

**EXPLANATORY MEMORANDUM TO
THE EUROPEAN COMMUNITIES (DESIGNATION) ORDER 2010**

2010 No. 761

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

This Order designates the Secretary of State so that the Secretary of State may exercise the powers conferred by section 2(2) of the European Communities Act 1972 (“section 2(2)”) in relation to defence-related products and energy and energy sources. It also designates the Treasury so that it may exercise the powers conferred by section 2(2) in relation to mutual assistance for the recovery of claims. Further, it designates any Northern Ireland department in relation to changes in terminology or numbering arising out of the Treaty of Lisbon and energy and energy sources, except nuclear energy and nuclear energy sources.

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

3.1 This Order was made at the Privy Council Meeting on Wednesday 17th March 2010, and laid before Parliament on Thursday 18th March 2010. Article 3 of this Order, containing a designation for the Treasury in relation to mutual assistance for the recovery of claims, and other provisions related to that designation, come into force on 18th March 2010.

3.2 It is considered necessary to breach the ‘21 day rule’ in this instance because the Treasury intends to rely upon the designation in relation to mutual assistance for the recovery of claims when implementing Regulation (EC) No 987/2009, laying down the procedure for implementing Regulation (EC) No 883/2004 on the coordination of social security systems¹. The Regulation must be implemented by 1 May 2010, when it comes into force. The Treasury is conscious that Parliament may be dissolved before that date.

3.3 Only the designation contained in article 3 of the Order comes into force on 18th March 2010. The remainder of the designations contained come into force on 8th April 2010, in-keeping with the ‘21 day rule’.

4. Legislative context

¹ OJ L 284, 30.10.2009 p. 1. A copy of Regulation (EC) No 987/2009 can be accessed via the following link:
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:284:0001:0042:EN:PDF>

- 4.1 Section 2(2) confers a power which may be exercised by a designated Minister or government department.
- 4.2 A designated Minister or government department can make provision by order, rules, regulations or scheme for the purpose of enabling a European Union right to be exercised or implementing a European Union obligation (or to deal with matters arising out of or related to any such obligation) in relation to the subject matter of the designation.

Mutual assistance for the recovery of claims

- 4.3 Regulation (EC) No 987/2009, laying down the procedure for implementing Regulation (EC) No 883/2004 on the coordination of social security systems, contains an obligation for Member States to recover interest under their domestic laws where they have been requested to recover foreign social security debts on behalf of another Member State.
- 4.4 The Treasury proposes to make legislation under section 2(2) to implement this Regulation so far as it relates to the recovery of interest on foreign debts equivalent to National Insurance Contribution debts. This Order designates the Treasury for that purpose.
- 4.5 The European Communities (Designation) (No. 3) Order 2008² designated the Treasury in relation to mutual assistance between member states for the recovery of claims relating to levies, duties, taxes and financing of the Common Agricultural Policy, and interest, costs and penalties related to such claims. That designation was sought in order to allow the Treasury to implement the obligations contained in Directive 2008/55/EC on mutual assistance for the recovery of claims relating to certain levies, duties, taxes and other measures (commonly referred to as 'MARD')³ which codified and repeals previous legislation (most notably Directive 76/308/EEC).
- 4.6 The designation in that Order is not, however, sufficient for the purpose of implementing Regulation No 987/2009 – foreign National Insurance Contribution debts are not considered to fall under the definition of a levy, duty, tax or financing of the Common Agricultural Policy.
- 4.7 This Order therefore repeals The European Communities (Designation) (No. 3) Order 2008, and replaces it. The designation contained in this Order covers the same matters, but contains the addition of a designation in relation to mutual assistance between states for the recovery of claims relating to social security contributions and interest, costs and penalties related to such claims.

² Article 2 of the European Communities (Designation) (No. 3) Order 2008 (S. I. 2008 No. 2564).

³ OJ L 150, 10/06/2008 p. 28. A copy of Directive 2008/55/EC can be accessed via the following link: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:150:0028:01:EN:HTML>

- 4.8 The designation in the Order includes, but is not restricted to, all the obligations relating to mutual assistance between Member States for the recovery of claims relating to social security contributions, and interest, costs and penalties related to such claims, contained within the Regulation. It also covers all the obligations relating to mutual assistance between Member States for the recovery of claims relating to levies, duties, taxes and financing of the Common Agricultural Policy, and interest, costs and penalties related to such claims, which arose out of Directive 2008/55/EC. The designation could also apply in relation to obligations arising from a future instrument amending the Regulation and/or Directive, or other European Union obligations concerning mutual assistance between states for the recovery of such claims.

