

EXPLANATORY MEMORANDUM TO

THE EUROPEAN UNION (FUTURE RELATIONSHIP) ACT 2020 (REFERENCES TO THE TRADE AND COOPERATION AGREEMENT) REGULATIONS 2021

2021 No. [XXXX]

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Cabinet Office and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

- 2.1 This instrument updates references made in the European Union (Future Relationship) Act 2020 (“the Act”) to the Trade and Cooperation Agreement (“the Agreement”), following a process of legal revision in accordance with Article FINPROV.9 (now Article 780) of the Agreement. In addition, the instrument will make other minor technical amendments to references to the Agreement in the Act.

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 is the United Kingdom.

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is England and Wales, Scotland and Northern Ireland, save that the amendments made by this instrument to section 25(1) of the Act extend to England and Wales and Scotland only; and the amendments made by this instrument to section 25(2) of the Act extend to Northern Ireland only.
- 4.2 The territorial application of this instrument is the United Kingdom.

5. European Convention on Human Rights

- 5.1 The Minister of State in the Cabinet Office, Lord Frost, has made the following statement regarding Human Rights:

“In my view the provisions of the European Union (Future Relationship) Act 2020 (References to the Trade and Cooperation Agreement) Regulations 2021 are compatible with the Convention rights.”

6. Legislative Context

- 6.1 When negotiations with the EU concluded on 24 December 2020, there was insufficient time to complete a final legal revision of the Agreement. Legal revision is the process whereby cross-references are checked for consistency, along with checks for typographical and other errors to ensure legal accuracy. The process usually takes place before signature of the agreement. The Agreement was signed and provisionally

applied from 1 January 2021 pending full ratification and was given domestic legal effect by the Act, which received Royal Assent on 31 December 2020.

- 6.2 The legal revision process provided for by Article FINPROV.9 (now Article 780) resulted in typographical and other errors in the Agreement being corrected and the Articles being renumbered from Article 1 - 783. The substance of the Agreement has not changed.
- 6.3 To reflect these changes in domestic law, this instrument updates references to the Agreement in the Act. In addition, the instrument makes other minor corrections to references to the Agreement in the Act. These changes and corrections include amendments to references to the Agreement in enactments amended by the Act.

7. Policy background

What is being done and why?

- 7.1 This instrument makes minor technical amendments and corrections to ensure that references to the Agreement in the Act and in enactments amended by the Act reflect what is contained in the legally revised, ratified version of the Agreement.
- 7.2 Section 37(4) and (5) of the Act provide that references to the Agreement in the Act (or in any other enactment) are to be read as if they were modified so as to refer to the ratified version of the Agreement. This instrument makes textual amendments to the references in the Act for legal clarity and to make the law more accessible for users.

8. European Union Withdrawal and Future Relationship

- 8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.
- 8.2 This instrument does, however, relate to the implementation of the Agreement in that it amends references to the Agreement in the Act, following publication of the ratified version of the Agreement, the Security of Classified Information Agreement and the Nuclear Cooperation Agreement on 30 April 2021.

9. Consolidation

- 9.1 Consolidation is not being done.

10. Consultation outcome

- 10.1 A commitment was made by the UK Government prior to the Act being passed that it would not normally make regulations in devolved areas under concurrent powers in the Act without the agreement of the relevant devolved administration. A near final draft of the SI was shared with them. The Northern Ireland Executive and the Welsh Government confirmed that they were content with the SI and, because of its technical content, their formal consent was not required. Following discussions with the Scottish Government, Ministerial consent is being sought prior to the SI being debated in Parliament.

11. Guidance

- 11.1 Guidance is not required for this instrument. Information regarding the process of legal revision of the Agreement and the way that the Act functions as a result of that

process can however be found at: <https://www.gov.uk/government/publications/ukey-and-eaec-trade-and-cooperation-agreement-ts-no82021>.

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 because we expect it to have minimal impact on businesses.

13. Regulating small business

- 13.1 The legislation does not apply to activities that are undertaken by small businesses.

14. Monitoring & review

- 14.1 No specific monitoring arrangements are needed.
- 14.2 As this instrument is made under the Act, no review clause is required.

15. Contact

- 15.1 The Parliamentary Branch at the Cabinet Office, email: parliamentary.branch@cabinetoffice.gov.uk, can be contacted with any queries regarding the instrument.
- 15.2 Sarah Adcock, Deputy Director for EU Secretariat, at the Cabinet Office can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Lord Frost, Minister of State in the Cabinet Office can confirm that this Explanatory Memorandum meets the required standard.