

**EXPLANATORY MEMORANDUM TO THE  
EUROPEAN COMMUNITIES (DESIGNATION)  
(NO. 5) ORDER 2004**

**2004 No. 2642**

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

This memorandum contains information for the Joint Committee on Statutory Instruments and the House of Lords Committee on the Merits of Statutory Instruments.

**2. Description**

2.2 A Designation Order is an enabling instrument required in order to give authority to Ministers and departments, or to the devolved administrations of Wales and Northern Ireland, to make use of s2(2) of the European Communities Act 1972 to implement EC obligations to deal with matters arising out of or related to such obligations, by making regulations.

**3. Matters of special interest to the [Joint Committee on Statutory Instruments or the Select Committee on Statutory Instruments]**

3.1 None

**4. Legislative Background**

The instrument provides Ministers with powers to make regulations to implement two EU Directives.

The first is Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers (the “Reception Conditions Directive”).

The directive was the subject of extensive scrutiny by both Parliamentary EU committees. The proposal was first deposited in June 2001 under document reference 9074/01. This was the subject of an explanatory memorandum (EM) dated 22 June 2001. A second document, 8351/02 was the subject of an EM dated 17 May 2002. Additionally an unnumbered EM was deposited in Parliament on 8 April 2002. The House of Commons EU Scrutiny Committee reported on these documents in the following reports: no.1, 01-02; no.14, 01-02; no.22, 01-02; no.24, 01-02; no.26, 01-02; and no.31, 01-02. The proposal was debated in European Standing Committee B on 17 June 2002. The documents were considered by sub-committee E of the House of Lords European Union Committee. The committee published a report on the proposal (report no.8, 01-02).

The second designation will enable implementation of Council Directive 2003/6/EC on insider dealing and market manipulation, and three Commission Directives adopted under it (Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC) (together, the “Market Abuse Directives”).

The Commission directives were not subject to scrutiny by the Parliamentary EU Committees. But the Council legislation was scrutinised under document references 9763/01 and 15698/02. These documents were the subject of EMs dated 2 November 2001 and 21 January 2003 respectively. The House of Commons EU Committee reported on these documents in reports no.9, 01-02 and no.10, 02-03. The House of Lords European Union Committee considered this proposal in sub-committee A and cleared the proposal following correspondence with Ministers in December 2001.

## **5. Extent**

5.1 Both designations apply to all of the United Kingdom.

## **6. European Convention on Human Rights**

6.1 Not applicable

## **7. Policy background**

The European Communities Act 1972 creates broad powers to make secondary legislation implementing Community law. The powers are conferred on Ministers or departments which Her Majesty may designate. This is a further Order in the series designating such Ministers and departments. It will enable the Ministers or departments to make secondary legislation in the fields specified in the Schedule, and in particular to implement the following EC measures:

The **Reception Conditions Directive** lays down minimum standards for the reception of asylum seekers in Member States, intended to lessen discrepancies between Member States’ reception provisions. It places certain obligations on Member States with regard to applicants as well as obligations on applicants with regard to the Member State concerned. Provisions include minimum standards on information, documentation, education, healthcare, accommodation, withdrawal of reception conditions as well as extra provisions for children and vulnerable individuals.

The **Market Abuse Directives** (i) prohibit certain behaviours which constitutes insider dealing or market manipulation; (ii) lay down a number of other requirements on market participants which are aimed at preventing market abuse; and (iii) require the competent authorities (the Financial Services Authority in the UK) to have in place effective regimes to detect and sanction market abuse.

## **8. Impact**

8.1 A Regulatory Impact Assessment has not been prepared for this enabling instrument as in itself it has no impact on business, charities or voluntary bodies.

8.2 There is no impact on the public sector.

## **9. Contact**

Daniel Jenkins at Cabinet Office Legal Advisers can answer any queries regarding the instrument (tel 0207 210 3434; email: [djenkins@treasury-solicitor.gsi.gov.uk](mailto:djenkins@treasury-solicitor.gsi.gov.uk)).