EXPLANATORY MEMORANDUM TO

THE EUROPEAN COMMUNITIES (DESIGNATION) (No. 3) ORDER 2014

2014 No. 2705

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 Secretary of State in relation to tobacco, tobacco products, nicotine, nicotine products and herbal products for smoking;
- Her Majesty's Commissioners for Revenue and Customs in relation to traceability of, and security feature for, tobacco and tobacco products;
- the Minister for the Cabinet Office in relation to the combating of late payment in commercial transactions.

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

3.1 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.

Tobacco products etc.

4.2 Directive 2014/40/EU on the manufacture, presentation and sale of tobacco and related products ("the Tobacco Products Directive") is a harmonising Directive concerning tobacco and related products which aims to improve the functioning of the internal market taking as a base the high level of protection of human health. This Directive requires transposition into UK law by new regulations or amendments to existing regulations. The Directive replaces Directive 2001/37/EC which is implemented in the UK by the Tobacco Products (Manufacture, Presentation and Sale) (Safety) Regulations 2002 and the Tobacco for Oral Use (Safety) Regulations 1992.

4.3 The subject matter of the Tobacco Products Directive is wider than Directive 2001/37/EC it replaces. This designation order creates new designations for the Secretary of State and for Her Majesty's Commissioners for Revenue and Customs in order to ensure the obligations can be fully implemented.

4.4 In light of these new designations, the Order revokes existing designations that have now been superseded.

Late payment in commercial transactions

4.5 The European Communities (Designation) Order 2002 (S.I. 2002/248) designates the Secretary of State in respect of the combating of late payment in commercial transactions. This instrument makes an equivalent designation for the Minister for Cabinet Office, in order to enable that Minister to make legislation in this area.

5. Territorial Extent and Application

5.1 This instrument applies to all of 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

Tobacco products etc.

7.1 In order to successfully implement the Tobacco Products Directive the Secretary of State needs to be designated. The existing designations are insufficient to fully implement the Directive.

7.2 The Commissioners of Revenue and Customs, who have responsibility for the collection and management of revenue and tax credits, are designated in order to implement Article 15 and 16 of the Tobacco Products Directive. These articles concern traceability of, and security feature for, tobacco products, in which the Commissioners have a specific interest.

Late payment in commercial transactions

7.3 The UK is required to implement obligations in Directive 2014/24/EU on public procurement. In addition to the transposition of these obligations it also proposes to make other provisions requiring contracting authorities to include certain contractual terms concerning late payment in contracts which are concluded as a result of the public procurement process. The Secretary of State is designated in relation to the combating of late payment in commercial transactions. This instrument makes an equivalent designation for the Minister for Cabinet Office.

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@cabinet-office.gsi.gov.uk) can answer any queries regarding the instrument.