

## EXPLANATORY MEMORANDUM TO

### THE EUROPEAN COMMUNITIES (DESIGNATION) (NO. 2) ORDER 2011

#### 2011 No. 2718

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

2.1 Section 2(2) of the European Communities Act 1972 includes a power for “designated” Ministers and departments to make subordinate legislation. The instrument designates the Treasury in relation to discrimination.

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

3.1 None.

#### 4. Legislative Context

4.1 A designation is required in relation to discrimination to allow the Treasury to amend domestic legislation affected by a judgment of the Court of Justice of the European Union concerning Council Directive 2004/113/EC of 13 December 2004 implementing the principle of equal treatment between men and women in the access to and supply of goods and services (“the Gender Directive”).

4.2 The Gender Directive lays down a framework for combating discrimination between men and women in the provision of services. Article 5 of the Gender Directive makes specific provision for insurance and related financial services. Article 5(1) provides that the use of sex as a factor in the calculation of premiums and benefits must not result in differences between individuals’ premiums and benefits. Article 5(2) permits Member States to derogate from Article 5(1) in certain limited circumstances. In Case C-236/09 *Association belge des Consommateurs Test-Achats ASBL and Others v Conseil des Ministres* (“*Test-Achats*”), the Court of Justice of the European Union declared Article 5(2) to be invalid with effect from 21 December 2012.

4.3 The UK implemented, pursuant to Article 5(2) of the Gender Directive, the derogation from Article 5(1) of the Gender Directive through paragraph 22 of Schedule 3 to the Equality Act 2010 (c. 15) which applies to England and Wales. The Equality Act 2010 also applies to Scotland (with the exception of section 190 and Part 15) and a few provisions apply to Northern Ireland.

#### 5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom.

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

6.1 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 Secretary of State and the Northern Ireland departments are already designated in relation to discrimination (S.I. 2002/1819).

7.2 It is envisaged that it will be necessary to amend paragraph 22 of Schedule 3 to the Equality Act 2010 following the judgment of the Court of Justice of the European Union in *Test-Achats*. The relevant provisions relate to insurance and related financial services so it is appropriate for the Treasury to legislate and the new designation will be used for this.

7.3 The designation could also apply in relation to obligations arising from a future EU instrument amending the Gender Directive, or other EU obligations concerning discrimination.

## **8. Consultation outcome**

8.1 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**

9.1 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.

## **10. Impact**

10.1 This Order is an enabling instrument and in itself has no impact on business, charities or voluntary bodies.

10.2 Except to the extent that the Order makes the power in section 2(2) of the European Communities Act 1972 available to the Treasury, there is no impact on the public sector.

10.3 An Impact Assessment has not been prepared for this instrument.

## **11. Regulating small business**

11.1 This 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.

### **13. Contact**

13.1 Les Saunders at the Cabinet Office European and Global Issues Secretariat (Tel: 020 7276 0190 or email: [Les.Saunders@cabinet-office.x.gsi.gov.uk](mailto:Les.Saunders@cabinet-office.x.gsi.gov.uk)) or Ellen Lawrence (Tel: 020 7276 0241 or email: [Ellen.lawrence@cabinet-office.x.gsi.gov.uk](mailto:Ellen.lawrence@cabinet-office.x.gsi.gov.uk)) can answer any queries regarding the instrument.