

**EXPLANATORY MEMORANDUM TO
THE EUROPEAN COMMUNITIES (DESIGNATION) (NO. 2) ORDER 2012**

2012 No. 2752

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 limited power for “designated” Ministers and departments to make subordinate legislation. The instrument designates –

- the Secretary of State and any Northern Ireland department in relation to property interests in moveable objects, and
- the Secretary of State and any Northern Ireland department in relation to criminal justice.

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

3.1 None.

4. Legislative Context

Property interests in moveable objects

4.1 A designation will be required in relation to property rights in moveable objects to allow the Secretary of State to amend domestic legislation in order to implement the Cape Town Convention on International Interests in Mobile Equipment, as approved on the behalf of the European Community in Decision 2009/370/EC.

4.2 The aim of the Cape Town Convention is to provide for an international property interest over certain high value moveable objects, including aircraft and airframes, which will be recognised by all Contracting States. As a result of the Convention, such an interest can be recognised and protected universally, regardless of the current jurisdiction of the moveable object.

4.3 The Convention therefore establishes the ‘international interest’ for this purpose, and a registry to record such interests. The Council Decision approves the Convention and Protocol on behalf of the EC. An Explanatory Memorandum was submitted to Parliament with regard to the Decision on 2 October 2008 (12135/08) and was cleared by both the

Commons European Scrutiny Committee (Report 8, Item 29920, Session 08/09) and the Lords Select Committee on the EU (Progress of Scrutiny 12 2009, Session 08/09).

Criminal justice

4.4 A designation will be required in relation to criminal justice to allow the Secretary of State to implement obligations arising from Chapters 4 and 5 of Title V of the Treaty on the Functioning of the European Union ('Judicial Cooperation in Criminal Matters' and 'Police Cooperation'). A list of some obligations to be covered by the designation is below. As policing and criminal justice are devolved matters in Northern Ireland, the designation is required to authorise any Northern Ireland department with regard to the same.

5. Territorial Extent and Application

5.1 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

Property rights in moveable objects

7.1 A designation in relation to property rights in moveable objects is required to implement the Cape Town Convention, and allow for any new European legislation in this area.

7.2 As the Northern Ireland assembly can legislate with the consent of the Secretary of State in the area of civil aviation, any Northern Ireland department is designated. However, that designation is limited to changes to the law of Northern Ireland. The subject matter of the Convention is not within the legislative competence of the Welsh Government.

Criminal Justice

7.3 Several directives made under Chapter 4 and 5 of Title V of the Treaty on the Functioning of the European Union are or may require implementation in the near future. These include:

- Directive 2010/64/EU on the right to interpretation and translation in criminal proceedings

- Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims
- Directive 2012/13/EU on the right to information in criminal proceedings
- Directive establishing minimum standards on the rights, support and protection of victims of crime, adopted 4 October 2012

7.5 Any Northern Ireland department is designated because criminal justice is a devolved matter in Northern Ireland. However, that designation is limited to changes to the law of Northern Ireland. Criminal justice is not devolved in Wales. In those limited areas where changes are required to legislation in Wales (such as the social welfare of victims of crime), the Welsh Government is not seeking a specific designation for the Welsh Ministers and is content for the Secretary of State to be designated.

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 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.

11. Regulating small businesses

11.1 The Order does not apply to small businesses.

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 designations 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

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) can answer any queries regarding the instrument.