

EXPLANATORY MEMORANDUM TO
THE TIMBER AND TIMBER PRODUCTS AND FLEGT (EU EXIT) REGULATIONS
2018

2018 No. 1025

1. Introduction

- 1.1 This explanatory memorandum has been prepared by Department for Environment, Food and Rural Affairs and is laid before Parliament by Act.

2. Purpose of the instrument

- 2.1 The Timber and Timber Products and FLEGT (EU Exit) Regulations 2018 ensure that 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 UK leaves the EU.

2.2 Explanations

What did any relevant EU law do before exit day?

- 2.3 Directly applicable EU regulations on illegal timber are: Council Regulation (EC) No 2173/2005 on the establishment of a 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, and The Forest Law Enforcement, Governance and Trade Regulations (2012) (including the amending regulations 2016)
- 2.4 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.

- 2.5 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.
- 2.6 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?

- 2.7 The instrument makes minor and technical amendments to the existing legislation described above to ensure the legislation is operable after Exit. The changes include amending references to the EU, EU institutions and EU administrative processes to UK equivalents; updating legal references to refer to relevant UK legislation; and retaining the requirement for the government to report.

What will it now do?

- 2.8 The instrument will ensure that the legislation described above will operate effectively in the UK after we leave the EU.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 The instrument was laid in draft for sifting on 24 July 2018, pursuant to the European Union (Withdrawal) Act 2018. The instrument has been considered by the European Statutory Instruments Committee and the Secondary Legislation Scrutiny Committee. Both Committees agreed with the recommendation that the SI is subject to the negative resolution procedure.

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, as confirmed by the European Statutory Instruments Committee and the Secondary Legislation Scrutiny Committee, 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 The UK is leaving the European Union and the related retained EU legislation will not work in the UK without the amendments made by the instrument.

7. Policy background

What is being done and why?

- 7.1 The intention is to have a United Kingdom Timber Regulation (UKTR) and UK Forest Law Enforcement Governance and Trade regulation that tackle illegal logging and ensure the demand for, and supply of, legally harvested timber for the UK market. On Exit day this will mean retaining the EU regime and making the proposed changes through a statutory instrument to ensure it remains operable outside the EU legal framework. The changes covered in this instrument are:
- a. Amending references to the EU and EU institutions and administrative processes to UK equivalents;
 - b. Updating legal references to refer to relevant UK legislation; and
 - c. Retaining the requirements for the government to report.
- 7.2 A number of corrections are not included in this instrument but will instead will be contained within a different instrument attracting affirmative procedure. The following matters will be addressed in that later instrument:
- a. Amending Article 1 of EU Timber Regulation 995/2010;
 - b. Amending the annexes that refer to the product scope of the EU timber regulation (EU Timber Regulation 995/2010, Article 14);
 - c. Amend the annexes of the FLEGT regulation that list FLEGT licensing partner countries (currently Indonesia) to add further countries to the list; amend the list of timber products to which the FLEGT licensing scheme applies for annex II: irrespective of the partner country and for annex III: in relation to the specified partner country (FLEGT Regulation 2173/2005, Article 10);
 - d. Recognising and withdrawing recognition of monitoring organisations (EU Timber Regulation 995/2010, Article 8);
 - e. Amending due diligence risk criteria (EU Timber Regulation 995/2010, Article 6);
 - f. Recognising existing schemes in a partner country to form the basis of FLEGT licensing (FLEGT Regulation 2173/2005, Article 4); and
 - g. Making provisions for the form, acceptance and verification of FLEGT licences (FLEGT Regulation 2173/2005, Article 5.9).
- 7.3 We intend to continue to recognise UK based Monitoring Organisations that have already been recognised by the EU.
- 7.4 Indonesia is currently named as a Partner Country in the annex of the FLEGT regulation 2173/2005 as it has a Partnership Agreement (PA) with the EU and is able to issue FLEGT licences. The UK intends to conclude its own PA with Indonesia. It

is not certain that a PA will be in place at Exit. To address this uncertainty, it is necessary to remove Indonesia from the Annex of the FLEGT regulation until the PA is concluded. These Exit regulations will provide that the annex is deleted. Once a PA is concluded between UK and Indonesia, Indonesia will be re-listed in regulation as a Partner Country.

