EXPLANATORY MEMORANDUM TO

THE EUROPEAN COMMUNITIES (DESIGNATION) (No.2) ORDER 2006

2006 No. 1461

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

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

None

4. Legislative Background

Council Directive 2004/52/EC of 29 April 2004 on the interoperability of electronic road toll systems in the Community

The legislation was the subject of Council document 8893/03, COM (03)132 on which the Government submitted an Explanatory memorandum dated 12 June 2003. The House of Common European Scrutiny Committee reported on the proposal on 3 occasions in Reports 29, 02/03, 01, 03/04 and 09, 03/04. The proposal was recommended for debate and debate was held in European Standing Committee A on 2 February 2004. The proposal was considered by Sub-Committee B of the House of Lords European Union Committee where it was cleared by the Committee following correspondence with Ministers on 23 July 2004.

Council Regulation (EEC, Euratom, ECSC) No. 259/68 of 29 February 1968

No scrutiny details are available

Directive 2003/58/EC of the European Parliament and of the Council of 15 July 2003 amending Council Directive 68/151/EEC, as regards disclosure requirements in respect of certain types of companies

The legislation was the subject of Council document 9925/02, COM(02)279 on which the Government submitted an Explanatory Memorandum dated 28 June 2002. The House of Commons European Scrutiny Committee cleared the proposal as not raising

issues of legal or political importance, Report 36, 01/02. The Proposal was considered by Sub-Committee A of the House of Lords European Union Committee and was cleared on 22 July 2002.

Council Regulation (EC) No 1236/2005 of 27 June 2005 concerning trade in certain goods which could be used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment

This legislation was the subject of Council doc 5773/03, COM(03)770 on which the Government submitted Explanatory Memoranda dated 11 June 2003 and 2 November 2004. The House of Commons European Scrutiny Committee reported that the proposal raised issues of legal and political importance and reported on a number of occasions; Reports 27, 02/03, 35, 02/03, 38, 02/03, 36, 03/04 and 11, 04/05. The proposal was considered by Sub-Committee A of the House of Lords European Union Committee and the Committee published a report for the information of the House on 11 April 2005, HL Paper 75, 8th report 04/05.

5. Extent

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

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 to make secondary legislation in the fields specified in the Order, and in particular to implement the following EC measures:

"Measures relating to the interoperability of electronic road user charging and road tolling systems"

This designation will enable the Department for Transport to implement provisions in Council Directive 2004/52/EC on the interoperability of electronic road toll systems in the Community. The instrument was required to be implemented by 20 November 2005. The Department of Transport intend to implement the Directive through regulations made under this designation by 31st December 2006.

The Directive has two main parts:

- It requires that all new electronic toll systems, brought into service from 1st January 2007, use one or more of the following technologies, GNSS, GSM or 5.8 GHz DSRC (Article 2(1))

- It requires the creation of a European Electronic Tool Service ("EETS"),

which would be complementary to local toll systems and would essentially be a set of rules that would in principle allow road users to use toll systems throughout Europe with a single on-board unit and receive a single bill.

The instrument applies to all new electronic toll systems - i.e. systems using electronic means to collect all types of road fees (whether imposed to finance infrastructure costs or charge for road usage) - requiring the installation of on-board vehicle equipment. It applies to all types of roads, and to various structures such as tunnels, bridges and ferries. This designation does not revoke any earlier designations.

"Rights in respect of State pensions and benefits of members of the pension scheme provided for officials and servants of the Communities"

The Staff Regulations of officials and the conditions of employment of other servants of the European Communities are laid down by Article 2 and 3 of Council Regulation (EEC, Euratom, ECSC) No. 259/68 of 29 February 1968[1]. The Regulations make provision for pensions in relation to officials of the Communities in Chapter 3 of the Regulations, Articles 77 to 84. In addition Annex VIII to the Regulations makes more specific provision and by Article 11 requires the transfer of pensions between the Member States' and the Communities' scheme.

In the past, the UK took the view that this provision related only to occupational and personal pension rights but not the UK State pension. This was because of the way the latter is financed and the fact that contributors do not accumulate an individual pension fund giving them a personal State pension right. However, following successful challenges from the Commission against Belgium and Spain, which have similar State pension schemes, the UK has now accepted that the provision covers the UK State pension also. The Government have therefore agreed that provision be made to enable individuals going to work for the Communities to transfer their UK State pension to the Communities scheme.

The regulations are to be made as soon as possible. This designation does not revoke any earlier designations.

Northern Ireland has a separate designation for this matter, the wording of which is identical to that set out above.

"Measures relating to disclosure requirements in respect of companies, registration and publication of documents and particular disclosed and languages in which disclosures are authorised or required to be made"

This designation will enable the Department for Trade and Industry to implement Directive 2003/58/EC of the European Parliament and of the Council of 15 July 2003 amending Council Directive 68/151/EEC, as regards disclosure requirements in respect of certain types of companies. The instrument amends the first company law directive. There is no designation in respect of the first company law directive as it was implemented in the European Communities Act 1972.

Briefly, the instrument makes provision to:

[1] Official Journal of the European Communities L56, 4.3.1968 – Special Edition 1968, 1 December 1972

(a) bring the reference to accounting documents in article 2 of the first company law directive up to date, following a series of specific directives on accounts (article 1(2)),

(b) require national companies registries to accept by electronic means any documents and particulars to which the first company law directive applies, whether by virtue of article 2 or other directives ('the directive documents') (article 1(3)),

(c) require national companies registries to keep records of the directive documents in electronic form and make them available to searchers by electronic means (article 1(3)),

(d) require national companies registries to accept translations of the directive documents into any official languages of the Community (article 1(4)),

(e) adapt article 4 of the first company law directive for electronic communications (article 1(5)),

(f) require Member States to impose appropriate penalties for breach of the rules on disclosing accounting documents and those in the new article 4 (article 1(6)).

Implementation by section 2(2) regulations will involve transposing the requirements for the registrar of companies ('the registrar') to accept, keep and distribute the directive documents electronically; transposing the requirements for the registrar to accept translations; and amending Part 11, Chapter 1 of the Companies Act 1985 (company identification) to require company details to be made available in electronic communications and on websites. There would be no need to transpose the requirements in relation to accounting documents as the Companies Act 1985 already makes appropriate provision.

The instrument must be implemented by 31 December 2006. Company law is devolved in Northern Ireland but is being unified for the whole of the United Kingdom by the Company Law Reform Bill (see clause 870). The devolved administrations do not want separate designations for this matter. This designation does not revoke any earlier designations.

"matters relating to trade in certain goods, including technical assistance, which could be used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment."

This designation will enable the Department for Trade and Industry (DTI) to implement Article 4 of Council Regulation (EC) No 1236/2005 concerning trade in certain goods which could be used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment. The Regulation comes into force on 30th July 2006. The DTI intends to implement the Regulation by Regulations which, it is intended will come into force by 30th July 2006.

The Regulations will provide penalties, enforcement and licensing arrangements in relation to a control on the acceptance of technical assistance by a person in the United Kingdom related to goods prohibited under the Directive (as set out in the title).

Control of trade of the goods themselves is covered by previous designations. However, the current designation is needed to provide a power for the Regulations to cover provision of 'technical assistance' in relation to such goods. This designation does not revoke any earlier designations.

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

Zoe Bryanston-Cross at Cabinet Office Legal Advisers, Tel: 0207 210 3382 or email (zoe.bryanston-cross@tsol.gsi.gov.uk) can answer any queries regarding the instrument.

Cabinet Office
European Secretariat
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