

**EXPLANATORY MEMORANDUM TO**

**THE EUROPEAN COMMUNITIES (DESIGNATION) ORDER 2012**

**2012 No. 1759**

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 Secretary of State in relation to financial assistance for industry;
- the Treasury in relation to administrative cooperation in the field of taxation and financial services; and
- any Northern Ireland department in relation to firearms and ammunition.

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

3.1 None.

**4. Legislative Context**

*Financial assistance*

4.1 A designation will be required in relation to financial assistance for industry to allow the Secretary of State to amend domestic legislation in order to deal with matters arising out of or related to EU obligations contained in Articles 107 and 108 of the Treaty on the Functioning of the European Union (“TFEU”).

4.2 Article 107 TFEU contains a general prohibition, subject to limited exceptions, on aid granted by a Member State or through state resources which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods. One exception to this general prohibition is aid provided to promote the economic development of areas where the standard of living is abnormally low or where there is serious underemployment. Another exception is aid to facilitate the development of certain economic activities or of certain economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest.

4.3 Article 108 TFEU provides, amongst other things, that the Commission shall, in co-operation with Member States, keep all systems of aid existing in the Member States under constant review.

4.4 The designation will be required, in particular, to address the status of Northern Ireland under those state aid arrangements, see further paragraphs 7.1 and 7.2 below.

*Administrative cooperation in the field of taxation*

4.5 A designation will be required in relation to administrative cooperation in the field of taxation to allow the Treasury to update and improve arrangements for co-operation between the Member States in order to deal with matters arising out of or related to EU obligations contained in Council Directive 2011/16/ EU.

4.6 Directive 2011/16 provides rules and procedures to facilitate cooperation between Member States in exchanging information that is foreseeably relevant to the administration and enforcement of the domestic laws of the Member States in relation to direct taxation.

4.7 Subordinate legislation pursuant to section 2(2) European Communities Act cannot be used to impose or increase taxation. Directive 2011/16 does not do this; the aim is to establish mutual assistance between Member States in enforcing the tax provisions within their own tax system. Section 2 (2) can thus be used to implement the Directive.

*Measures relating to firearms and ammunition*

4.8 This designation is required in relation to firearms and ammunition matters to allow the Northern Ireland Department of Justice to amend the implementation of the European Weapons Directive (Council Directive 91/477/EEC of 18 June 1991 on control of the acquisition and possession of weapons).

4.9 The European Weapons Directive introduced the European Firearms Pass (EFP). A EFP is a passport for owners of a firearm, permitting them bringing a firearm into the country and allowing travel between Member States without the obligation of obtaining separate authorisations from each State.

4.10 The Directive has been implemented in respect of Northern Ireland in the Firearms (Northern Ireland) Order 2004 (S.I 2004 No 702). Article 15 of that Order created the visitor's firearms permit which will be issued by the Chief Constable on production of an original copy of the EFP. This is a stricter approach than required by the European Weapons Directive, which only require production of a photocopy of the EFP.

4.11 EU citizens who wish to bring guns into Northern Ireland must therefore submit an original document, the European Firearms Pass (EFP), to obtain a visitor's firearms permit (VFP) authorising their possession of guns in Northern Ireland.

4.12 Subordinate legislation pursuant to section 2(2) European Communities Act will be made to amend Article 15 (6) of the Firearms (Northern Ireland) Order 2004 to allow a photocopy of the EFP to be submitted to the Chief Constable rather than the original document.

#### *Financial services*

4.13 This designation is required in relation to financial services to allow the Treasury to implement Regulation (EU) no 236/2012 of the European Parliament and of the council of 14 March 2012 on short selling and certain aspects of credit default swaps.

4.14 The implementation is required to remove incompatible provisions in the Financial Services and Markets Act 2000 and to provide for enforcement of the Regulation 236/2012. See further paragraphs at 7.11 to 7.13 below.

