

**EXPLANATORY MEMORANDUM TO**  
**THE EUROPEAN COMMUNITIES (DESIGNATION) (No. 3) ORDER 2009**

**2009 No. 1381**

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

**2. Purpose of the instrument**

This Order designates Northern Ireland departments so that they may exercise the powers conferred by section 2(2) of the European Communities Act 1972 (“section 2(2)”) in relation to the packaging of products.

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

None

**4. Legislative Context**

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 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.

4.3 Directive 2007/45/EC laying down rules on nominal quantities for prepacked products, and repealing Council Directives 75/106/EEC and 80/232/EEC, and amending Council Directive 76/211/EEC (“the Packaging Directive”)<sup>1</sup> removes restrictions which currently provide that certain pre-packaged products can only be placed on the market in ‘nominal quantities’. It retains the restriction in relation to nominal quantities of pre-packaged wines and spirits.

4.4 The Northern Ireland rules relating to the packaging of products are contained in the Weights and Measures (Northern Ireland) Order 1981 (“the 1981 Order”)<sup>2</sup> and the Weights and Measures (Intoxicating Liquor) Order (Northern Ireland) 1989 (“the 1989 Order”)<sup>3</sup>.

4.5 The devolved administration in Northern Ireland proposes to make legislation under section 2(2) to implement the Packaging Directive. This Order designates each Northern Ireland department for that purpose.

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<sup>1</sup> OJ L 247, 21.9.2007 p.17. A copy of Directive 2007/45/EC can be accessed via the following link:  
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2007:247:0017:0020:EN:PDF>

<sup>2</sup> SI 1981/231 (N.I. 10).

<sup>3</sup> S.R. 1989 No.164.

4.6 The designation in this Order includes but is not restricted to all the obligations concerning the packaging of products covered by the Packaging Directive. The designation could also apply in relation to a future instrument amending the Packaging Directive or other Community obligations concerning product packaging.

4.7 Article 3(2) of the Order allows (but does not oblige) a Northern Ireland department to make subordinate legislation jointly with another Minister or department designated in relation to the same matter by any other Order.<sup>4</sup>

## **5. Territorial Extent and Application**

This instrument applies to all of the United Kingdom (although Article 4 contains a territorial restriction on the designation of Northern Ireland departments).

## **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**

7.1 The devolved administration in Northern Ireland proposes to make legislation under section 2(2) to implement the Packaging Directive. This Order designates each Northern Ireland department for that purpose.

7.2 In order for the Packaging Directive to be implemented, it is necessary for provisions in the 1981 Order which impose restrictions on the nominal quantities ('specified quantities' in the 1981 Order) of pre-packaged products to be amended.<sup>5</sup>

7.3 It is also necessary for pre-packaged wines and spirits to be carved out of the 1989 Order and new provisions inserted.<sup>6</sup>

## **8. Consultation Outcome**

As this Order is an enabling instrument, which in itself has no impact on business, charities or voluntary bodies, no consultation was carried out.

## **9. Guidance**

As this Order is an enabling instrument, which in itself has no impact on business, charities or voluntary bodies, no guidance has been prepared in relation to it.

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<sup>4</sup> For example, the Secretary of State is designated "in relation to the packaging of products" (SI 2009/221) and the National Assembly for Wales (now the Welsh Ministers) is designated in relation to "the management of packaging and packaging waste" (SI 2005/850).

<sup>5</sup> See article 19 of the 1981 Order, and Schedules 4, 5, 6 and 7.

<sup>6</sup> See Schedule 1 to the 1989 Order.

## **10. Impact**

10.1 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.

10.2 There is no impact on the public sector.

## **11. Regulating small business**

The Order does not apply to small business.

## **12. Monitoring & review**

12.1 The designations in this and similar Orders are intended to identify clearly the subject areas in relation to which a Minister or government department is designated.

12.2 The designation contained in this Order will be subject to review before any further designations are made in relation to related subject areas, with this end in mind.

## **13. Contact**

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Cabinet Office  
European and Global Issues Secretariat  
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