EXPLANATORY MEMORANDUM TO

THE EUROPEAN COMMUNITIES (DESIGNATION) ORDER 2009

2009 No. 221

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 This Order designates the Secretary of State, any Northern Ireland department and the Welsh Ministers so that they may exercise the powers conferred by section 2(2) of the European Communities Act 1972 ("section 2(2)") in relation to services in the internal market.

2.2 This Order also designates the Secretary of State in relation to the packaging of products.

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

None.

4. **Legislative Context**

4.1 Section 2(2) confers a power which may be exercised by a designated Minister or government department.

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

Designations of the Secretary of State, any Northern Ireland department and the Welsh Ministers in relation to services in the internal market

4.3 Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market ("the Services Directive")[1] is intended to remove barriers to the establishment of service providers in Member States or to the provision of services by providers established in another Member State.

Designation of the Secretary of State in relation to the packaging of products

4.4 Directive 2007/45/EC, of the European Parliament and of the Council of 5 September 2007 laying down rules on nominal quantities for packaged products, and repealing Council Directives 75/106/EEC and 80/232/EEC,

[1] OJ L 376, 27.12.2006 p.36. A copy of Directive 2006/123/EC can be accessed via the following link: http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2006:376:0036:0068:EN:PDF

and amending Council Directive 76/211/EEC ("the Packaging Directive")[2] removes restrictions which currently provide that certain pre-packaged products can only be placed on the market in 'nominal quantities'. It retains the restriction in relation to nominal quantities of pre-packed wines and spirits.

4.5 Domestic rules relating to the packaging of products are contained in the Weights and Measures Act 1985 ("the 1985 Act").[3]

5. Territorial Extent and Application

This instrument applies to all of the United Kingdom (although territorial restrictions on designations of Northern Ireland departments and Welsh Ministers appear in Articles 5 and 6).

6. European Convention on Human Rights

As the instrument is subject to the negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy Background

Designations of the Secretary of State, and Northern Ireland department and the Welsh Ministers in relation to services in the internal market

7.1 The Secretary of State and devolved administrations in Wales and Northern Ireland propose to make legislation under section 2(2) to implement the Services Directive by 28 December 2009. This Order designates them for that purpose.

7.2 It is intended that implementation of the Services Directive will be accomplished by means of amendments to existing primary and secondary legislation relating to, *inter alia*, barriers to the provision of specific services, the completion of procedures and formalities electronically, and the powers and duties of specific authorities responsible for regulation of the services sector.

Designation of the Secretary of State in relation to the packaging of products

7.3 The Secretary of State proposes to make legislation under section 2(2) to implement the Packaging Directive by 11 April 2009. This Order designates the Secretary of State for that purpose.

7.4 In order for the Packaging Directive to be implemented, it is necessary for provisions of the 1985 Act which impose restrictions on the nominal quantities ('specified quantities' in the 1985 Act) of pre-packaged products to be amended.[4]

---

[2] OJ L 247, 21.9.2007 p.17. A copy of Directive 2007/45/EC can be accessed via the following link: http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2007:247:0017:0020:EN:PDF

[3] 1985 c.72

[4] See s.22 Weights and Measures Act 1985 c.72, and Schedules 4, 5, 6 and 7.

7.5 In relation to those provisions of the 1985 Act which relate to restrictions on pre-packed wines and spirits,[5] it is proposed that they be carved out of the 1985 Act and inserted into the Weights and Measures (Intoxicating Liquor) Order 1988.[6]

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

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.

10.2 There is no impact on the public sector.

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 designations 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 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 and Global Issues Secretariat
30th January 2009

[5] See Schedule 1 to the 1985 Act
[6] SI 1988/2039