

EXPLANATORY MEMORANDUM TO
THE CONFLICT MINERALS (COMPLIANCE) (NORTHERN IRELAND) (EU
EXIT) (AMENDMENT) REGULATIONS 2021

2021 No. 145

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Foreign, Commonwealth and Development Office and is laid before Parliament by Command of Her Majesty.
- 1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

- 2.1 This instrument amends The Conflict Minerals (Compliance) (Northern Ireland) (EU Exit) Regulations 2020 (“the 2020 Regulations”) which were laid before Parliament on 15 October 2020 and came into force on 1 January 2021.
- 2.2 The 2020 Regulations implemented, to and in the UK in respect of Northern Ireland from 1 January 2021, Regulation (EU) No 2017/821 of the European Parliament and of the Council of 17 May 2017 laying down supply chain due diligence obligations for Union importers of tin tantalum and tungsten, their ores, and gold originating from conflict-affected and high risk areas (OJ No. L 130, 19.5.2017) (“the EU Regulation”). The EU Regulation established supply chain due diligence obligations applicable to relevant importers of tin, tantalum, tungsten, their ores and gold originating from conflict-affected and high risk areas (“conflict minerals”) and placed obligations upon Member States for the effective and uniform implementation of the EU Regulation. This instrument amends the 2020 Regulations to narrow the category of person upon whom a notice requiring the production of information may be served from a “person” to “Union importer” and to make clear that civil sanctions may be imposed for failure to cooperate with either the Secretary of State or an inspector who is exercising powers under the 2020 Regulations. It also makes further clarifying and necessary consequential amendments, and implements minor corrections to the 2020 Regulations.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 This instrument amends regulation 8 of the 2020 Regulations in response to the Thirty-First Report of Session 2019–21 of the Joint Committee on Statutory Instruments (“the JCSI”) at paragraphs 4.1-4.3. This amendment is in line with the undertaking given by the Foreign, Commonwealth and Development Office in its memorandum set out at Appendix 4 of that Report.

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 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 Northern Ireland.
- 4.2 The territorial application of this instrument is Northern Ireland.

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 This instrument amends the 2020 Regulations to remedy defective drafting as set out in the Thirty-First Report of Session 2019–21 of the Joint Committee on Statutory Instruments at paragraphs 4.1-4.3. In particular, the JCSI identified that the 2020 Regulations make provision (in regulation 8) for the Secretary of State to give notice requiring “a person” to produce information, but that power is only enforceable (in regulation 15) against “Union importers”. The Foreign, Commonwealth and Development Office, in its memorandum set out at Appendix 4 of that Report, undertook to bring forward this amending legislation as soon as possible. This undertaking was also given in the speeches by which the 2020 Regulations were introduced for debate in both Houses.
- 6.2 This instrument also implements clarifying and necessary consequential amendments as well as minor corrections.
- 6.3 This instrument is subject to annulment in pursuance of a resolution of either House of Parliament as it is made under the powers in section 8C(1)(a) of the European Union (Withdrawal) Act 2018 but does not contain provision falling within sub-paragraph 2 of paragraph 8F of Schedule 7 of that Act.
- 6.4 The Foreign, Commonwealth and Development Office has consulted with the S I Registrar in compliance with the requirement set out in Statutory Instrument Practice 4.7.6 and has applied the procedure for free issue to this instrument on the basis that it is correcting a defective instrument and making additional amendments.

7. Policy background

What is being done and why?

- 7.1 The 2020 Regulations implement the EU Regulation to and in the UK in respect of Northern Ireland. The purpose of the EU Regulation is to break the link between conflict and the exploitation of conflict minerals and to put an end to abuses of local communities, including mine workers, often linked to violation of human rights. The EU Regulation imposes due diligence obligations on business and obligations upon Member State competent authorities to be responsible for its effective and uniform implementation.
- 7.2 As part of this implementation, regulation 8 of the 2020 Regulations makes provision for a power to give notice requiring the production of information. Regulation 3 of this instrument narrows the category of persons to whom a notice can be given to “Union importers”.
- 7.3 Regulations 4 and 5 of this instrument clarify issues relating to the powers of an inspector. In particular they clarify that an inspector may require the provision of any

assistance as may be considered necessary by the inspector for the purposes of carrying out the Secretary of State's functions, and that an inspector is not authorised to take possession of any document or information over which legal professional privilege may be claimed.

7.4 Regulation 6 amends regulation 15 of the 2020 Regulations to make clear that civil sanctions may be imposed for failure to cooperate with either the Secretary of State or an inspector who is exercising powers under the 2020 Regulations.

7.5 Regulation 7 makes minor corrections to the Schedule of the 2020 Regulations, and clarifies that a compliance notice issued to a Union importer under paragraph 3 of that Schedule must inform the Union importer of the right to apply to the Secretary of State for a review of the compliance notice.

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

8.1 This instrument is being made under the power in section 8C(1)(a) of the European Union (Withdrawal) Act 2018 in order to implement the Protocol on Ireland/Northern Ireland in the Withdrawal Agreement.

9. Consolidation

9.1 This instrument does not consolidate previous instruments.

10. Consultation outcome

10.1 No consultation has been conducted for this instrument.

11. Guidance

11.1 The OECD guidance (upon which the EU Regulation is based) is available on the [OECD website](#). There is also guidance for businesses on due diligence available through the [European Partnership for Responsible Minerals Due Diligence Hub](#), which was part funded by the UK. The Secretary of State will publish guidance on the use of civil sanctions under the 2020 Regulations (in accordance with Parts 2 and 4 of the Schedule to those Regulations) at the earliest opportunity.

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. Whilst no impact assessment was required for the 2020 Regulations, a *de-minimis* assessment was carried out which identified no, or no significant impact on business, charities or voluntary bodies. This instrument amends those Regulations in a limited manner and does not change that assessment.

13. Regulating small business

13.1 The scope of the EU Regulation is determined by 'import volume thresholds' which are set by the European Union on the basis of information provided by Member States and are used to determine if a business is in scope and whether they should legally be required to follow due-diligence obligations. Import thresholds as set under the EU

Regulation will mean small businesses are unlikely to fall in scope. Therefore, it was not anticipated that small businesses will be significantly impacted by the 2020 Regulations and it is not anticipated that they will be significantly impacted by this instrument.

14. Monitoring & review

- 14.1 As this instrument is made under the EU Withdrawal Act 2018, no review clause is required. In any event, the 2020 Regulations make provision for a review of their regulatory provisions within five years of their coming into force and at intervals not exceeding five years thereafter and, as this instrument amends the 2020 Regulations, it is not subject to the requirement to include provision for review in section 28 of the Small Business, Enterprise and Employment Act 2015. The Secretary of State will carry out the review as required by the 2020 Regulations and publish a report and that instrument may be amended accordingly.

15. Contact

- 15.1 For queries regarding these Regulations please contact the Conflict Minerals National Competent Authority at the FCDO at the following email address:
CMNCA@fcdo.gov.uk
- 15.2 Richard Jones, Head, Human Rights, Open Societies and Human Rights Directorate, Commonwealth and Development Office can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Lord (Tariq) Ahmad of Wimbledon, Minister of State at the Foreign, Commonwealth and Development Office can confirm that this Explanatory Memorandum meets the required standard.