EXPLANATORY MEMORANDUM TO

THE EUROPEAN COMMUNITIES (DESIGNATION) (AMENDMENT) ORDER 2006

2006 No. 3329

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

2. Description

This Order, which comes into force on 11th January 2007, amends several existing instruments which designate the National Assembly for Wales in relation to certain matters for the purposes of section 2(2) of the European Communities Act 1972 (power to make provisions regarding Community obligations, etc.). This Order amends the existing instruments so as to clarify that the territorial scope of the designations includes the sea adjacent to Wales, in accordance with the definition of "Wales" in section 158(1) of the Government of Wales Act 2006.

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

None.

4. Legislative Background

4.1 Section 2(2) of the European Communities Act 1972 confers a power which may be exercised by a designated Minister or government department, or by the devolved administrations of Wales or Northern Ireland.

4.2 A designated Minister, government department or devolved administration can then make provision by regulations for the purpose of enabling a Community right to be exercised or implementing a Community obligation (or dealing with matters arising out of or related to any such obligation) in relation to the subject matter of the designation.

4.3 The National Assembly for Wales ("the Assembly") may be designated for the purposes of section 2(2) ECA 1972 by virtue of section 29(1) of the Government of Wales Act 1998.

4.4 The Assembly was designated in relation to various matters (which are summarised below) by the following instruments[1]. The regulations that the Assembly has made in relation to those matters are also listed below:

4.4.1 **The European Communities (Designation) (No. 3) Order 2000 (S.I. 2000/2812)**

(i) air quality assessment and management;
(ii) environmental impact assessment;
(iii) use of sewage sludge in agriculture.

[1] For the full text of the designation in each case, see the relevant Order.

(a) The Air Quality Limit Values (Wales) Regulations 2002 (S.I. 2002/3183 (W.299)) -
These regulations place the Assembly under a duty to take the measures necessary to ensure that in each zone in Wales concentrations of certain pollutants do not exceed the limit values set out in the regulations.

(b) The Air Quality (Ozone) Wales Regulations 2003 (S.I. 2003/1848 (W.198)) -
These regulations place a duty upon the Assembly to ensure that concentrations of ozone and ozone precursor substances in ambient air are assessed in each zone in Wales in accordance with the specified methods.

4.4.2 **The European Communities (Designation) Order 2002 (S.I. 2002/248)**

(i) conservation of natural habitats; and
(ii) conservation of wild fauna and flora.

(a) The Wildlife and Countryside Act 1981 (Amendment) (Wales) Regulations 2004 (S.I. 2004/1733 (W.176)) -
These Regulations broadened the definition of the "wild birds" in relation to which offences may be committed under Part 1 of the Wildlife and Countryside Act 1981 and limit the scope of the defence available to the offence (under section 1(2) of the Wildlife and Countryside Act 1981) of possessing a live or dead wild bird or egg of such a bird.

4.4.3 **The European Communities (Designation) Order 2004 (S.I. 2004/706)**

(i) environmental noise assessment and management;
(ii) waste electrical and electronic equipment;
(iii) effects of plans and programmes on the environment.

(a) The Environmental Assessment of Plans and Programmes (Wales) Regulations 2004 (S.I. 2004/1656 (W.170)) -
These Regulations impose a requirement upon authorities preparing certain types of plans or programmes which apply solely to Wales to carry out a strategic environmental assessment of those plans or programmes prior to their adoption.

(b) The Environmental Noise (Wales) Regulations 2006 (S.I. 2006/2629 (W.225)) -
These regulations require the preparation and adoption of noise maps and action programmes.

4.4.4 **The European Communities (Designation) Order 2005 (S.I. 2005/850)**

(i) accidents involving dangerous substances;
(ii) pollution caused by waste.

(a) The Hazardous Waste (Wales) Regulations 2005 (S.I. 2005/1806 (W.138)) -
These Regulations set out the regime for the control and tracking of the movements of hazardous waste.

4.4.5 **The European Communities (Designation) (No. 3) Order 2005 (S.I. 2005/2766)**

(i) the common agricultural policy of the European Community.

(a) The Sea Fishing (Enforcement of Community Satellite Monitoring Measures) (Wales) Order 2000 Amendment Regulations 2002 (S.I. 2002/677 (W.74)) -
These Regulations amend and insert various provisions into the Sea Fishing (Enforcement of Community Monitoring Measures) (Wales) Order 2000 (S.I. 2000/1078 (W.71)).

(b) The Registered Fish Buyers and Sellers and Designation of Fish Auction Sites (Wales) Regulations 2006 (S.I. 2006/1495 (W.145)) -
These regulations make provision for the marketing and purchasing of fish.

(c) The Fisheries and Aquaculture Structures (Grants) (Wales) Regulations 2002 (S.I. 2002/675 (W.72)) -
These Regulations enable the NAW to make payments etc of grants towards expenditure in respect of various matters (under the Financial Instrument for Fisheries Guidance).

4.5 This Order inserts a definition of "Wales" in all those Orders as outlined above and in accordance with the definition of "Wales" in section 158(1) of the Government of Wales Act 2006.

5. Territorial Extent and Application

This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

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

7. Policy Background

This is a further Order to amend existing Orders that designate the National Assembly for Wales to enable it to make secondary legislation in the fields specified in those Orders. The existing Orders state that regulations made by the Assembly shall apply "in relation to Wales only" but the Orders do not expressly define "Wales". This Order clarifies that "Wales" should be given the definition in

the Government of Wales Act 2006, so that it is made clear that the territorial scope of the designations includes the sea adjacent to Wales.

8. Impact

8.1 A Regulatory 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.

8.2 There is no impact on the public sector.

9. Contact

Rachel Towers at Cabinet Office Legal Advisers, Tel: 020 7210 3376 or email (Rachel.Towers@tsol.gsi.gov.uk) can answer any queries regarding the instrument.

Cabinet Office
European Secretariat
21st December 2006