4.15 An existing designation relating to securities and rights in securities partly covers the subject of Regulation 236/2012. The new designation will supersede the securities designation, which is being revoked along with other financial services designations which are also superseded. The new designation will be used to implement Regulation 236/2012 and any future EU designations relating to financial services.

## **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 instruments are subject to the negative resolution procedure and does not amend primary legislation, no statement is required.

## **7. Policy background**

#### *Financial assistance*

7.1 The UK government periodically negotiates with the European Commission which areas of the UK can receive financial assistance from the UK government, pursuant to the exceptions to the general prohibition explained in paragraphs 4.1 – 4.3 above. These areas are referred to as “the assisted areas”.

Ever since the UK entered into the European Economic Community (now the EU) it has been agreed between the European Commission and the UK government that, because of Northern Ireland's economic circumstances, the whole of Northern Ireland should be treated as an assisted area.

7.2 Under section 7(1) of the Industrial Development Act 1982 (“IDA”) the Secretary of State is permitted to provide financial assistance to the assisted areas. Section 7(6) of the IDA defines “the assisted areas” as the development areas, the intermediate areas and Northern Ireland. The Secretary of State may, by order, specify an area of Great Britain as a development area or an intermediate area.

The intention is to remove the reference to “Northern Ireland” from the definition of “the assisted areas” contained in section 7(6) of the IDA. This is because the economic circumstances in Northern Ireland have improved to the extent that the whole of Northern Ireland should no longer be automatically classified as an assisted area. Rather its individual council wards would be eligible for such classification on a level footing with those in the rest of the United Kingdom. There will be an amendment to section 1(1) of the IDA to provide for the Secretary of State to specify development and intermediate areas in any area of the United Kingdom as opposed to just Great Britain. Therefore, it is appropriate for the Secretary of State to legislate and the new designation will be used for this.

7.3 The financial assistance designation could, also be used for making other legislation about financial assistance to industry.

#### *Administrative cooperation in the field of taxation*

7.4 The aim is to use the taxation designation in respect of administrative cooperation in the field of taxation to implement Directive 2011/16, by consolidating existing piecemeal legislation in the area.

#### *Measures relating to firearms and ammunition*

7.5 Article 15(6) of the Firearms (Northern Ireland) Order 2004 allows the Chief Constable to issue a visitor’s firearms permit on production of a ‘document’ which has always been understood to be the original EFP rather than a copy of it.

7.6 Therefore to obtain the visitor’s firearms pass the shooter is prevented from traveling with his gun to another EU country during the period that his original EFP is with the Chief Constable.

7.7 It is envisaged this will cause problems when Northern Ireland host the 2013 World Police and Fire Games as shooters would otherwise be prevented from attending training events and competitions while their EFP is being used to issue their visitor’s firearms permit.

7.8 There is therefore a risk that competitors from the EU countries will be disadvantaged in the lead up to the Games from delays in processing applications for the visitor’s firearms permit.

7.9 The proposed change is to allow shooters from the EU to submit a copy of their EFP rather than the original. Firearms and ammunition is a devolved matter, therefore the designation sought is in respect of ‘any Northern Ireland Department’.

The requirement for an original copy rather than a photocopy has been revised in respect of the rest of the UK by the Firearms (Amendment) Act 1988 (Amendment) Regulations 2011 (S.I 2011/2175) ahead of the London Olympics.

7.10 It is proposed to bring this change into effect by January 2013.

#### *Financial Services*

7.11 Short selling is currently regulated in the UK by rules made by the Financial Services Authority using the powers in section 131B of the Financial Services and Markets Act 2000 (as amended by the Financial Services Act 2010).

7.12 However, the current domestic legislation is not compatible with the EU Regulation on short selling, which is directly applicable, so the domestic legislation needs to be repealed to provide further implementation of Regulation 236/2012; therefore section 2(2) is required for implementation of the Regulation.

7.13 Certain provisions under the Financial Services and Markets Act 2000 in relation to enforcement powers must also be extended to enable the Regulation to be properly enforced.

### **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 on the Order 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 Secretary of State, Northern Ireland department and 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.

Cabinet Office

3 July 2012