

EXPLANATORY MEMORANDUM TO
THE EUROPEAN UNION (DEFINITION OF TREATIES) (ASSOCIATION
AGREEMENT) (CENTRAL AMERICA) ORDER 2018

2018 No. 1065

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 This Order declares the agreement establishing an Association between the European Union and its Member States, on the one hand, and Central America (Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua, and Panama) on the other hand, signed at Tegucigalpa on 29th June 2012 (“the Agreement”) to be an EU Treaty as defined in section 1(2) of the European Communities Act 1972 which allows for a simplified implementation process using the powers under that Act.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

Other matters of interest to the House of Commons

- 3.2 Disregarding minor or consequential changes, the territorial application of this instrument includes Scotland and Northern Ireland.

4. Legislative Context

- 4.1 The parties to the Agreement must each ratify or approve the Agreement in accordance with their internal procedures before the Agreement can enter into force. The United Kingdom must be in a position to implement all of its obligations, including its EU obligations, in respect of the Agreement before ratifying the Agreement. Declaring the Agreement to be an EU Treaty is a necessary step in ensuring that the UK is able to implement its obligations in respect of the Agreement. So far 23 EU member states have ratified the Agreement. We anticipate that the UK will be able to ratify the Agreement shortly after the completion of this process.

5. Extent and Territorial Application

- 5.1 The extent of this instrument is the United Kingdom.
5.2 The territorial application of this instrument is the United Kingdom.

6. European Convention on Human Rights

- 6.1 The Minister of State for Europe and the Americas, Sir Alan Duncan MP, has made the following statement regarding Human Rights:

“In my view the provisions of the European Union (Definition of Treaties) (Association Agreement) (Central America) Order 2018 are compatible with the Convention rights.”

7. Policy background

What is being done and why

- 7.1 The Order declares that the Agreement is to be regarded as one of the EU Treaties under the European Communities Act 1972. One of the effects of this is that certain rights and obligations under the Agreement automatically become law in the United Kingdom. Subordinate legislation can be made to give effect to the provisions of the Agreement, although we do not consider this will be necessary for this Agreement.
- 7.2 The main objective of the Agreement is to strengthen and consolidate relations with Central America in the areas of political dialogue, cooperation and trade. Political dialogue will cover issues ranging from the fight against terrorism to environmental matters. Pursuant to the Agreement the parties undertake to cooperate on issues from democracy and human rights to science and technology to combatting the supply of illicit drugs. The extensive trade provisions address obstacles to trade and establish a framework for future trade relations between the parties.
- 7.3 The Government believes the Agreement is consistent with the UK’s policy objectives for the Central American region, including its wider trade policy goals. The Agreement has the potential to bring significant political benefits to the UK and to result in more constructive dialogue on issues of importance to the UK, such as migration, climate change, health, and border disputes, both within Central America and between the two regions.
- 7.4 Until exit negotiations are concluded, the UK remains a full member of the European Union and all the rights and obligations of EU membership remain in force. During this period the Government will also continue to negotiate, implement and apply EU legislation and third country agreements. Although the UK is leaving the EU, the Government would not wish the UK’s exit to delay ratification of agreements which are important to our EU partners and to the third countries in question.
- 7.5 The Government notified the House of Commons on 27 February 2012 of its decision to opt in to Article 49(4) of the Agreement, which relates to readmission of persons to the territory of one state party from another and falls within Title V of Part III of the Treaty on the Functioning of the European Union.¹ The opt-in relates to Justice and Home Affairs measures, in which the UK has the option to choose to participate.

Consolidation

- 7.6 This Order does not amend another instrument and therefore consolidation is not relevant.

8. Consultation outcome

- 8.1 As this Order enables the fulfilment of an EU obligation, no public consultation has been carried out.

¹ 27 February 2012, Hansard Vol. 541
(<https://publications.parliament.uk/pa/cm201212/cmhansrd/cm120227/wmstext/120227m0001.htm#1202271000005>)

9. Guidance

- 9.1 No guidance will be published. HMRC publish guidance on trade tariffs and codes on the gov.uk website.

10. Impact

- 10.1 The impact on business, charities or voluntary bodies is an estimated annual benefit of £126 million, once the Agreement is fully implemented. Discounting the benefits from the first ten years from provisional application of the Agreement, and taking into account the different stages of liberalisation results in a total benefit to business of £1.1 billion. The estimate is also based on UK exporters capturing the savings from reductions in Central American tariff levels and increasing both agricultural and manufacturing exports from the UK to Central America. It also assumes that any adjustment costs for businesses will be limited and that increased competition from Central American businesses will be minimal due to different specialisms. The analysis assesses UK costs and benefits as a share of the EU costs and benefits estimated by the European Commission. The central assumption is that the UK bears 13.7% of EU costs and benefits based on the UK proportion of total EU trade. Wider benefits are also likely, but not possible to quantify. The impact assessment also looks at the effects of the Agreement on sectors, importers, equality, competition, small businesses and human rights.
- 10.2 The impact on the public sector is a reduction in annual tariff income to the Government of around £13 million annually. In effect, this analysis assumes that the removal of EU tariffs will allow a transfer of economic rent (tariff income) from the European Commission and UK Government to Central American exporters. The analysis does not assume that the price of Central American exports to the UK would fall, providing a welfare benefit to UK consumers – although that would likely be the case in practice.
- 10.3 The original impact assessment, commissioned in 2015, has been laid alongside this Explanatory Memorandum and will be published alongside this Explanatory Memorandum on the legislation.gov.uk website. Its projections are based on the UK as a member of the EU and on a phased implementation of the Agreement over the first ten years following its signature. The EU Commission has been implementing the trade pillar of the Agreement since 2013, when it was provisionally applied. The Agreement is in its fifth year of implementation. The latest report from the EU Commission on implementation (4 April 2017) showed that despite steady progress the Agreement is not close to being fully implemented, with low usage of the Tariff Rate Quotas granted to Central America and a number of non-tariff barriers to trade still in place. The report makes no prediction of the future pace of implementation. A new impact assessment has not been commissioned at this stage due to the asymmetric nature of implementation of the Agreement and the short time period for which the Agreement will continue to apply to the UK, which would make any prediction of the impact on UK trade with Central America highly speculative. The Government has committed to agreeing a transitional arrangement to ensure continuity in trade between the UK and Central America after the EU Agreement no longer applies to the UK.

11. Regulating small business

- 11.1 The legislation applies to activities that are undertaken by small businesses.

11.2 No specific action is proposed to minimise regulatory burdens on small businesses. This is because the legislation does not impose a regulatory burden on small businesses. Where they are undertaking relevant activities, small businesses will benefit from the liberalisation described above.

12. Monitoring & review

12.1 No specific monitoring or review of this Order is planned. However, the Agreement to which the Order relates provides for the establishment of an Association Council which will supervise and regularly review the application and implementation of the Agreement and examine any major issues arising within the framework of the Agreement.

13. Contact

13.1 Tom Heaps at the Foreign and Commonwealth Office (Telephone: 020 7008 2868 or email: tom.heaps@fco.gov.uk) or Susannah Leftley (Telephone: 020 7008 7400 or email: susannah.leftley@fco.gov.uk) can answer any queries regarding this instrument.