EXPLANATORY MEMORANDUM TO

**The Overseas Association Decision (Revocation) (EU Exit) Regulations 2019**

2019 No. [XXXX]

1. Introduction

This explanatory memorandum has been prepared by the Foreign and Commonwealth Office and is laid before Parliament by Act of Her Majesty.

1. Purpose of the instrument

The Overseas Association Decision (Revocation) (EU Exit) Regulations 2019 (“the Regulations”) are made in exercise of the powers in section 8 of the European Union (Withdrawal) Act 2018 (c. 16) (the “Act”) in order to address deficiencies in retained EU law arising from the withdrawal of the United Kingdom from the European Union. The Regulations revoke retained EU law found in Council Decision 2013/755/EU of 25 November 2013 on the association of the overseas countries and territories with the European Union (the “Overseas Association Decision” or “OAD”). These Regulations revoke the text of the OAD given that the OAD is an arrangement between the European Union and the overseas countries and territories of EU Member States (“OCTs”), and the British overseas territories will no longer be OCTs after the United Kingdom’s withdrawal from the European Union.

***Explanations***

*What did any relevant EU law do before exit day?*

The OAD laid down provisions as regards the detailed rules and the procedure for the association of the European Union with the non-European OCTs which have special relations with Denmark, France, the Netherlands and the United Kingdom. With respect to the UK, this includes the following British overseas territories: Anguilla, Bermuda, British Antarctic Territory, British Indian Ocean Territory, Cayman Islands, Falkland Islands, Montserrat, Pitcairn, Henderson, Ducie and Oeno Islands, South Georgia and the South Sandwich Islands, St Helena, Ascension and Tristan da Cunha, Turks and Caicos Islands, and Virgin Islands.

The OAD created a framework for cooperation between the EU and the OCTs, made provision for trade in goods and services between the EU and the OCTs, and set out the conditions under which OCTs could access EU-funded development assistance.

Why is it being changed?

As the British overseas territories will no longer be OCTs from exit day, the retained EU law contained in the OAD is no longer appropriate.

What will it now do?

These Regulations revoke the text of the OAD so that, as retained EU law, it will not, as of exit day, form part of the UK statute book.

1. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 This instrument is being laid in draft for sifting.

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 a 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.

1. Extent and Territorial Application

The territorial extent of this instrument is the United Kingdom.

The territorial application of this instrument is the United Kingdom.

1. European Convention on Human Rights

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

1. Legislative Context

The OAD sets out the arrangements of association between the European Union and the OCTs. Once the United Kingdom leaves the EU the British overseas territories will no longer be OCTs, and therefore the retained EU law contained in the OAD is no longer appropriate in respect of the United Kingdom or the relevant British overseas territories. These Regulations revoke the text of the OAD so that, as retained EU law, it is removed from the UK statute book.

As the Act does not extend to or apply in the relevant British overseas territories, this instrument also does not extend to or apply in those British overseas territories, but has effect in United Kingdom domestic law only. The instrument therefore does not have any effect on the OAD as a matter of EU or international law or as a matter of the law of the relevant British overseas territories.

On the commencement of the Taxation (Cross-border Trade) Act 2018 (c. 22), certain provisions of the Treaty of the Functioning of the European Union and the OAD concerning EU customs duties cease to have effect to the extent that they relate to such duties as a result of the operation of section 29 and Schedule 7, paragraph 1 of that Act. Those OAD provisions are: Articles 43 (*free access for originating goods*), 45 (*measures adopted by the OCTs*), 48 (*temporary withdrawal of preferences*) and 49 (*safeguard and surveillance measures*) and Annexes VI (*concerning the definition of the concept of ‘originating products’ and methods of administrative cooperation*), VII (*temporary withdrawal of preferences*) and VIII (*safeguard and surveillance procedures*). This is also the case in relation to Article 200(1) of the Treaty on the Functioning of the European Union, which concerns a prohibition on the imposition of customs duties on goods originating in the relevant British overseas territories. It is intended that arrangements will be put in place between the relevant British overseas territories and the United Kingdom concerning the rates of import duty applicable to goods originating from those British overseas territories, which will be given effect by way of regulations under section 9 of the Taxation (Cross-border Trade) Act.

