EXPLANATORY MEMORANDUM TO

THE EUROPEAN COMMUNITIES (DESIGNATION) ORDER 2020

2020 No. 533

1. Introduction

1.1 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 measures relating to the access to, or the pursuit of a regulated profession.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

3.2 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is the United Kingdom.

4.2 The territorial application of this instrument is the United Kingdom.

5. European Convention on Human Rights

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

6. Legislative Context

6.1 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.

6.2 Regulations are to be made under section 2(2) ECA 1972 in order to implement EU Directive 2018/958 on a proportionality test before adoption of new regulation of professions. The ECA 1972 was repealed by section 1 of the European Union (Withdrawal) Act 2018 ("EUWA 2018") with effect from exit day (11.00 p.m. 31 January 2020), but saved with modifications until IP completion day by section 1A of

EUWA 2018.[1] During the transition period Ministers and Northern Ireland Departments must continue to be designated in order to make regulations to implement European Union obligations. If no existing designation exists for a particular subject area, then a new one must be provided. The Secretary of State is not currently designated in relation measures relating to the access to, or the pursuit of a regulated profession.

7. Policy background

What is being done and why?

7.1 Following exit from the European Union on 31 January 2020 the United Kingdom entered into a transition period. This transition period will end on IP completion day. During the transition period the United Kingdom is required to continue fulfilling certain obligations that arise under EU law. These obligations include implementing EU Directive 2018/958. As no minister is designated to make the necessary implementing regulations, this Designation Order is required to enable the Secretary of State to make such regulations as are necessary to implement EU Directive 2018/958.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

8.1 This instrument is not being made under the EUWA 2018 but relates to the withdrawal of the United Kingdom from the European Union because the power to make designation orders is derived from Section 2(2) ECA 1972. As set out above, ECA 1972 was repealed by section 1 of the EUWA 2018 with effect from exit day, but saved with modifications until IP completion day by section 1A of EUWA 2018.

9. Consolidation

9.1 This text does not amend any other instrument: no consolidation is required.

10. Consultation outcome

10.1 As this Order is an enabling instrument, which in itself has no impact on business, charities or voluntary bodies, no consultation was carried out.

11. Guidance

11.1 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.

12. Impact

12.1 There is no, or no significant, impact on business, charities or voluntary bodies.

12.2 There is no, or no significant, impact on the public sector.

12.3 An Impact Assessment has not been prepared for this instrument for the reasons set out in paragraphs 12.1 and 12.2.

[1] IP Completion day is defined in Schedule 1 of the Interpretation Act 1978 (c.30) by reference to section 39 of the European Union (Withdrawal Agreement) Act 2020 (c.1), as 11.00 p.m. on 31 December 2020.

13. Regulating small business

13.1 The legislation does not apply to activities that are undertaken by small businesses.

14. Monitoring & review

14.1 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.

14.2 The designation contained in this Order will be subject to review before any further designations are made in relation to related subject areas.

15. Contact

15.1 Tim Cork at the Cabinet Office Telephone: 0207 004 1362 or email: tim.cork@cabinetoffice.gov.uk can be contacted with any queries regarding the instrument.

15.2 Severine Gould, Deputy Director for Transition Taskforce, at the Cabinet Office can confirm that this Explanatory Memorandum meets the required standard.

15.3 The Rt. Hon. Penny Mordaunt MP, Paymaster General, at the Cabinet Office can confirm that this Explanatory Memorandum meets the required standard.