regulations speak of timber being placed on the market and lay down the instances in which 'operators' – those placing timber on the market for the first time – have to exercise due diligence to ensure that illegally harvested timber is not placed on the market. In order to ensure unfettered market access between Northern Ireland and GB, through the avoidance of new checks, the definition of the internal market has been retained as the United Kingdom.

- The regulations make provisions for the recognition of monitoring organisations ("MOs"). These are businesses that support operators with their due diligence systems. Businesses must apply for recognition as an MO, and the regulations lay down where they must be legally established in order to apply. In order that businesses established in Northern Ireland are able to apply for recognition as an MO, references are retained to the United Kingdom.
- The regulations make reference to reporting requirements, including the requirement that a report takes into account progress made with regard to partnership agreements and their impact on minimising the presence of illegally harvested timber on the market. As above, reference to the United Kingdom has been retained to reflect the nature of such agreements.

7.4 This instrument corrects a typographical error in regulation to 6(5)(a) of the 2018 Exit Regulations to change 'in' to 'by'. Since this instrument corrects an error in the 2018 Exit Regulations, we are issuing this instrument free of charge to all known recipients of the 2018 Exit Regulations. The Department has complied with the requirement stated in paragraph 4.7.6 of Statutory Instrument Practice to consult with the SI Registrar.

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

8.1 This instrument is being made in exercise of the powers conferred by sections 8(1) and 8C(1) of, and paragraph 21 of Schedule 7 to, the European Union (Withdrawal) Act 2018.

9. Consolidation

9.1 This instrument is not consolidating any other provisions.

10. Consultation outcome

10.1 This instrument was not subject to consultation, as it does not alter existing policy.

10.2 Defra considers this reserved policy. Devolved Administrations were engaged in the development of this instrument and are content.

11. Guidance

11.1 Guidance is not being provided in relation to this instrument.

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 as no, or no significant, impact on the private or voluntary sector is foreseen and this instrument relates to maintenance of existing regulatory standards.

13. Regulating small business

13.1 The legislation applies to activities that are undertaken by small businesses. No mitigating actions for small businesses were deemed necessary for this instrument.

14. Monitoring & review

14.1 As this instrument is made under the EU Withdrawal Act 2018 as amended by the EU Withdrawal Act 2020, no review clause is required.

15. Contact

15.1 Matt Coughlan at the Department for Environment, Food and Rural Affairs Telephone: 07469 905165 or email: matt.coughlan@defra.gov.uk can be contacted with any queries regarding this instrument.

15.2 Tamsin Ballard / Emma Donnelly (Job share) Deputy Directors for International Strategy & Official Development Assistance, 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.

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 sections 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/Sifting Committees
Appropriate-ness	Sub-paragraph (2) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 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 sections 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 sections 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 7	Ministers of the Crown exercising sections 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 offences	Sub-paragraphs (3) and (7) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9, and 23(1) or jointly exercising powers in Schedule 2 to create a criminal offence	Set out the 'good reasons' for creating a criminal offence, and the penalty attached.
Sub-delegation	Paragraph 30, Schedule 7	Ministers of the Crown exercising sections 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, Schedule 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, Lord Goldsmith has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

"In my view the Timber and Timber Products and FLEGT (EU Exit) Regulation 2020 does no more than is appropriate".

1.2 This is the case because: this instrument corrects operational difficulties as necessary to ensure that protections for the control of illegal logging are maintained in the UK after the end of the implementation period and ensures that regulations are operable for the purposes of implementing the Protocol.

2. Good reasons

2.1 The Minister of State, Lord Goldsmith 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".

2.2 These are: this instrument corrects operational difficulties as necessary to ensure that protections for the control of illegal logging are maintained in the UK after the end of the implementation period and ensures that regulations are operable for the purposes of implementing the Protocol.

3. Equalities

3.1 The Minister of State, Lord Goldsmith has made the following statement:

"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, Lord Goldsmith has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

"In relation to the instrument, I, Minister of State Lord Goldsmith 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 amendments made by this instrument do not raise any issues relevant to the public sector equality duty under section 149(1) Equality Act 2010 because they are minor and technical and do not alter the operation of the underlying schemes or impose any new liabilities or obligations on any relevant persons.

4. Explanations

4.1 The explanations statement has been made in section 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 Not required to be made on laying.