

**EXPLANATORY MEMORANDUM TO
THE EUROPEAN COMMUNITIES (DESIGNATION) (NO. 3) ORDER 2005**

2005 No. 2766

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

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. **Description**

A Designation Order is an enabling instrument required in order to give authority to Ministers and departments, or to the devolved administrations of Wales and Northern Ireland, to make use of s2(2) of the European Communities Act 1972 to implement EC obligations to deal with matters arising out of, or related to such obligations, by making regulations.

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

None

4. **Legislative Background**

Regulation of the European Parliament and of the Council on persistent organic pollutants and amending Directives 79/117/EEC and 96/59/EC

This legislation was the subject of Council document 10864/03 (COM(03)333). The Government submitted an explanatory memorandum dated 9 July 2003. The House of Commons European Scrutiny Committee cleared the proposal as not raising issues of legal or political importance (Report 32, 02-03). The proposal was sifted to Sub-Committee D of the House of Lords European Union Committee at the Sub-Committee cleared the proposal on 8 October 2003. The scrutiny history is not available for the 1979 legislation.

Directive of the European Parliament and of the Council on the promotion of cogeneration based on a useful heat demand in the internal energy market and amending Directive 92/42/EC

This legislation was the subject of Council documents 11381/02 (COM(02)415), 11875/03 (COM(03)416), and 5797/04 (COM(04)49) on which the Government submitted explanatory memoranda dated 11 September 2002, 31 October 2002, 23 April 2003, 25 September 2003 and 11 May 2003. The House of Commons European Scrutiny Committee reported on the proposal in reports 21, 01-02; 20, 02-03; 33, 02-03; 20, 03-04 and 25, 03-04. The proposal was sifted to Sub-Committee B of the the House of Lords European Union Committee and was cleared following Ministerial correspondence on 20 November 2003.

Council Directive of 19 December 1975 on the approximation of the laws of the Member States relating to the making-up by volume of certain pre-packaged liquids

Council Directive of 20 December 1976 on the approximation of the laws of the Member States relating to the making-up by weight or by volume of certain pre-packaged products

Council Directive of 20 December 1979 on the approximation of the laws of the Member States related to units of measurement and on the repeal of Directive 71/354/EEC

The scrutiny history of this legislation is not available.

European Parliament and Council Directive 2004/25/EC of 21 April 2004 on takeover bids

This legislation was the subject of Council document 12846/02 (COM(02)534) on which the Government submitted explanatory memoranda dated 12 November 2002, 4 March 2003 and 8 May 2003. The House of Commons European Scrutiny Committee reported on the proposal in reports 4, 02-03; 14, 02-03 and 21, 02-03. The proposal was also debated in European Standing Committee C on 19 March 2003. The proposal was sifted to Sub-Committee E of the House of Lords European Union Committee and was the subject of a report from the Committee dated 1 July 2003, report 28, 02-03.

Regulation (EC) No 1831/2003 of the European Parliament and of the Council on additives for use in animal nutrition

Regulation (EC) No 882/2004 of the European Parliament and of the Council on official controls performed to ensure the verification of compliance with feed and food law, animal health and animal welfare rules

Regulation (EC) No 183/2005 of the European Parliament and of the Council laying down requirements for feed hygiene

Regulation 1831/2003 was the subject of Council documents 7505/02 and 5028/03. The Government submitted explanatory memoranda on 22 May 2002, 21 November 2002 and 5 March 2003. The House of Commons European Scrutiny Committee reported on the documents in reports 4, 01-02, 32, 01-02, 7, 02-03 and 15, 02-03. The proposal was debated in European Standing Committee C on 2 July 2003. The House of Lords European Union Committee considered the proposal in Sub-Committee D and cleared the documents in December 2002 following correspondence with Ministers.

Regulation 882/2004 was the subject of Council document 6090/03. The Government submitted explanatory memoranda dated 3 March 2003 and 1 April 2004. The House of Commons European Scrutiny Committee reported on the proposal in reports 16 and 34, 02-03 and 17, 0304. The proposal was also debated in European Standing Committee C on 29 October 2003. The House of Lords European Union Committee considered the proposal in Sub-Committee D and this was cleared after Ministerial correspondence in May 2004.

Regulation 183/2005 was the subject of Council document 8554/03. The Government submitted explanatory memoranda dated 30 May and 30 October 2003, and 11 March 2004. The House of Commons European Scrutiny Committee reported on the proposal in reports, 27 and 36, 02-03 and report 14, 03-04. The House of Lords European Union Committee considered the proposal in Sub-Committee D and following correspondence with Ministers cleared the proposal in April 2004.

5. Extent

This instrument applies to all of the United Kingdom as described in Section 7 below.

