

EXPLANATORY MEMORANDUM TO
THE EUROPEAN COMMUNITIES (DESIGNATION) ORDER 2015

2015 No. 814

1. 1.1 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 (“ECA 1972”) includes a power for “designated” Ministers and departments to make subordinate legislation. The instrument designates the Welsh Ministers in relation to the prevention and limitation of the effects of accidents involving dangerous substances insofar as they relate to—

- a. land-use planning;
- b. transport routes; or
- c. fisheries.

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

3.1 The Order itself raises no matters of interest to the JCSI, but the Committee’s attention is drawn to the fact that the date on which this instrument has been laid before Parliament means that (due to the dissolution of Parliament) the Committee will not have the full 21 days to consider the Order before it comes into force.

3.2 The reason why the Order being has been laid before Parliament so close to the date of dissolution, rather than at the start of the next Parliament, is because the Welsh Ministers must implement the EU obligations referred to in section 4 by the 1 June 2015, and therefore need to make the implementing regulations (in exercise of the designation conferred by this order) on the 15 May, or shortly thereafter. The date on which the need for a designation was first identified and the timing of the Privy Council meetings meant that the Order could not be laid before Parliament sooner.

4. Legislative Context

4.1 Section 2(2) ECA 1972 confers a power which may be exercised by a designated Minister or government department. A designated Minister or government department can make secondary legislation to implement European Union obligations, or to deal with matters arising out of or related to those European Union obligations.

4.2 The Welsh Ministers need to make secondary legislation in order to implement Directive 2012/18/EU of the European Parliament and of the Council of 4 July 2012 on the control of major accident hazards involving dangerous substances, amending and subsequently repealing Council Directive 96/82/EC, OJ L 197, 24.7.2012, pp.1-37 (“the Seveso III” Directive”). The purpose of the directive is to prevent major accidents involving dangerous substances and to limit the consequences for people and the environment.

4.3 The existing designation for the National Assembly for Wales in relation to the prevention and limitation of the effects of accidents involving dangerous substances insofar as they relate to land-use planning policies and consents is insufficient to cover all of the above new aspects of the Seveso III Directive that will be implemented by the Welsh Ministers.

5. Territorial Extent and Application

5.1 By virtue of Article 3 of the Order this instrument only designates the Welsh Ministers to make subordinate legislation that applies in relation to Wales.

5.2 This instrument applies in relation to the United Kingdom.

6. European Convention on Human Rights

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

7. Policy background

7.1 It is proposed to transpose the new requirements in the Directive mainly through the existing hazardous substances consent regime and the wider planning system in the same way as proposed in relation to England. But, as several existing requirements are now expressed differently in Seveso III, the Welsh Ministers will also have to make further changes to the domestic regulatory framework. In doing so, the Welsh Ministers are taking the opportunity to streamline current processes where consistent with the Directive and industry practice.

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 business

11.1 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

13.1 Les Saunders at the Cabinet Office European and Global Issues Secretariat (Tel: 020 7276 0190 or email: Les.Saunders@cabinetoffice.gov.uk) can answer any queries regarding the instrument.

19 March 2015