

EXPLANATORY MEMORANDUM TO
THE EUROPEAN COMMUNITIES (DESIGNATION) (NO.4) ORDER 2007
2007 No. 2133

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

2. **Description**

This Order, which comes into force on 1st September 2007, designates the Secretary of State and the Treasury so that they may each exercise the powers conferred by section 2(2) of the European Communities Act 1972 (“section 2(2)”) in relation to the prevention of money laundering and terrorist financing. This Order also revokes a designation of the Treasury that is superseded.

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 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.

Directive 2005/60/EC (“the Third EU Money Laundering Directive”)

4.3 Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing (“the Third EU Money Laundering Directive”)¹ repeals and replaces Directive 91/308/EEC (“the Second EU Money Laundering Directive”) on prevention of the use of the financial system for the purpose of money laundering.

¹ A copy of the Directive can be accessed at this link:
<http://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2005:309:0015:0036:EN:PDF>.

4.4 The Third EU Money Laundering Directive requires Member States to ensure that money laundering and terrorist financing are prohibited. Member States must bring into force the laws, regulations and administrative provisions necessary to comply with the Directive by 15th December 2007.

4.5 The Second EU Money Laundering Directive is implemented in the UK by provisions of the Proceeds of Crime Act 2002, the Terrorism Act 2000 and the Money Laundering Regulations 2003² (made by HM Treasury). HM Treasury is currently designated for the purposes of section 2(2) for “measures relating to preventing the use of the financial system for the purpose of money laundering”. It is under this designation that the 2003 Regulations were made.

4.6 HM Treasury have made the Money Laundering Regulations 2007³ to implement (partly) the Third EU Money Laundering Directive, relying on the current designation. The Regulations were made and laid before Parliament last week, and will come into force on 15th December 2007.

4.7 However, the Secretary of State for the Home Department will also make a statutory instrument under section 2(2) later this year to implement (partly) the Third EU Money Laundering Directive (“the Home Office instrument”) - see paragraphs 7.4 and 7.5. The Secretary of State is not currently designated in relation to the subject matter of the Directive. Therefore, this Order designates the Secretary of State in respect of “the prevention of money laundering and terrorist financing”.

4.8 It is not necessary to amend the existing designation of HM Treasury in order for them to implement the Third EU Money Laundering Directive. However, in order to ensure consistency, the current designation of the Treasury is revoked and replaced by one in the same terms as that now made for the Secretary of State.

4.9 After the designation made by this Order comes into force, the Secretary of State for the Home Department will make the Home Office instrument. The Home Office instrument will make amendments to the Proceeds of Crime Act 2002 and the Terrorism Act 2000 (see paragraphs 7.4 and 7.5). It is expected that the Home Office instrument will be made and laid before Parliament in October or November 2007 and come into force on 15th December 2007.

4.10 The Government submitted an explanatory memorandum dated 17th September 2004 on the draft Third EU Money Laundering Directive (doc. 11134/04). The House of Commons Select Committee on European Scrutiny reported on the draft Directive in reports 32 (2003-04), para 13 (13th October 2004), 1 (2004-05), para 14 (1st December 2004) and 1 (2005-06), para 50 (4th July 2005), clearing it after Ministerial correspondence. The House of Lords European Union Committee considered the draft Directive in Sub-

² S.I. 2003/3075.

³ S.I. 2007/ .

Committee E (Law and Institutions) and cleared it from scrutiny on 22nd June 2005 after Ministerial correspondence (see report 45 (2005-06)).

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

7.1 The majority of the Third EU Money Laundering Directive will be implemented by HM Treasury. The Treasury issued an initial consultation document in July 2006⁴ setting out their proposed approach to implementation and a further consultation document in January 2007 setting out their proposed new Regulations to replace the Money Laundering Regulations 2003⁵. These Regulations were made and laid before Parliament last week (see paragraph 4.6, above).

7.2 The remainder of the Third EU Money Laundering Directive will be implemented by the Secretary of State for the Home Department.

7.3 Section 1 of Chapter 3 of the Third EU Money Laundering Directive requires Member States to establish a system whereby suspicions of money laundering and terrorist financing are reported to a central point. Section 2 of Chapter 3 requires Member States to prevent a person tipping off another person that a report of suspicion of money laundering or terrorist financing has been made.

7.4 Part 7 of the Proceeds of Crime Act 2002 already creates a number of money laundering offences and then requires people to make reports of suspicions of money laundering by making it an offence not to make such reports. The Home Office instrument is likely to amend the Proceeds of Crime Act 2002, including the insertion of a new section to ensure that if reports are made to an intermediary they are passed in full to the central contact point (in the case of the UK, this is the Serious Organised Crime Agency).

7.5 The amendments to the Terrorism Act 2000 are likely to be more extensive. Part 3 of the Terrorism Act 2000 creates a number of offences relating to terrorist property, financing and money laundering. Sections 19, 20, 21, 21A and 21B and Schedule 3A create a number of offences for failing to report suspicious activity. The following amendments are likely to be made:

⁴ the consultation document can be accessed at this link: <http://www.hm-treasury.gov.uk/media/E/D/moneylaundering310706.pdf>.

⁵ the consultation document can be accessed at this link: http://www.hm-treasury.gov.uk/consultations_and_legislation/money_laundering_directive/consult_thirdmoney_index.cfm.

- addition of new defences to the offences in sections 17 and 18 of the Terrorism Act 2000 to cover authorised disclosures, taking action with appropriate consent and acting with a reasonable excuse;
- additions to the elements of the offences in sections 21A and 21B of the Terrorism Act 2000 to cover knowledge or suspicion of an *attempt* to commit an offence under sections 15 to 18 of that Act;
- expansion of the scope of the defence in section 21A relating to a person acting as a professional legal adviser to cover other professional advisers;
- provision to ensure that if reports are made to an intermediary they are passed in full to the central contact point (as will be done in relation to the Proceeds of Crime Act 2002);
- creation of a new offence of tipping off to implement Article 28.

7.6 The changes needed to the Proceeds of Crime Act 2002 and the Terrorism Act 2000 were the subject of consultation in the Treasury's consultation document of July 2006 (see paragraph 7.1). The Home Office were involved in producing that consultation document. There is a consultation due to commence in August 2007 on the draft Home Office instrument.

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
1st August 2007