

**EXPLANATORY MEMORANDUM TO
THE EUROPEAN COMMUNITIES (DESIGNATION) ORDER 2006**

2005 No. 608

- 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.

2. Description

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

None

4. Legislative Background

Council Directive 76/769/EEC (as amended) on the marketing and use of certain dangerous substances and preparations and Council Regulation (EC) 850/2004 concerning persistent organic pollutants.

The Council Regulation was the subject of Council document 10864/03, COM(03)333 on which the Government submitted an Explanatory Memorandum on 9 July 2003. The House of Commons European Scrutiny Committee cleared the proposal as not raising issues of legal or political importance (Report 32, 02/03). The House of Lords European Union Committee cleared the proposal at the meeting of Sub-Committee D on 8 October 2003.

Council Regulation 1435/2003 on the Statute for a European Cooperative Society

This legislation was the subject of Council document 5086/92, COM(91)273 and 8363/93, COM(93)252. The Government submitted Explanatory Memoranda dated 14 May 1992 and 1 December 2003. The House of Commons European Scrutiny Committee considered the proposal raised issues of legal and political importance but cleared the proposal following reports 01, 92/93 and 03, 93/94. The House of Lords European Union Committee cleared the proposal following consideration in Sub-Committees A, C and E on 1 March 1994.

Directive 2005/32 of the European Parliament and of the Council establishing a framework for the setting of ecodesign requirements for energy using products and amending Council Directive 92/42/EEC and Directives 96/57/EC and 2000/55/ED of the European Parliament and of the Council.

This legislation was the subject of Council document 12082, COM(03)453. on which the Government submitted an Explanatory Memorandum dated 15 September 2003. The House of Commons European Scrutiny Committee considered the proposal raised issues of political importance but cleared the proposal after reports 36, 02/03 and 09, 03/04. The House of Lords European Union Committee cleared the proposal on 7 October 2003 (sift 1154).

Directive 2004/48/EC on the enforcement of intellectual property rights

This legislation was the subject of Council document 6777/03, COM(03)46 on which the Government submitted an Explanatory Memorandum dated 20 March 2003. The House of Commons European Legislation Committee reported that the proposal raised issues of legal and political importance and cleared the proposal after reports 22, 02/03 and 12, 03/04. The House of Commons European Union Committee considered the proposal in Sub-Committee E and cleared the proposal on 19 March 2004.

5. Extent

This instrument applies to all of the United Kingdom as described in Section 7 below.

6. European Convention on Human Rights

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

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 or in this case additionally Northern Ireland Departments to make secondary legislation in the fields specified in the Order, and in particular to implement the following EC measures:

Council Directive 76/769/EEC (as amended) on the marketing and use of certain dangerous substances and preparations and Council Regulation (EC) 850/2004 concerning persistent organic pollutants.

This designation will enable DEFRA to implement provisions in Council Directive 76/769/EEC (as amended) on the marketing and use of certain dangerous substances and preparations and Council Regulation (EC) 850/2004 concerning persistent organic pollutants. The Directive has already been implemented, but the extent of the implementation is deficient in that express enforcement duties were not imposed on the regulators in the UK. New S.I.s are required to consolidate the existing UK and devolved S.I.s that deal with the pollution of the environment and to incorporate enforcement provisions.

The Council Regulation amends Directive 79/117/EC and puts in place controls to protect human health and the environment from the harmful effects of persistent organic pollutants. The provisions of the Regulation are directly applicable but an enforcement SI is required to:

- i) designate the competent authority (Environment Agency); and
- ii) put in place penalties and an appropriate enforcement regime.

The Council Regulation applied with effect from 20 May 2004. The transposition deadline has already passed. The Regulation requires that the competent authority be designated by 10 August 2004 and that the appropriate penalties be put in place by 20 May 2005. It is intended to implement the Regulation by Summer 2006.

This designation is not a new designation. The Secretary of State was previously designated in relation to persistent organic pollutants, dangerous substances and chemicals in 2005 (S.I. 2005/2766) and in relation to restrictions on the marketing and use of certain dangerous substances and preparations in 1992 (S.I. 1992/1711). This designation intends to consolidate these two previous designations.

