

**EXPLANATORY MEMORANDUM TO
THE EUROPEAN COMMUNITIES (DESIGNATION) ORDER 2008**

2008 No. 301

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 15th March 2008, designates the Secretary of State and any Northern Ireland department 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 environment. Several existing designations which designate the Secretary of State and any Northern Ireland department in relation to environmental matters are revoked and replaced by this new designation.

This Order also designates the Secretary of State in relation to the placing on the market of cat and dog fur and of products containing such fur.

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.

Designation of the Secretary of State and any Northern Ireland department in relation to the environment

- 4.3 This Order designates the Secretary of State and any Northern Ireland department in relation to the environment.

- 4.4 Article 174 EC sets out the objectives of Community policy on the environment which include: preserving, protecting and improving the quality of the environment; protecting human health; prudent and rational utilisation of natural resources; and promoting measures at international level to deal with regional or world-wide environmental problems. Article 175 provides

the powers for the Community to take action in order to achieve the objective referred to in Article 174.

- 4.5 Several existing designations of the Secretary of State and any Northern Ireland department that relate wholly or partly to the environment are revoked by this Order - see the Schedule to the Order. The effect of these designations is reproduced by the new, broader designation, which subsumes them in terms reflecting the common environmental legal base of the Community measures implemented by the instruments that have been made in reliance on the revoked designations.
- 4.6 Insofar as a revoked designation in this Order relates to the environment and another matter, the environmental aspect will be covered by the new single designation in relation to the environment. The other matter will be covered by other existing designations.
- 4.7 For example the Secretary of State and any Northern Ireland department are designated by S.I. 1988/2240 in relation to the quality of water intended for human consumption, including water when used in, or in connection with the production and marketing of, food. The Secretary of State and any Northern Ireland department are also designated in relation to the quality of water for domestic purposes or for use in food production (for exact wording see Schedule to the Order) by S.I. 1998/2793. Insofar as these designations relate to the environment, they are replaced by the new designation in relation to the environment. Insofar as they relate to food and drink, the Secretary of State and any Northern Ireland department continue to be designated by S.I. 2003/2901 (measures relating to food (including drink) including the primary production of food; and measures relating to feed produced for or fed to food-producing animals).
- 4.8 Similarly, the Secretary of State is designated by S.I. 1993/595 in relation to measures relating to the limitation of aircraft noise. Insofar as this designation relates to the environment, it is replaced by the new designation in relation to the environment. Insofar as it relates to aviation, the Secretary of State continues to be designated by S.I. 1993/2661 (measures relating to air transport).
- 4.9 The designation of the Treasury in S.I. 1988/78, in relation to measures relating to the requirement for an assessment of the impact on the environment of projects likely to have significant effects on the environment will remain. The remainder of the designation is revoked in this Order (see Schedule).
- 4.10 Some designations are revoked in respect of the Minister of Agriculture, Fisheries and Food (see S.I. 1988/785 (designation in relation to environmental impact assessments) and S.I. 1994/757 in the Schedule). These are now defunct designations as the functions of the Minister of Agriculture, Fisheries and Food were transferred to the Secretary of State by article 2 of S.I. 2002/794.

4.11 In some cases, the only designation in an existing Order (or only designation that is still in effect in an Order) relates to an environmental matter. Where that is the case, the whole Order is revoked - see article 6(2).

4.12 Designations of the Welsh Assembly Government/Welsh Ministers in relation to environmental matters have not been revoked by this Order.

Regulation (EC) No 1523/2007 of the European Parliament and of the Council of 11 December 2007 banning the placing on the market and the import to, or export from, the Community of cat and dog fur, and products containing such fur

4.13 Regulation (EC) No 1523/2007 of the European Parliament and of the Council of 11 December 2007 bans the placing on the market and the import to, or export from, the Community of cat and dog fur, and products containing such fur¹.

4.14 The Regulation, which is based on Articles 95 and 133 of the EC Treaty, is a trade measure harmonising the various requirements imposed by Member States in connection with domestic consumer concern regarding cat and dog fur and bans (i) commercial import into the Community; (ii) commercial export from the Community; and (iii) placing on the market, of fur from domestic species of cat and dog.

4.15 The Regulation requires Member States to create an appropriate penalty for breach of the Regulation as well as powers of confiscation and forfeiture.

4.16 Subordinate legislation will be made under section 2(2), as described in Section 7 of this Explanatory Memorandum, as the powers available to the Secretary of State under other existing legislation are not sufficient to effect full implementation of the Regulation.

4.17 The Regulation must be fully implemented by 31st December 2008.

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

Designation of the Secretary of State and any Northern Ireland department in relation to the environment

¹ A copy of the Regulation can be accessed at this link:
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2007:343:0001:0004:EN:PDF>

- 7.1 Designation Orders in relation to environmental matters are frequently made throughout the year. This Order is intended to simplify procedures and remove a large number of existing environmental designations from the statute book. By having a single designation in relation to the environment this will improve procedures and brigade resources more efficiently, reducing the need for future environmental designation Orders.

Designation of the Secretary of State in relation to the placing on the market of cat and dog fur and products containing such fur

- 7.2 Subject to the results of public consultation, the UK intends to implement the three prohibitions imposed by the Regulation, by creating a criminal offence for breach of Article 3 of the Regulation. The offence will carry an appropriate maximum penalty, which is likely to be financial but will in any event not exceed 2 years' imprisonment on indictment.
- 7.3 Although a person apprehended knowingly and wilfully importing or exporting prohibited fur may be liable to prosecution under section 170(2) of the Customs and Excise Management Act 1979, upon the coming into force of the Regulation, this will not constitute proper implementation since the Regulation requires Member States to provide a penalty for all imports, exports and sales of such fur, whether knowing or otherwise.
- 7.4 Once designated, the Secretary of State for Business, Enterprise and Regulatory Reform, in consultation with the Secretary of State for Environment, Food and Rural Affairs and the Commissioners for Revenue and Customs, proposes to make regulations to transpose the requirements of the Regulation using the powers in section 2(2). It is intended that one Statutory Instrument will provide penalties and enforcement mechanisms for each of the prohibitions.

8. Impact

- 8.1 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.
- 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
19th February 2008