1. Policy background

What is being done and why?

The text of the OAD is being revoked by these Regulations. This is being done because once the United Kingdom leaves the EU the British overseas territories will no longer be OCTs, and therefore the retained EU law contained in the OAD is no longer appropriate in respect of the United Kingdom or the relevant British overseas territories.

The OAD makes provision for a number of matters which are dependent on the UK’s membership of the European Union and the reciprocal arrangements that apply under it in respect of the British overseas territories and the OCTs of other EU Member States. The OAD will not apply to the UK or the British overseas territories and it would be neither possible nor appropriate to maintain these arrangements in relation to OCTs of other EU Member States without an agreement between the EU and the UK on these matters. It is therefore considered necessary to revoke the text of the OAD as retained EU law as it relates to the OCTs of other EU Member States.

With respect to the relationship between the UK and the British overseas territories concerned, there is already a framework for a constitutional relationship set out in the constitutions of the British overseas territories and in the 28 June 2012 White Paper on the Overseas Territories (available at <https://www.gov.uk/government/publications/the-overseas-territories-security-success-and-sustainability>). This relationship is further developed through regular Joint Ministerial Councils between elected leaders of the British overseas territories and UK Government Ministers and in other fora. It is not considered appropriate to create a parallel framework for cooperation between the UK and the British overseas territories by keeping and amending these elements of the OAD. In any case, as explained above, the parent Act does not extend to the relevant British overseas territories.

However, the UK Government is seeking to preserve key benefits deriving from the OAD for the British overseas territories insofar as possible on a bilateral basis post-EU exit. This includes making arrangements concerning the rates of import duty applicable to goods originating from those British overseas territories, which will be given effect by way of regulations under section 9 of the Taxation (Cross-border Trade) Act. Existing projects under EU funding streams, including the European Development Fund (EDF), the Voluntary Scheme for Biodiversity and Ecosystem Services in Territories of the European Union (BEST) and Horizon 2020, will be guaranteed by HM Treasury for the lifetime of those projects in the event of a no deal, in accordance with the guidance published in October 2018 at <https://www.gov.uk/government/publications/funding-for-british-overseas-territories-if-theres-no-brexit-deal/funding-for-british-overseas-territories-if-theres-no-brexit-deal>. Future funding and programming arrangements for the post-2020 period will be considered as part of the UK Government’s next Spending Review in 2019, taking account of Overseas Territory Governments’ views. The OAD also contains a large number of legally non-binding or purely aspirational provisions, which describe possible cooperation or standards to be adopted in a number of areas, including environmental protection. The substance of the majority of such provisions is already reflected either in the 2012 White Paper or in other bilateral arrangements between the UK and the British overseas territories. The UK Government has made clear to the British overseas territories that it is committed to maintaining the effects of as many as possible of these legally non-binding provisions, which are not already the subject of other existing arrangements, on a bilateral basis.

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

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.

1. Consolidation

This instrument does not involve consolidation.

1. Consultation outcome

The governments of Anguilla, Bermuda, British Antarctic Territory, British Indian Ocean Territory, Cayman Islands, Falkland Islands, Montserrat, Pitcairn, Henderson, Ducie and Oeno Islands, South Georgia and the South Sandwich Islands, St Helena, Ascension and Tristan da Cunha, Turks and Caicos Islands, and Virgin Islands were consulted in the preparation of these Regulations. The draft Regulations were shared with the Governors/Commissioners and Attorneys General of those British overseas territories and comments invited. One substantive reply was received with a number of questions which the Foreign and Commonwealth Office addressed in writing and those explanations as to how the Regulations would operate were accepted. No other substantive responses or concerns were raised following the consultation.

1. Guidance

No guidance has been prepared for these Regulations because they deal with deficiencies in retained EU law.

1. Impact

These regulations deal with deficiencies in retained EU law and do not alter the fact that the OAD will cease to apply - as a matter of international law - to the British overseas territories from exit day. There is therefore no significant, impact on business, charities or voluntary bodies.