The relevant designations in S.I. 2005/2766 and S.I. 1992/1711 are revoked by the present Order.

Council Regulation 1435/2003 on the Statute for a European Cooperative Society

This designation will enable HM Treasury to implement Council Regulation 1435/2003 on the Statute for a European Cooperative Society (SCE). The Regulation creates a new legal form, the European Cooperative Society (SCE), and provides the mechanisms for the formation, operation and termination of SCEs.

HM Treasury intends to give effect to the Council Regulation by:

- Designating a register of SCEs that register in Great Britain,
- Designating the Financial Services Authority as the competent authority for registration and regulation of SCEs that register in Great Britain,
- Exercising various options in the EC Regulation that relate to the formation and operation of SCEs,
- Providing enforcement mechanisms against SCEs that register in Great Britain but which fail to comply with the regulatory requirements.

The Council Regulation is accompanied by Council Directive 2003/72/EC supplementing the Statute for a European Cooperative Society with regard to the involvement of employees. That instrument is being implemented by the DTI, who will be relying on the terms of an existing designation in relation to employee matters. That instrument is not relevant for these purposes.

The Council Regulation comes into force on 18 August 2006. The domestic Regulations that give effect to that instrument must, therefore, also come into force on 18 August 2006. HMT intends to make the Regulations that give effect to the Council Regulation on or before 26 July 2006.

A separate designation is sought in respect of Northern Ireland departments, who intend to make legislation that mirrors that of HMT.

Directive 2005/32 of the European Parliament and of the Council establishing a framework for the setting of ecodesign requirements for energy using products and amending Council Directive 92/42/EEC and Directives 96/57/EC and 2000/55/ED of the European Parliament and of the Council.

This designation will enable DEFRA to implement the Ecodesign Requirements for Energy-using Products Directive¹ (the EuP Directive). Energy-using Product (EuP) means a product which, once placed on the market and/or put into service, is dependent on energy input (from whatever source) to work as intended, or a product for generation, transfer and measurements of such energy, including parts dependent on energy input.

The EuP Directive is a framework directive, which imposes certain duties on the Commission. There are three main legislative changes required by the EuP Directive, amending Directives 92/42/EEC, 96/57/EC and 2000/55/EC. The amendments insert a clause into each of these three Directives, rendering them 'implementing measures' under the EuP Directive. The Directives for amendment have been implemented into domestic law by SI 1994/3083, SI 1997/1941 and SI 2003/1398 respectively. Defra intend to implement the EuP Directive by repealing the previous S.I.s rather than amending them again and to consolidate the Directives into a new, comprehensive set of EuP regulations.

The EuP Directive is to be implemented by 11 August 2007 and DEFRA intend to make the implementing regulations by this date.

Directive 2004/48/EC on the enforcement of intellectual property rights

This designation will enable the DTI to implement Directive 2004/48/EC on the enforcement of intellectual property rights by 29 April 2006.

This designation is intended by the DTI to replace and consolidate the various designations presently in place. It is also intended for this designation to be sufficient to cover those aspects of intellectual property where it is at present unclear whether any current designation is sufficient (for example, the law of passing off which may or may not be covered by the "trade marks" designation). Further, the Directive refers to the enforcement of "intellectual property", but it does not refer to the enforcement of any individual IP rights; therefore, it means that the designated matter fits squarely within the Directive's scope.

It would be the DTI's intention (along with DEFRA and HMRC) to revoke as many of the existing designations in the area of intellectual property as possible so that in most cases the proposed designation for intellectual property will be sufficient.

¹ Directive 2005/32 of the European Parliament and of the Council establishing a framework for the setting of ecodesign requirements for energy using products and amending Council Directive 92/42/EEC and Directives 96/57/EC and 2000/55/ED of the European Parliament and of the Council.

8. Impact

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

8.2 There is no impact on the public sector.

9. Contact

Victoria Vincent at Cabinet Office Legal Advisers, Tel: 0207 210 3382 or email (Victoria.vincent@tsol.gsi.gov.uk) can answer any queries regarding the instrument.

Cabinet Office
European Secretariat
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