

EXPLANATORY MEMORANDUM TO
THE EUROPEAN COMMUNITIES (DESIGNATION) ORDER 2018
2018 No. 622

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department for Exiting the European Union 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 and the Minister for the Cabinet Office in relation to accessibility of public sector bodies’ websites and mobile applications.

2.2 This instrument also explains that existing designation orders are not restricted by this Order.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

Other matters of interest to the House of Commons

3.2 As this instrument is subject to negative resolution and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

4.1 Section 2(2) of the ECA 1972 confers a power that 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 obligations.

4.2 On 23 June 2016, the EU referendum took place and the people of the UK voted to leave the European Union. Until exit negotiations are concluded, the UK remains a full member of the European Union and all the rights and obligations of EU membership remain in force. During this period the Government will continue to negotiate, implement and apply EU legislation.

4.3 In 2016 the EU introduced Directive (EU) 2016/2102 of the European Parliament and of the Council of 26 October 2016 on the accessibility of the websites and mobile applications of public sector bodies. This Directive aims to ensure that websites and mobile applications of public sector bodies are made more accessible, particularly for persons with disabilities.

4.4 Directive 2016/2102 requires public sector bodies to take the necessary measures to make their websites and mobile applications more accessible by making them perceivable, operable, understandable and robust. Public sector bodies must apply the

accessibility requirements to the extent that they do not impose a disproportionate burden on the public sector body, taking into account relevant circumstances (such as size, resources and nature of the public sector body, and the estimated benefits for persons with disabilities).

- 4.5 There are some exemptions to the Directive for a small number of bodies and types of content). The Directive requires public sector bodies to publish and regularly update accessibility statements outlining their compliance. It also requires Member States to monitor compliance and report to the Commission on the outcomes of this monitoring. Member States are further required to set up an enforcement procedure and notify the Commission of the body responsible for enforcement by 23 September 2018.
- 4.6 This designation order allows the Secretary of State and the Minister for the Cabinet Office to put measures in place to help ensure that new public sector websites (not published before 23 September 2018) meet the Directive's accessibility requirements.

5. Extent and Territorial Application

- 5.1 The extent of this instrument is the United Kingdom.
- 5.2 This instrument applies to all of 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

What is being done and why

- 7.1 Accessibility ensures that websites and mobile applications of the public sector do not provide barriers for any users including those with disabilities. Directive 2016/2102 builds on existing UK legislation under the Equality Act 2010 (which requires that reasonable adjustments are made by those providing services) and longstanding UK policy that public sector websites are accessible to international accessibility standards.
- 7.2 The Government Digital Service requires that all central government digital services meet these standards as part of its assurance process. Directive 2016/2102 will formalise these requirements into law as well as requiring public sector website owners to monitor and report against them. It is expected that the requirements associated with Directive 2016/2102 will lead to a heightened awareness of accessibility amongst public sector website and mobile application owners and a step change in the accessibility of these sites.

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 There is no impact on business, charities or voluntary bodies.
- 10.2 There is no impact on the public sector.
- 10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

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

12. Monitoring & review

- 12.1 The designation in this and similar orders is intended to identify clearly the subject areas in relation to which the 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 Department for Exiting the European Union (Telephone: 020 7276 0190 or email: les.saunders@dexeu.gov.uk) can answer any queries regarding the instrument.