

Draft Regulations laid before Parliament under paragraph 1(2) of Schedule 7 to the European Union (Withdrawal) Act 2018, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2019 No. 0000

EXITING THE EUROPEAN UNION

**The Kimberley Process Certification Scheme
(Amendment) (EU Exit) Regulations 2019**

Made - - - -

Coming into force in accordance with regulation 1

The Secretary of State makes these Regulations in exercise of the powers conferred by section 8(1) of the European Union (Withdrawal) Act 2018⁽¹⁾.

In accordance with paragraph 1(2) of Schedule 7 to that Act, a draft of this instrument has been laid before Parliament and approved by resolution of each House of Parliament.

PART 1

Introduction

Citation and commencement

1. These Regulations may be cited as the Kimberley Process Certification Scheme (Amendment) (EU Exit) Regulations 2019 and come into force on exit day⁽²⁾.

PART 2

Amendment of subordinate legislation

Amendment of the Kimberley Process (Fees) Regulations 2014

2.—(1) The Kimberley Process (Fees) Regulations 2014⁽³⁾ are amended as follows.

(2) In regulation 3, omit “the United Kingdom’s European Union obligations arising from”.

(1) 2018 c. 16.

(2) Section 20(1) of the European Union (Withdrawal) Act 2018 defines “exit day”.

(3) S.I. 2014/1684.

- (3) In the Schedule, for “Community Certificate” substitute “United Kingdom certificate”.

PART 3

Amendment of retained direct EU legislation

Amendment of Council Regulation (EC) 2368/2002

3.—(1) Council Regulation (EC) 2368/2002⁽⁴⁾, implementing the Kimberley Process certification scheme for the international trade in rough diamonds, is amended as follows.

- (2) Except where otherwise amended by these Regulations—
- (a) for “a Community authority”, “the Community authority”, “the appropriate Community authority”, “the relevant Community authority”, or “that Community authority”, substitute “the United Kingdom competent authority”;
 - (b) for “Community territory”, substitute “United Kingdom”;
 - (c) for “Community certificate”, substitute “United Kingdom certificate”.

Amendments to subject matter and definitions

- 4.—**(1) Article 1 is amended as follows.
- (2) For “Union”, substitute “United Kingdom”.
- (3) Omit the second paragraph.

5.—(1) Article 2 is amended as follows.

- (2) In point (c), for from “, has notified that” to “in Annex II” substitute “and has notified that fact to the Chair of the KP certification scheme.”.
- (3) For point (f), substitute—
- “‘United Kingdom competent authority’ means ‘the Secretary of State’;”.
- (4) For point (g), substitute—
- “‘United Kingdom certificate’ means a certificate issued by the United Kingdom competent authority;”.
- (5) Omit points (o) to (q).

Amendments to the import regime

- 6.** In Article 3, omit “or Greenland”.
- 7.** In Article 4, for paragraphs 1 to 3, substitute—
- “**1.** Containers and the corresponding certificates shall without delay be submitted for verification to the United Kingdom competent authority.”.
- 8.** In Article 5, in paragraph 3, omit “the Commission and”.
- 9.** Omit Article 6.
- 10.** Omit Article 7.
- 11.—**(1) Article 8 is amended as follows.

(4) OJNo. L 358, 31.12.2002, p.28, as amended by subsequent Regulations.

- (2) In paragraph 1—
 - (a) for “The Commission”, substitute “The United Kingdom competent authority”;
 - (b) omit “or Greenland”.
- (3) Omit paragraph 2.
- 12.** Omit Article 9.
- 13.**—(1) Article 10 is amended as follows.
 - (2) Omit paragraph 1.
 - (3) In paragraph 2—
 - (a) for from “the Commission or” to “by the Commission”, substitute “the Chair of the Kimberley Process Certification Scheme”;
 - (b) for from “in particular with a view” to “certification scheme”, substitute “as necessary for the monitoring or facilitation of the KP certification scheme”.

Amendments to the export regime

- 14.**—(1) Article 11 is amended as follows.
 - (2) Omit “or Greenland”.
 - (3) In point (a), at the end, insert “, or a certificate issued and validated under this Regulation prior to exit day, as defined by section 20(1) of the European Union (Withdrawal) Act 2018, as amended from time to time.”.
- 15.**—(1) Article 12 is amended as follows.
 - (2) In paragraph 1(a)(i), omit “or”.
 - (3) Omit paragraph 1(a)(ii).
 - (4) In paragraph 5, omit “issuing”.
- 16.**—(1) Article 13 is amended as follows.
 - (2) For “in Annex V”, substitute “in the list of self-regulating diamond organisations, as published by the Secretary of State for the purposes of Article 17”.
 - (3) For “Community” (in the second place it occurs), substitute “United Kingdom”.
- 17.** In Article 14, in paragraph 3, omit “the Commission and”.
- 18.**—(1) Article 15 is amended as follows.
 - (2) Omit paragraph 1.
 - (3) For paragraph 2, substitute—
 - “**2.** The United Kingdom competent authority shall keep for at least three years the authenticated copies provided for under Article 12(4) as well as all information received from an exporter to justify the issue and validation of a United Kingdom certificate.
 - The United Kingdom competent authority shall provide the Chair of the Kimberley Process Certification Scheme with access to those authenticated copies of this information as necessary for the monitoring or facilitation of the KP certification scheme.”.
- 19.**—(1) Article 16 is amended as follows.
 - (2) In paragraph 1—

- (a) for “Commission”, substitute “United Kingdom competent authority”;
- (b) for “Community” (in the first place it occurs), substitute “United Kingdom”.
- (3) Omit paragraph 2.

