**EXPLANATORY MEMORANDUM TO THE**

**EUROPEAN COMMUNITIES (DESIGNATION) (NO. 2) ORDER 2005**

**2005 No. 1971**

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

This memorandum contains information for the Joint Committee on Statutory Instruments.

## 2. Description

2.1 A Designation Order is an enabling instrument required in order to give authority to Ministers and departments, or to the devolved administrations of Wales and Northern Ireland, to make use of s2(2) of the European Communities Act 1972 to implement EC obligations to deal with matters arising out of, or related to such obligations, by making regulations.

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

3.1 None

## 4. Legislative Background

4.1 The instrument provides Ministers, the National Assembly for Wales and Northern Irish Departments with powers to make regulations to implement the following EU legislation.

<u>European Parliament and Council Directive 2004/54/EC on the minimum safety requirements for tunnels in the Trans-European Road Network</u>

This legislation was the subject of Council documents 5207/03 and 7060/04. The Government submitted explanatory memoranda dated 5 February 2003, and 8 April 2004 on each document respectively. The House of Commons European Scrutiny Committee reported on the documents in reports, 12 and 33, 02-03 and 17, 03-04. The House of Lords European Union Committee considered the first of the documents in Sub-Committee B and cleared it in October 2003 following correspondence with Ministers. The second document was cleared at the Chairman's sift on 6 April 2004 (sift 1176).

<u>European Parliament and Council Directive 2002/74/EC on the protection of employees in the event of the insolvency of their employer.</u>

This legislation was the subject of Council documents 5547/01 and 9502/02. The Government submitted explanatory memoranda on the first of these documents dated 3 March 2001 and 15 November 2001 and on the second document on 13 June 2002. The House of Commons European Scrutiny Committee reported on the first of these documents in reports 8, 00-01 and 7, 01-02. The Committee reported on the second of

the documents in report 34, 01-02. The House of Lords European Union Committee cleared the first document at the Chairman's sifts on 13 March 2001 (sift 1062) and 20 November 2001 (sift 1082). The second document was also cleared at the sift on 25 June 2002 (sift 1108).

Directive 2004/80/EC Compensation to victims of violent intentional crime

This legislation was the subject of Council documents 13349/02, 10996/03 and 8255/04. The Government submitted explanatory memoranda on 13 November 2002, 31 July 2003 and 21 April 2004. The House of Commons European Scrutiny Committee reported on the documents in reports 6, 11 and 32, 02-03, and 17, 03-04. The House of Lords European Union Committee considered the proposal in Sub-Committee E and following correspondence with Ministers cleared the proposal in May 2004.

Regulation (EC) No 1831/2003 of the European Parliament and of the Council on additives for use in animal nutrition

Regulation (EC) No 882/2004 of the European Parliament and of the Council on official controls performed to ensure the verification of compliance with feed and food law, animal health and animal welfare rules

Regulation (EC) No 183/2005 of the European Parliament and of the Council laying down requirements for feed hygiene

Regulation 1831/2003 was the subject of Council documents 7505/02 and 5028/03. The Government submitted explanatory memoranda on 22 May 2002, 21 November 2002 and 5 March 2003. The House of Commons European Scrutiny Committee reported on the documents in reports 4, 01-02, 32, 01-02, 7, 02-03 and 15, 02-03. The proposal was debated in European Standing Committee C on 2 July 2003. The House of Lords European Union Committee considered the proposal in Sub-Committee D and cleared the documents in December 2002 following correspondence with Ministers.

Regulation 882/2004 was the subject of Council document 6090/03. The Government submitted explanatory memoranda dated 3 march 2003 and 1 April 2004. The House of Commons European Scrutiny Committee reported on the proposal in reports 16 and 34, 02-03 and 17, 0304. The proposal was also debated in European Standing Committee C on 29 October 2003. The House of Lords European Union Committee considered the proposal in Sub-Committee D and this was cleared after Ministerial correspondence in May 2004.

