**EXPLANATORY MEMORANDUM TO**

**THE EUROPEAN COMMUNITIES (DESIGNATION) (NO. 5) ORDER 2010**

**2010 No. 2690**

**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 includes a power for "designated" Ministers and departments to make subordinate legislation. The instrument designates the Secretary of State, any Northern Ireland department and the Welsh Ministers in relation to mediation, the Welsh Ministers in relation to the common agricultural policy ("CAP") and any Northern Ireland department in relation to private international law, allowing them to implement EU law in these areas.

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

3.1 None.

## 4. Legislative Context

*Mediation*

4.1 A designation is required in relation to mediation to allow the proper implementation of Directive 2008/52/EC of the European Parliament and of the Council of 21 May 2008, on certain aspects of mediation in civil and commercial matters ("the Mediation Directive").

4.2 The aim of the Mediation Directive is to promote the use of mediation in certain cross-border disputes. The designation is required in particular for the implementation of Articles 7 and 8 of the Mediation Directive.

4.3 Article 7 of the Mediation Directive seeks to promote mediation in certain cross-border disputes by requiring Member States to ensure that, with limited exceptions, neither mediators nor those involved in the mediation process can be compelled to give evidence in civil or commercial judicial proceedings or arbitration regarding information arising out of or in connection with a mediation process.

4.4 Article 8 of the Mediation Directive requires Member States to ensure that if a limitation or prescription period in domestic law expires while mediation is ongoing of a dispute that is within the scope of the Directive, parties should not be subsequently

prevented from seeking a remedy for that dispute by initiating judicial proceedings or arbitration if the mediation fails.

*Common agricultural policy*

4.5 In relation to Wales (which includes the adjacent territorial sea), the Welsh Ministers are currently designated, for the purposes of section 2(2) of the European Communities Act 1972, in relation to the CAP. The definition of "Wales" used in relation to that designation was the definition for the purposes of the Government of Wales Act 2006 ("GoWA 2006") and resulted in a strip of jurisdiction between the outer limits of the territorial sea adjacent to Wales and the mid-line half way between Ireland and Wales (i.e. British Fishery Limits) which was being legislated for and administered, in relation to fisheries matters, by the Department for Environment Food and Rural Affairs.

4.6 On 12th January 2010, section 43 of and Part 2 of Schedule 4 to the Marine and Coastal Access Act 2009 ("the 2009 Act") made amendments to the Government of Wales Act 2006 ("GoWA 2006") which introduced the following definition of "Welsh zone" (into section 158 of GoWA 2006):

> *"Welsh zone" means the sea adjacent to Wales which is—*
>
> *(a) within British fishery limits (that is, the limits set by or under section 1 of the Fishery Limits Act 1976), and*
> *(b) specified in an Order in Council under section 58 or an order under subsection (3).*

4.7 On 31st March 2010, the outer boundary of the Welsh zone was set out in the Welsh zone (Boundaries and Transfer of Functions) Order 2010 (S.I. 2010/760). That 2010 Order was made under section 58 of GoWA 2006 and specified the sea within British fishery limits which is to be treated as adjacent to Wales for the purposes of the definition of "Welsh zone". That Order also transferred to the Welsh Ministers a number of functions, connected with fishing, fisheries and fish health (in accordance with section 58(1A) GoWA 2006), in relation to the area of the Welsh zone which lies outside the territorial sea adjacent to Wales.

4.8 The Welsh Ministers' CAP designation is now being brought into line with these new provisions so that the territory in relation to which the Welsh Ministers can exercise powers under section 2(2) of the European Communities Act 1972 to implement the CAP (which includes the common fisheries policy) is the same as that to which the 2010 Order relates.

*Private international law*

4.9 A designation is required to allow the Department of Justice in Northern Ireland to make legislation to support implementation of Council Regulation (EC) No 4/2009 of 18 December 2008 on jurisdiction, applicable law, recognition and enforcement of decisions

and cooperation in matters relating to maintenance obligations ("the Maintenance Regulation").

4.10 The purpose of the Regulation is to ensure the effective and efficient recovery of maintenance between family members within the EU. This is a matter which is currently governed by Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (commonly known as "Brussels I"). Brussels I covers a wide range of civil liabilities which include maintenance obligations. The Regulation establishes a specific system to govern the cross-border recovery of maintenance and will replace the provisions dealing with maintenance in Brussels I.

4.11 The Secretary of State is already designated in relation to private international law (S.I. 2008/1792) – the whole of the area covered by Brussels I – and, given that functions in this area have now been devolved in Northern Ireland, the opportunity has been taken to designate Northern Ireland departments in relation to private international law.

## 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

*Mediation*

7.1 In relation to article 7 of the Mediation Directive (confidentiality of mediation), provisions relating to evidence and relevant to confidentiality of mediation are contained in primary and secondary legislation. Article 7 is likely to be implemented by a combination of stand-alone provision and amendment of existing provisions.

7.2 In relation to article 8 of the Mediation Directive (effect of mediation on limitation and prescription periods), there are again provisions in both primary and secondary legislation dealing with limitation and prescription periods that are relevant to disputes within the scope of the Directive. The main provisions are contained in the Limitation Act 1980 and the Prescription Act 1832. Article 8 will therefore be implemented by way of amendment to provisions on limitation and prescription.

*Common agricultural policy*

7.3 Following the definition of the Welsh zone and the transfer of domestic fisheries functions to the Welsh Ministers in relation to that zone, the Welsh Assembly

Government is currently engaged in a review of all extant sea fisheries legislation which applies throughout Wales and the Welsh zone. The new designation will be used in legislation arising from that review.

7.4 The new designation consolidates the previous CAP designation for Wales and amendments to it with the change in relation to the Welsh zone described above.

*Private international law*

7.5 Although the Maintenance Regulation will apply directly to Northern Ireland under European law, it is envisaged that it will be necessary to amend the law in Northern Ireland regarding jurisdiction, recognition and enforcement of maintenance matters to support the application of the Regulation. The new designation will be used for this.

## 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.x.gsi.gov.uk) or Ellen Lawrence

(Tel 020 7276 0241 or email: Ellen.Lawrence@cabinet-office.x.gsi.gov.uk) can answer any queries regarding the instrument.