Amendments to industry self-regulation

20.—(1) Article 17 is amended as follows.

- (2) In paragraph 1—
 - (a) for “Commission”, substitute “Secretary of State”;
 - (b) for from “Annex V” to “Community authority”, substitute “the list of self-regulating organisations published by the Secretary of State for the purposes of this Article.”.
- (3) In paragraph 2—
 - (a) in point (a), omit from “, at the latest” to “in Article 29(3)”;
 - (b) in point (a)(ix), at the end, insert “, or, if prior to exit day, a competent authority”;
 - (c) in point (b)(ii), for “Commission” substitute “United Kingdom competent authority”;
 - (d) in point (c), omit “the Commission and”.
- (4) In paragraph 3—
 - (a) omit “the Commission and”;
 - (b) omit “of a Member State in which they are resident or established”.
- (5) For paragraph 4, substitute—

“4. The Secretary of State must publish a list containing each organisation that fulfils the requirements of this Article(5).”.
- (6) In paragraph 5, omit point (b).
- (7) In paragraph 6—
 - (a) omit “in a Member State”;
 - (b) after “Article”, in the first place in which it occurs, omit “and established or resident in that Member State”;
 - (c) after “member thereof”, omit “established or resident in that Member State”.
- (8) Omit paragraph 7.
- (9) In paragraph 8—
 - (a) Omit from “of a Member State” to “referred to in Article 22(2),”;
 - (b) for “in Annex V”, substitute “of self-regulating organisations published by the Secretary of State for the purposes of this Article”.
- (10) Omit paragraph 9.
- (11) In paragraph 10, for “Community” substitute “United Kingdom”.

Amendments to transit

21.—(1) Article 18 is amended as follows.

- (2) Omit “or Greenland” in both places in which it occurs.
- (3) For “those territories”, substitute “the United Kingdom”.

(5) This list will be published at <https://www.gov.uk/guidance/export-diamonds-special-rules>.

Amendments to general provisions

22.—(1) Article 19 is amended as follows.

(2) Omit paragraph 1.

(3) In paragraph 2, for from “Member States” to “Community authorities”, substitute “The Secretary of State must provide the Chair of the Kimberley Process Certification Scheme with the information showing that the United Kingdom competent authority”.

(4) Omit paragraph 3.

(5) In paragraph 4, for “Community authorities” substitute “The United Kingdom competent authority”.

(6) Omit paragraph 5.

(7) Omit paragraph 6.

23. In Article 20, for “Commission may amend” substitute “Secretary of State must publish (and update from time to time to reflect any changes)(6)”.

24. Omit Articles 21 to 23.

25. In Article 24, omit paragraph 3.

26. In Article 25, omit the second to fifth paragraphs.

27. In Article 26, omit “other Community or”.

28. In Article 28, in each place in which it occurs, for “a Member State” substitute “the United Kingdom”.

29. For Article 29, substitute—

“Amendments to the certification scheme

29.—(1) Where the condition in paragraph (2) is met, the Secretary of State may by regulations amend this Regulation.

(2) The condition is that that the Secretary of State considers that this Regulation is no longer effective to ensure that the law of the United Kingdom is consistent with the international Kimberley Process requirements.

(3) Regulations under this Article may only contain provision that the Secretary of State considers to be—

(a) appropriate for the purposes of ensuring that this Regulation is consistent with the international Kimberley Process requirements; or

(b) appropriate in connection with any provision made under point (a).

(4) Regulations under this Article may contain transitional and consequential provisions and savings.

(5) The power in this Article to make regulations is exercisable by the Secretary of State by statutory instrument.

(6) A statutory instrument containing regulations under this Article may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.

(6) This list will be published at <https://www.gov.uk/guidance/export-diamonds-special-rules>.

(7) In this Article “the international Kimberley Process requirements” means any certification requirements or similar controls relating to the import or export of rough diamonds that are agreed from time to time by the Participants.”.

The Annexes

30. Omit Annexes II to V.

Signed by authority of the Secretary of State for Foreign and Commonwealth Affairs.

Date

Minister of State
Foreign and Commonwealth Office

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are made in exercise of the powers in section 8 of the European Union (Withdrawal) Act 2018 (c. 16) in order to address failures of retained EU law to operate effectively and other deficiencies (under paragraphs (a), (b), (d), and (g) of section 8(2)) arising from the withdrawal of the United Kingdom from the European Union.

These Regulations make amendments to legislation in respect of the Kimberley Process certification scheme, which relates to the import and export of rough diamonds and measures to minimise the trade of rough diamonds from conflict zones. In particular, these Regulations amend legislation relating to fees required for the provision of certificates under the Kimberley Process certification scheme, and the regulatory framework and powers intended to ensure that rough diamonds are not imported to or exported from the United Kingdom unless they are properly certificated under the Kimberley Process certification scheme. Part 2 amends subordinate legislation and Part 3 amends retained direct EU legislation.

These Regulations make provision for the Secretary of State to amend further the retained EU law relating to the Kimberley Process certification scheme by statutory instrument, where the Secretary of State considers that law is no longer effective to ensure that the law of the United Kingdom is consistent with the international Kimberley Process requirements.

These Regulations make provision for the Secretary of State to publish information, and this will be found at: <https://www.gov.uk/guidance/export-diamonds-special-rules> .

An impact assessment has not been prepared for this instrument as no, or no significant, impact on the private or voluntary sectors is foreseen.