

**EXPLANATORY MEMORANDUM TO
THE EUROPEAN COMMUNITIES (DESIGNATION) (No.4) ORDER 2008**

2008 No. 3117

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

2. Description

This Order designates the Secretary of State so that the Secretary of State may exercise the powers conferred by section 2(2) of the European Communities Act 1972 (“section 2(2)”) in relation to consumer credit.

This Order also designates both the Secretary of State and the Lord Privy Seal in relation to the European Parliament (including elections to the Parliament and members of the Parliament). It revokes an earlier designation relating to the European Parliament, which is superseded by this Order.

3. Matters of special interest to the Joint Committee on Statutory Instruments

None.

4. Legislative Background

4.1 Section 2(2) confers a power which may be exercised by a designated Minister or government department.

4.2 A designated Minister or government department can then make provision by order, rules, regulations, or scheme for the purpose of enabling a Community right to be exercised or implementing a Community obligation (or to deal with matters arising out of or related to any such obligation) in relation to the subject matter of the designation.

Designation of the Secretary of State in relation to consumer credit

4.3 Directive 2008/48/EC¹ of the European Parliament and of the Council of 23 April 2008 on credit agreements for consumers and repealing Council Directive 87/102/EEC (“the Consumer Credit Directive”) aims to harmonise certain aspects of consumer credit agreements - to provide a high level of consumer protection and promote an internal market in consumer credit.

4.4 Domestic rules relating to consumer credit agreements are contained in the Consumer Credit Act 1974 (“the 1974 Act”)² (as amended by the Consumer Credit Act 2006³) and secondary legislation made under that Act.

¹ OJ L 133, 22.05.2008 p.66. A copy of Directive 2008/48/EC can be accessed via the following link: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:133:0066:0092:EN:PDF>

² 1974 c.39

³ 2006 c.14

Designation of the Secretary of State and Lord Privy Seal in relation to the European Parliament

- 4.5 Decision 2005/684/EC, Euratom of the European Parliament adopting the Statute for Members of the European Parliament (“the Decision”)⁴ sets down the regulations and general conditions governing the performance of the duties of MEPs, including a provision for the payment of MEPs’ salaries, allowances and pensions from the EU budget, bringing the remuneration of MEPs under central control. Pay, allowances and pensions of MEPs from the UK are currently governed by the European Parliament (Pay and Pensions) Act 1979 (“the 1979 Act”).⁵
- 4.6 The Decision also provides for MEPs elected to the Parliament before it comes into force (and who are re-elected in 2009) to retain their national system regarding salary, transitional allowance and pensions, and so provision must be made enabling the pay provisions of the 1979 Act to continue to have effect in respect of MEPs who choose to exercise this right.

5. Territorial Extent and Application

This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

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

7. Policy Background

Designation of the Secretary of State in relation to consumer credit

- 7.1 The Secretary of State proposes to make legislation under section 2(2) to implement the Consumer Credit Directive by Autumn 2009.
- 7.2 The powers provided in the 1974 Act are not sufficient to implement some of the rights and obligations introduced by the Consumer Credit Directive. There is no existing designation because the earlier 1987 Directive was not implemented by section 2(2) regulations.

Designation of the Secretary of State and Leader of the House of Commons in relation to the European Parliament

- 7.3 The Lord Privy Seal proposes to make legislation in the near future under section 2(2) to amend the 1979 Act to implement requirements in the Decision, which will apply to UK MEPs from the first day of the new European Parliamentary session in 2009.

⁴ OJ L 262, 7.10.2005 p.1. A copy of Decision 2005/684/EC Euratom can be accessed via the following link:

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2005:262:0001:0010:EN:PDF>

⁵ 1974 c.50

7.4 In order for the implementing legislation to be made it is necessary to designate the Lord Privy Seal under section 2(2). The Lord Privy Seal is a minister of the Crown,⁶ and can therefore be designated under section 2(2). As the Secretary of State also has policy responsibilities relating to some matters associated with the European Parliament, it is necessary for the Secretary of State to continue to be designated.⁷

8. Impact

8.1 An 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

Les Saunders at Cabinet Office European Secretariat, Tel: 020 7276 0190 or email Les.Saunders@cabinet-office.x.gsi.gov.uk, can answer any queries regarding the instrument.

Cabinet Office
European and Global Issues Secretariat
26th November 2008

⁶ See for instance Part 1 of Schedule 1 to the Ministers and Other Salaries Act 1975 (c.27) and Schedule 2 to the House of Commons Disqualification Act 1975 (c.24) which list the Lord Privy Seal as a Ministerial Office.

⁷ Particularly in respect of those matters listed in the European Communities (Designation) (No.2) Order 2004,⁷ which this Order revokes.