- 7.5 The annex of the EU FLEGT regulation 2173/2005 was unpopulated from 2005 – 2016, when Indonesia became the first country able to issue FLEGT licences.

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

- 8.1 This instrument is being made using the power in section 8 of the European Union (Withdrawal) Act 2018 in order to address failures of retained EU law to operate effectively or other deficiencies arising from the withdrawal of the United Kingdom from the European Union. In accordance with the requirements of that Act the Minister has made the relevant statements as detailed in Part 2 of the Annex to this Explanatory Memorandum

9. Consolidation

- 9.1 The Department does not intend to consolidate the relevant legislation at this time.

10. Consultation outcome

- 10.1 As there is no policy change, no public consultation was required. The purpose of the instrument is solely to enable the current legislative and policy framework to remain unchanged by the withdrawal of the United Kingdom from the European Union.
- 10.2 Defra considers this reserved policy.
- 10.3 Devolved administrations were engaged in the development of the instrument and are content with the instrument.

11. Guidance

- 11.1 None.

12. Impact

- 12.1 There is no, or no significant, impact on business, charities or voluntary bodies. The impact on the public sector is minimal. There will be no change to monitoring and enforcement requirements.
- 12.2 An impact assessment has not been produced for this instrument as no, or no significant, impact on the private or voluntary sector is foreseen.

13. Regulating small business

- 13.1 The legislation applies to activities that are undertaken by small businesses. No significant impacts on small businesses is foreseen as a result of this instrument.

14. Monitoring & review

- 14.1 As this instrument is made under the EU Withdrawal Act 2018, no review clause is required.

15. Contact

- 15.1 Alex White at the Department for Environment, Food and Rural Affairs email: alex.white@defra.gsi.gov.uk can answer any queries regarding the instrument.
- 15.2 Sarah Swash at the Department for Environment, Food and Rural Affairs can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 The Parliamentary Under Secretary of State for the Environment, Thérèse Coffey MP 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/ESIC
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	Sub-paragraphs (3) and (7)	Ministers of the Crown	Set out the 'good reasons' for creating a

offences	of paragraph 28, Schedule 7	exercising sections 8(1), 9, and 23(1) or jointly exercising powers in Schedule 2 to create a criminal offence	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. Sifting statement(s)

- 1.1 The Parliamentary Under Secretary of State for the Environment, Therese Coffey, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:
- 1.2 “In my view the Timber, Timber Products and FLEGT (EU Exit) Regulations 2018 should be subject to annulment in pursuance of a resolution of either House of Parliament (i.e. the negative procedure)”. This is the case because: this instrument does not fall into the category of regulations identified in schedule 7 Part 1 paragraph 1(2) as requiring approval in draft by resolution of both Houses of Parliament. This instrument makes minor and technical amendments to the existing legislation described above to ensure retained EU law and preserved UK law is operable after Exit. No substantive policy changes are brought in by this instrument.

2. Appropriateness statement

- 2.1 The Parliamentary Under Secretary of State for the Environment, Therese Coffey, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:
- 2.2 “In my view the Timber, Timber Products and FLEGT (EU Exit) Regulations 2018 does no more than is appropriate”. This is the case because: this instrument corrects deficiencies as necessary to ensure that protections for the control of illegal logging are maintained in the UK after we leave the EU.

3. Good reasons

- 3.1 The Parliamentary Under Secretary of State for the Environment, Therese Coffey, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:
- 3.2 “In my view there are good reasons for the provisions in this instrument, and I have concluded they are a reasonable course of action”. These are: this instrument corrects deficiencies as necessary to ensure that protections for the control of illegal logging are maintained in the UK after we leave the EU.

4. Equalities

- 4.1 The Parliamentary Under Secretary of State for the Environment, Therese Coffey, 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.”
- 4.2 The Parliamentary Under Secretary of State for the Environment, Therese Coffey, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018: “In relation to the instrument, I, Therese Coffey 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.”

- 4.3 The amendments made by the 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.

5. Explanations

- 5.1 The explanations statement has been made in section 2 of the main body of this explanatory memorandum.

6. Criminal offences

- 6.1 No criminal offences are created by the instrument.

7. Legislative sub-delegation

- 7.1 No sub-delegated powers are created by the instrument.

8. Urgency

- 8.1 We are not invoking the need for urgency to avoid a draft affirmative procedure as the instrument is suitable for a negative procedure.