EXPLANATORY MEMORANDUM TO

THE EUROPEAN COMMUNITIES (DESIGNATION) (NO.2) ORDER 2007

2007 No.1349

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

2. Description

2.1 This Order designates any Northern Ireland department and the National Assembly for Wales so that they may exercise the powers conferred by section 2(2) of the European Communities Act 1972 ("section 2(2)") in relation to persistent organic pollutants, dangerous substances, preparations and chemicals. It also designates the Lord Chancellor so that he may exercise the powers conferred by section 2(2) in relation to jurisdiction and the recognition and enforcement of judgments.

2.3 The Order also revokes a number of designations which are superseded, which relate to companies and business organisations and to jurisdiction and judgments in matrimonial and parental matters.

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

None.

4. Legislative Background

4.1 Section 2(2) confers a power which may be exercised by a designated Minister or government department, or by the devolved administrations of Wales or Northern Ireland.

4.2 A designated Minister, government department or devolved administration can then make provision by regulation, order, rules or schemes for the purpose of enabling a Community right to be exercised or implementing a Community obligation (or dealing with matters arising out of or related to any such obligation) in relation to the subject matter of the designation.

4.3 The National Assembly for Wales ("the Assembly") may be designated for the purposes of section 2(2) by virtue of section 29(1) of the Government of Wales Act 1998.

Regulation (EC) No 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the registration, evaluation, authorisation and restriction of Chemicals (REACH)

4.4 Under the terms of REACH, the UK is required, inter alia, to appoint competent authorities to carry out obligations arising under the Regulation.

4.5 The Secretary of State is already designated in relation to persistent organic pollutants, dangerous substances, preparations and chemicals under the European Communities (Designation) Order 2006 (S.I. 2006/608), and will appoint a competent authority for England and may appoint the competent authority for Scotland if Scottish Ministers agree.

4.6 This Order designates the devolved administrations in Northern Ireland and Wales in respect of the same subject matter, to enable them to appoint competent authorities and make any other implementing secondary legislation as required by the Regulation.

Agreement between the European Community and the Kingdom of Denmark on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters

4.7 The Civil Jurisdiction and Judgments Act 1982[1] ("the 1982 Act") gave effect to the Conventions in force at the time on the harmonisation of civil jurisdiction of, and rules relating to recognition and enforcement of judgments in, the courts of the Member States. Council Regulation 44/2001 on jurisdiction and recognition and enforcement of judgments in civil and commercial matters came into force on 1st March 2002, and supplants and overrides much of the existing substance in the Conventions. The Civil Jurisdiction and Judgments Order 2001 (S.I. 2001/3929) made the necessary adjustments to the law of the United Kingdom as contained in the 1982 Act following the Regulation's entry into force.

4.8 The Regulation initially did not apply to Denmark and consequently 'Regulation State' is defined as excepting Denmark in the UK's implementing provisions. The European Community and the Kingdom of Denmark have now agreed that the Regulation shall apply to relations between the Community and Denmark, with certain modifications, and the agreement will enter into force on 1st July 2007.

4.9 The 1982 Act will need to be amended to reflect this change. There is no power in the 1982 Act to make amendments consequential upon modifications to, or in relation to, the Regulation. The power to amend contained in section 14 of the Interpretation Act 1978[2] is not sufficiently wide to allow amendment to the Act and in any event the provisions envisaged are not strictly amendments as they make fresh provision in consequence of a new event: the application of the Regulation to Denmark. Consequently, the

[1] 1982 c.27.
[2] 1978 c.30.

amendments will be made by regulations under section 2(2). The new designation will allow the Lord Chancellor to make these regulations.

4.10 The new designation will supersede the Lord Chancellor's existing designation in relation to jurisdiction and the enforcement of judgments in matrimonial matters and the matters of parental responsibility in the European Communities (Designation) (No. 7) 2004 (S.I. 2004/3328). This designation is therefore revoked.

Revocation of superseded designations relating to companies and business organisations

4.11 These designations have been superseded by designations in the European Communities (Designation) Order 2007 (S.I. 2007/193) and the Transfer of Functions (Insurance) Order 1997 (S.I. 1997/2781), and are therefore being revoked.

4.12 S.I. 2007/193 designates the Secretary of State and any Northern Ireland department in relation to the creation, operation, regulation or dissolution of companies and other forms of business organisation. Article 6(c) of S.I. 1997/2781 designates the Treasury, in place of the Secretary of State, in relation to the authorisation of the carrying on of insurance business and the regulation of such business and its conduct.

5. Territorial Extent and Application

This instrument applies to all of 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

Designation "in relation to persistent organic pollutants, dangerous substances, preparations and chemicals" for any Northern Ireland Department and the National Assembly for Wales

7.1 There are two main areas where the UK will need to take legislative action under REACH: the appointment of competent authorities and making provision for enforcement of the various obligations placed on persons under REACH. All parts of the UK are working towards an agreed approach in these two areas, which would enable the Secretary of State to make the necessary secondary legislation for the whole of the UK. However, to the extent that these matters are within their devolved competence, the designations will allow Wales and Northern Ireland to make secondary legislation under section 2(2) if the need arises.

Agreement between the European Community and the Kingdom of Denmark on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters

7.2 The obligation to extend Regulation 44/2001 to Denmark will be implemented by amending the definition of "Regulation State" in the 1982 Act so that it does not except Denmark.

7.3 The 1982 Act applies to the United Kingdom. The new regulations will similarly apply to the United Kingdom.

Revocation of superseded designations

7.4 A new designation drafted in sufficiently wide terms may in effect supersede an existing related designation. It is current practice to revoke designations that are no longer needed.

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

Les Saunders at Cabinet Office European Secretariat, Tel: 020 7276 0190 or email: Les.saunders@Cabinet-office.x.gsi.gov.uk can answer any queries regarding the instrument.

Cabinet Office
European Secretariat
9th May 2007