EXPLANATORY MEMORANDUM TO

THE EUROPEAN COMMUNITIES (DESIGNATION) (No. 2) ORDER 2015

2015 No. 1530

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 public procurement by contracting authorities whose functions are wholly or mainly Welsh devolved functions.

2.2 The Instrument also amends an existing designation, to designate the Chancellor of the Duchy of Lancaster instead of the Lord President of the Council in relation to the European Parliament and in relation to local elections.

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

None.

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 are not currently designated in relation to public procurement. The designation made by Article 2 of this Order is in principle relevant to European Union obligations imposed by the following:

a) Directive 2014/24/EU of the European Parliament and of the Council of 26 February 214 on public procurement and repealing Directive 2004/18/EC;

b) Directive 2014/25/EU of the European Parliament and of the Council of 26 February 2014 on procurement by entities operating in the water, energy, transport and postal services sectors and repealing Directive 2004/17/EC;

c) Directive 2014/23/EU of the European Parliament and of the Council of 26 February 2014 on the award of concession contracts;

d) Council Directives 89/665/EEC of 21 December 1989, as amended by Directive 2007/66/EC of the European Parliament and Council of 11

December 2007 ("the 2007 Directive") with regard to improving the effectiveness of review procedures concerning the award of public contracts.

e) Council Directive 92/13/ EEC of 25 February 1992 co-ordinating the laws, regulations and administrative provisions relating to the application of Community rules on the procurement procedures of entities operating in the water, energy, transport and telecommunications sectors, as amended by the 2007 Directive.

4.3 The Directives mentioned in paragraph 4.2(a) and (d) have been transposed, including in relation to Wales, by the Public Contracts Regulations 2015 (SI 2015 No 102). The Directives mentioned in paragraphs 4.2(b) and (c) have not yet been transposed. The Directive mentioned in paragraph 4.2(e) is currently transposed, including in relation to Wales, by the Utilities Contracts Regulations 2006 (SI 2006 No 6, as amended). See also paragraph 7 below.

4.4 The existing European Communities (Designation) Order 2013 (no.1445), amongst other things, makes provision for the designation of the Lord President of the Council in relation to the European Parliament and in relation to local elections. Following machinery of government changes responsibility for these policy areas has transferred from the Lord President of the Council to the Chancellor of the Duchy of Lancaster. Therefore it is necessary to amend the 2013 Order to give full effect to that change alongside other changes made by the Chancellor of the Duchy of Lancaster Order 2015 (No. 1376).

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

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 has been accepted that the Welsh Ministers should be able to exercise the powers conferred by section 2(2) ECA 1972 in relation to public procurement by contracting authorities (as defined in the Public Contracts Regulations 2015) whose functions are wholly or mainly devolved in Wales. This will not necessarily mean that the Welsh Ministers will in fact make separate provision transposing the Directives mentioned in paragraph 4.2(b) and (c) in relation to such authorities (or to alter the transposition of the other Directives mentioned in paragraph 2 in relation to such authorities), but it will give them the power to do so and also to make subordinate legislation to make provision arising out of or related to the obligations imposed by those Directives in relation to such authorities.

7.2 Following machinery of government changes, matters of electoral responsibility previously held by the Lord President of the Council have been transferred to the Chancellor of the Duchy of Lancaster.

8. Consultation outcome

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

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

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

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

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.