

EXPLANATORY MEMORANDUM TO
THE EUROPEAN COMMUNITIES (DESIGNATION) (No. 3) ORDER 2015
2015 No. 1770

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 to electronic trust services and other systems to facilitate electronic transactions in the internal market.

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

3.1 None.

4. Legislative Context

4.1 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.

4.2 The Secretary of State is not currently designated in relation to electronic trust services and other systems to facilitate transactions in the internal market. The designation made by Article 2 of this Order is in principle relevant to European Union obligations imposed by Articles 16 and 17 of Regulation (EU) No. 910/2014 on electronic identification and trust services for electronic transactions in the internal market (“the Regulation”), which repeals and replaces Directive 1999/93/EC.

4.3 Directive 1999/93/EC is implemented into domestic law by the Electronic Communications Act 2000 and the Electronic Signatures Regulations 2002 (SI 2002/318). The Electronic Signatures Regulations 2002 will be revoked. The relevant provisions in the Electronic Communications Act 2000 will be repealed or amended as appropriate.

5. Territorial Extent and Application

5.1 This instrument applies in relation to 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

7.1 The Regulation forms part of the development of the European Union's digital online economy. The Commission formed the view that the current low levels of consumer and business confidence when making transactions online, particularly concerning verifying people's identities and the use of electronic signatures, were factors holding back the development of the online economy.

7.2 The Commission identified several areas presenting barriers to Europe's digital development. In response, it proposed legislation on electronic trust services (including e-signatures, e-seals, e-time stamps, e-documents and electronic delivery systems) and the mutual recognition of electronic identification and online authentication.

7.3 The aim of the Regulation is to:

- (a) support secure and seamless online electronic interactions between businesses, citizens and public authorities;
- (b) provide a clear legal framework to eliminate fragmentation and address the lack of interoperability;
- (c) enhance digital citizenship; and
- (d) prevent cyber crime.

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@cabinetoffice.gov.uk) can answer any queries regarding the instrument.