For the same reason, there is no, or no significant, impact on the public sector.

Accordingly, an Impact Assessment has not been prepared for this instrument.

1. Regulating small business

The legislation does not apply to activities that are undertaken by small businesses in the UK.

1. Monitoring & review

As this instrument is made under the European Union (Withdrawal) Act 2018, no review clause is required. In addition, as the text of the OAD is being revoked, no subsequent monitoring is required.

1. Contact

David Thompson at the Foreign & Commonwealth Office, Telephone: 020 7008 5856 or email: david.thompson@fco.gov.uk can be contacted with any queries regarding the instrument.

Ian Ascough at the Foreign & Commonwealth Office can confirm that this Explanatory Memorandum meets the required standard.

Lord Ahmad at the Foreign & Commonwealth Office can confirm that this Explanatory Memorandum meets the required standard.

Annex 1

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.

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| 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 clauses 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 clauses 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 clauses 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 clauses 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 77 | Ministers of the Crown exercising clauses 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2In 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 offences | Sub-paragraphs (3) and (7) of paragraph 28, Schedule 7 | Ministers of the Crown exercising clauses 8(1), 9, and 23(1) or jointly exercising powers in Schedule 2 to create a criminal offence | Set out the ‘good reasons’ for creating a criminal offence, and the penalty attached. |
| Sub-delegation | Paragraph 30, Schedule 7 | Ministers of the Crown exercising clauses 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, Sch 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) Act 2018

1. Sifting statement(s)

The Minister of State for for the Commonwealth and the UN has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view the Overseas Association Decision (Revocation) (EU Exit) Regulations 2019 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 these Regulations satisfy the conditions under paragraph 1(3) of Schedule 7 to the European Union (Withdrawal) Act 2018.”

This is the case because none of the affirmative triggers specified in Schedule 7 of the European Union (Withdrawal) Act 2018 apply to this instrument.

1. Appropriateness statement

The Minister of State for for the Commonwealth and the UN has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view the Overseas Association Decision (Revocation) (EU Exit) Regulations 2019 do no more than is appropriate. This is the case because, from exit day, the British overseas territories concerned will no longer be overseas countries or territories which are associated with the European Union. In addition, as the European Union (Withdrawal) Act 2018 does not extend to the relevant British overseas territories, it is considered that the Regulations would not be an appropriate vehicle through which to develop any system of mutual commitments between the UK and the British overseas territories. From exit day the retained EU law contained in the Overseas Association Decision is therefore no longer appropriate in respect of the United Kingdom and it is therefore appropriate that the Overseas Association Decision be deleted. See further paragraphs 2, 6 and 7 of the explanatory memorandum.”

This is the case because the instrument will revoke the OAD from retained EU law in order to correct deficiencies in the UK statute book.

1. Good reasons

The Minister of State for for the Commonwealth and the UN has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view there are good reasons for the provisions in the Overseas Association Decision (Revocation) (EU Exit) Regulations 2019, and I have concluded they are a reasonable course of action. These are that from exit day the retained EU law contained in the Overseas Association Decision is no longer appropriate in respect of the United Kingdom given that the British overseas territories concerned will no longer be overseas countries and territories associated with the European Union. In addition, as the European Union (Withdrawal) Act 2018 does not extend to the relevant British overseas territories, it is considered that the Regulations would not be an appropriate vehicle through which to develop any system of mutual commitments between the UK and the British overseas territories. See further paragraphs 2, 6 and 7 of the explanatory memorandum.”

These reasons are that the instrument will correct deficiencies contained in the retained EU law arising as a result of the UK no longer being a Member State of the EU and the British overseas territories no longer being overseas countries and territories of the EU.

1. Equalities

The Minister of State for for the Commonwealth and the UN has made the following statement:

“The Overseas Association Decision (Revocation) (EU Exit) Regulations 2019 do 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.”

The Minister for State for Europe and the Americas has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In relation to the Overseas Association Decision (Revocation) (EU Exit) Regulations 2019, I, the Minister for State for Europe and the Americas 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.”

1. Explanations

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