

**EXPLANATORY MEMORANDUM TO
THE KIMBERLEY PROCESS (FEES) REGULATIONS 2014**

2014 No. 1684

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**

These Regulations prescribe fees to be paid to the Foreign and Commonwealth Office in connection with the issue of certificates by the Department to implement the Kimberley Process Certification Scheme for the international trade in rough diamonds. The scheme is in pursuance of European Union obligations.

3. **Matters of special interest to the Joint Committee on Statutory Instruments**

3.1 The fees payable to the Foreign and Commonwealth under the 2004 Regulations for issuing certificates in implementation of the Kimberley Process Certification Scheme for international trade in rough diamonds have not been increased since those Regulations were made. These Regulations revise the fees and prescribe a single fee for the issuance of any certificate accompanying a shipment under the scheme.

3.2 Since the 2004 Regulations there has been a reduction in the number of certificates being issued. The reduction in fees is such that they do not meet the full costs incurred in connection with the service being provided by the Department's Government Diamond Office. The Government Diamond Office will not be able to maintain their current level of activity and meet the requirements of Council Regulation (EC) No. 2368/2002 without an increase.

4. **Legislative Context**

4.1 This Order is made in exercise of powers conferred under section 56(1) and (2) of the Finance Act 1973.

4.2 Council Regulation (EC) No. 2368/2002 (the “Council Regulation”) provides for Community Authorities to issue Community certificates to implement the Kimberley Process certification scheme for the international trade in rough diamonds. The Government Diamond Office, Foreign and Commonwealth Office, has been designated by the United Kingdom as a Community Authority and is listed in Annex III to the Council Regulation. These Regulations are made in pursuance of an EU obligation and concern the issuing of certificates.

5. Territorial Extent and Application

This Order applies to all of the United Kingdom.

6. European Convention on Human Rights

Mark Simmonds, Parliamentary Under-Secretary of State for Foreign and Commonwealth Affairs has made the following statement regarding Human Rights:

In my view, the provisions of the Kimberley Process (Fees) Regulations 2014 are compatible with the Convention rights.

7. Policy background

7.1 The United Kingdom is one of six European Union Member States responsible for the implementation of the Kimberley Process Certification Scheme. The Government Diamond Office, as a designated Community Authority, is required under the Council Regulation to ensure that imports and exports of rough diamond shipments entering and exiting the UK comply with Kimberley Process requirements and to issue certificates of compliance.

7.2 Fees in connection with the issuing of certificates were first prescribed in the Kimberley Process (Fees) Regulations 2003. The fees were increased in the Kimberley Process (Fees) Regulations 2004 but have not been increased further. A review of the charging structure was announced following the transfer of DeBeers’ London-based rough diamond sales to Botswana. The review was necessary owing to the reduction in the number of certificates being issued and the fees generated as the Government Diamond Office was not able to recoup the costs of providing the

service. A public consultation on certificate fees was conducted by the Government Diamond Office from 13th to 27th March 2014 to seek views on how fees are set to meet commitments under the Kimberley Process certification scheme.

8. Consultation Outcome

The Government consultation generated 13 responses. The overall feedback from the consultation gave a mixed picture from respondents. 62% agreed with full cost recovery, which would currently be £37 per certificate, whilst 38% preferred to maintain the current fee structure. This would not meet the cost of providing the service and not in line with HMG's best practice on 'Managing Public Money' which states that charges for services provided by the public sector normally pass on the full costs of providing them. The consultation explained that to maintain an effective service the fees would have to increase to recover the full costs.

9. Guidance

No guidance will be issued.

10. Impact

10.1 There are around 50 companies in the UK involved in the import and export of rough diamonds beyond the European Union, of which only around 20 are regular traders (classified as 3 or more exports in a year). Only those companies wishing to export rough diamonds from the UK will be affected. The associated costs of implementing the KPCS in the UK are currently £138,418 per annum. The rough diamond industry's contribution (fees) will be £18,400. The FCO's contribution of £109,339 covers the overheads for GDO work for which we do not charge: enquiries, inspections, audits, UK representation within the KPCS and related policy work. Withdrawing the Government Diamond Office would have a negative impact on the rough diamond industry, in that it could lead to an increase in costs, significantly reduce the competitiveness of the UK and make it more difficult to do business.

10.2 There is no impact on the public sector in the United Kingdom.

10.3 A Regulatory Triage Assessment has been prepared for this instrument. The Regulatory Policy Committee confirmed that these Regulations are low cost and they

were considered using the fast track procedure under the Better Regulation framework.

11. Regulating small business

The legislation applies to small business in the United Kingdom.

12. Monitoring and Review

The Government Diamond Office will monitor the practical effects of these Regulations to ensure it continues to meet policy aims and obligations under the Council Regulation.

13. Contact

Andrew Murdoch at the Foreign and Commonwealth Office can answer any queries regarding the instrument. Telephone: 020 7008 1692. E-mail: andrew.murdoch@fco.gov.uk. The Government Diamond Office can answer queries on the Kimberley Process certification scheme for international trade in rough diamonds: <https://www.gov.uk/the-government-diamond-office>.