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

The European Communities Act 1972 creates broad powers to make secondary legislation implementing Community law. The powers are conferred on Ministers or departments which Her Majesty may designate. This is a further Order in the series designating such Ministers and departments. It will enable the Ministers or departments or in this case additionally Northern Ireland Departments and the National Assembly for Wales to make secondary legislation in the fields specified in the Order, and in particular to implement the following EC measures:

Regulation of the European Parliament and of the Council on persistent organic pollutants and amending Directives 79/117/EEC and 96/59/EC

This designation will enable DEFRA to implement provisions in Council Directive 76/769/EEC (as amended) on the marketing and use of certain dangerous substances and preparations and Council Regulation (EC) 850/2004 concerning persistent organic pollutants. The Directive has already been implemented, but the extent of the implementation is deficient in that express enforcement duties were not imposed on the regulators in the UK. New S.I.s are required to consolidate the existing UK and devolved S.I.s that deal with the pollution of the environment and to incorporate enforcement provisions.

The Council Regulation amends Directive 79/117/EC and puts in place controls to protect human health and the environment from the harmful effects of persistent organic pollutants. The provisions of the Regulation are directly applicable but an enforcement SI is required to:

- i) designate the competent authority (Environment Agency); and
- ii) put in place penalties and an appropriate enforcement regime.

Directive of the European Parliament and of the Council on the promotion of cogeneration based on a useful heat demand in the internal energy market and amending Directive 92/42/EC

This designation will allow DEFRA to implement Directive 2004/8/EC on the promotion of cogeneration based on a useful heat demand in the internal energy market. This Directive requires three main legislative changes.

- i) The methodology used under the Directive to calculate combined heat and power (CHP) requires a revision of the UK's CHP Quality Assurance Standard.
- ii) The Directive requires amendment to the Boiler Efficiency Regulations 1993/3083.
- iii) Provisions of the Directive on guarantees of origin need to be implemented.

It is intended to make one SI covering i) and ii) and this is due to come into force by 21 February 2006. A second SI will implement the provisions on guarantees later in 2006.

A separate designation is sought in respect of Northern Ireland departments, who intend to make legislation that mirrors that of Defra.

Council Directive of 19 December 1975 on the approximation of the laws of the Member States relating to the making-up by volume of certain pre-packaged liquids

Council Directive of 20 December 1976 on the approximation of the laws of the Member States relating to the making-up by weight or by volume of certain pre-packaged products

Council Directive of 20 December 1979 on the approximation of the laws of the Member States related to units of measurement and on the repeal of Directive 71/354/EEC

These designations will allow the DTI to re-implement Directives 1975/106/EEC, 1976/211/EEC and 80/181/EEC. These Directives are concerned with the approximation of the laws of the Member States relating to the making up by weight or by volume of certain pre-packaged products and the presentation of packaged food. For a number of reasons the current method of implementation in the UK is considered to be unsatisfactory and overly complex and there are also some outstanding EC obligations.

The implementation dates for the Directives have long since passed. They were originally implemented by primary legislation and by secondary legislation which was not made under section 2(2) of the European Communities Act 1972. Consequently, there is no current designation for re-implementing the Directives under section 2(2).

A separate designation is sought in respect of Northern Ireland departments, who intend to make legislation that mirrors that of the DTI.

European Parliament and Council Directive of 21 April 2004 on takeover bids

This designation is required by the DTI to implement Directive 2004/25/EC on takeover bids. The Takeovers Directive contains general principles and minimum standards for takeover regulation in the EU and EEA. It is only concerned with takeover bids for EU and EEA registered companies having shares traded on a

regulated market in a Member State. The ability of Member States to legislate in the area of takeovers is constrained by the requirement that they ensure observance of the general principles and minimum requirements, but they do have the power to go beyond the minimum required by the Directive.

The Directive must be implemented by 21 May 2006 and DTI intends to make the implementing regulation by mid-April 2006.

A separate designation is sought in respect of Northern Ireland departments, who intend to make legislation that mirrors that of the DTI.

Regulation (EC) No 1831/2003 of the European Parliament and of the Council on additives for use in animal nutrition

Regulation (EC) No 882/2004 of the European Parliament and of the Council on official controls performed to ensure the verification of compliance with feed and food law, animal health and animal welfare rules

Regulation (EC) No 183/2005 of the European Parliament and of the Council laying down requirements for feed hygiene

This designation is not a new designation. The National Assembly for Wales was previously designated in relation to the Common Agricultural Policy in 1999 (S.I. 1999/2788). S.I. 2005/1971 replaced the designation in the 1999 Order, but it has failed to achieve its objective. This designation intends to correct the omissions in S.I. 2005/1971.

The relevant designation in S.I. 2005/1971 is revoked by the present Order.

These designations will enable the NAW to implement its obligations under three Regulations (882/2004, 183/2005, 1831/2003) that are essentially concerned with the control of food hygiene and animal feed additives.

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

Andrea Baller at Cabinet Office Legal Advisers, Tel: 0207 210 3208 or email aballer@treasury-solicitor.gsi.gov.uk can answer any queries regarding the instrument.

Cabinet Office
European Secretariat
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