Regulation 183/2005 was the subject of Council document 8554/03. The Government submitted explanatory memoranda dated 30 May and 30 October 2003, and 11 March 2004. The House of Commons European Scrutiny Committee reported on the proposal in reports, 27 and 36, 02-03 and report 14, 03-04. The House of Lords European Union Committee considered the proposal in Sub-Committee D and following correspondence with Ministers cleared the proposal in April 2004.

**5. Extent**

5.1 This instrument applies to all of the United Kingdom as described in Section 7 below.

## 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

7.1 The European Communities Act 1972 creates broad powers to make secondary legislation implementing Community law. The powers are conferred on Ministers or departments which Her Majesty may designate. This is a further Order in the series designating such Ministers and departments. It will enable the Ministers or departments or in this case additionally Northern Ireland Departments and the National Assembly for Wales to make secondary legislation in the fields specified in the Order, and in particular to implement the following EC measures:

<u>European Parliament and Council Directive 2004/54/EC on the minimum safety requirements for tunnels in the Trans-European Road Network</u>

This designation will enable the Department for Transport to implement provisions contained in this Directive that sets out the minimum safety requirements for tunnels of over 500 metres in length in the Trans-European Road Network. It also defines a set of standards relating to the organisation, the roles and responsibilities of the various bodies in charge of safety in tunnels as well as technical standards for tunnel infrastructure, operation, traffic rules and user information. The Directive covers tunnels of over 500 metres in length and the lay-out of roads immediately outside of the tunnels. This designation will also enable the devolved administrations to implement this directive, should that be necessary in the future.

<u>European Parliament and Council Directive 2002/74/EC on the protection of employees in the event the insolvency of their employer.</u>

This designation will enable the DTI and the Northern Ireland Administration to implement provisions contained in the Directive which updates, rationalises and simplifies the original Insolvency Protection Directive 80/987/EEC).

<u>Directive 2004/80/EC Compensation to victims of violent intentional crime</u>

The designation will enable the Home Office to implement this Directive which contains two main obligations. First, it requires Member States to establish compensation schemes which guarantee 'fair and appropriate compensation' to victims of violent intentional crime committed in their respective territories (Article 12(2)).

Second, it also requires Member States to ensure that where a violent intentional crime has been committed in a Member State other than the Member State where the applicant for compensation is habitually resident, the applicant shall have the right to submit the application to an authority in the State where the applicant is habitually resident (Article 1). However, compensation is to be paid by the competent authority in the State on whose territory the crime was committed (Article 2). The Directive

accordingly gives crime victims the right to submit an application for compensation to a designated body in their state of residence (the 'assisting authority') (Article 3) for onward transmission to a designated body in the Member State where the injury was sustained, and which will determine the application (the 'deciding authority') (Article 4). It requires assisting authorities to provide guidance to claimants about making claims, and to cooperate with the deciding authority in arranging hearings in connection with the application (Article 5).

Regulation (EC) No 1831/2003 of the European Parliament and of the Council on additives for use in animal nutrition

Regulation (EC) No 882/2004 of the European Parliament and of the Council on official controls performed to ensure the verification of compliance with feed and food law, animal health and animal welfare rules

Regulation (EC) No 183/2005 of the European Parliament and of the Council laying down requirements for feed hygiene

These designations will enable the NAW to implement its obligations under three Regulations (882/2004, 183/2005, 1831/2003) that are essentially concerned with the control of food hygiene and animal feed additives. The proposed designations will exclude certain zootechnical additives from the "medicinal products" exemption contained in current designation orders. This is because DEFRA Veterinary Medicines Directorate (an executive agency of DEFRA) and the Food Standards Agency ("FSA") have agreed that the three functional groups (as set out in Schedule 3 of the proposed Order) fall within the responsibility of the FSA, on the basis that they constitute feed rather than medicines. Although these three groups are listed in the category 'zootechnical additives' they in fact have no medicinal effect upon the animals that consume them and will therefore be excluded from the current exemptions.

## 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

Hugh Mawby at Cabinet Office Legal Advisers, Tel: 0207 210 3382 or email hmawby@treasury-solicitor.gsi.gov.uk can answer any queries regarding the instrument.

Cabinet Office
European Secretariat
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