Changes in terminology or numbering arising out of the Treaty of Lisbon

- 4.9 The Treaty of Lisbon Amending the Treaty on European Union and the Treaty Establishing the European Community⁴ came into force on 1 December 2009. The Treaty alters the standard EU terminology. For example, the “European Community” is now the “European Union”, and the Treaty establishing the European Community is renamed the Treaty on the Functioning of the European Union. It also changes the numbering of the provisions of the Treaty on European Union and the Treaty on the Functioning of the European Union.
- 4.10 The European Communities (Designation) (No. 5) Order 2009 included a designation for the Secretary of State in relation to changes in terminology or numbering arising out of the Treaty of Lisbon⁵. The devolved administration in Northern Ireland now has a corresponding designation.
- 4.11 The devolved administration in Northern Ireland proposes to make legislation under section 2(2) to amend terminology in some Northern Ireland legislation. This Order designates any Northern Ireland department for this purpose.

Defence-related products

- 4.12 Directive 2009/43/EC, simplifying the terms and conditions of transfers of defence-related products within the Community⁶, aims to simplify the rules and procedures applicable to the transfer of defence-related products between Member States in order to ensure the proper functioning of the internal market. It includes obligations relating to

⁴ OJ C 306 17.12.2007. A copy of the Treaty of Lisbon Amending the Treaty on European Union and the Treaty Establishing the European Community can be accessed via the following link: <http://eur-lex.europa.eu/JOHtml.do?uri=OJ:C:2007:306:SOM:EN:HTML>

⁵ Article 4 of the European Communities (Designation) (No. 5) Order 2009 (S. I. 2009 No. 3214).

⁶ OJ L 146 10.06.2009, p. 1. A copy of Directive 2009/43/EC can be accessed via the following link: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:146:0001:0036:EN:PDF>

the licensing of both suppliers and recipients of defence-related products within the European Union.

- 4.13 The Secretary of State proposes to make legislation under section 2(2) to implement this Directive. This Order designates the Secretary of State for that purpose.
- 4.14 The designation in the Order includes but is not restricted to all the obligations concerning defence-related products covered by the Directive. The designation could also apply in relation to obligations arising from a future instrument amending the Directive or other European Union obligations concerning defence-related products.

Energy and energy sources

- 4.15 Directive 2009/28/EC on the promotion of the use of energy from renewable sources and amending and subsequently repealing Directives 2001/77/EC and 2003/30/EC⁷ sets certain mandatory targets for the use of energy from renewable sources, to be met by 2020. It requires Member States to submit a national renewable energy action plan and harmonises the sustainability criteria for biofuels and bioliquids which count towards the targets. It also imposes requirements on administrative procedures, regulations and codes concerning infrastructure for the production of electricity, heating or cooling from renewable energy sources and to the process of transformation of biomass into biofuels. It imposes requirements in relation to information and training, in relation to guarantees of origin and access to and operation of the electricity and gas grids.
- 4.16 The Secretary of State and the devolved administration in Northern Ireland propose to make legislation under section 2(2) to implement this Directive. This Order designates the Secretary of State and any Northern Ireland department for that purpose.
- 4.17 The Secretary of State and the devolved administration in Northern Ireland have previously been designated in relation to certain areas falling within the field of energy and energy sources. These designations are not, however, sufficient for the purpose of implementing the Directive. This Order therefore designates the Secretary of State in relation to energy and energy sources and the devolved administration in Northern Ireland in relation to energy and energy sources except nuclear energy and nuclear energy sources (nuclear energy and nuclear energy sources being a matter excepted from the devolution settlement). It revokes previous designations which are no longer necessary in the light of these designations⁸.

⁷ OJ L 140, 5.6.2009, p. 16. A copy of Directive 2009/28/EC can be accessed via the following link: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:140:0016:0062:EN:PDF>

⁸ For a full list of those designations revoked, see Article 11 of the Order.

4.18 The designations in this Order include but are not restricted to all the obligations concerning energy or energy sources covered by the Directive. The designation would also apply in relation to a future instrument amending the Directive or other European Union obligations concerning energy or energy sources.

5. Territorial extent and application

This instrument applies to all of the United Kingdom (although Article 9 contains a territorial restriction on the designations of Northern Ireland departments).

6. European Convention on Human Rights

As the instrument is subject to the negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

Mutual assistance for the recovery of claims

7.1 The Treasury proposes to make legislation under section 2(2) to implement Regulation (EC) No 987/2009. This order designates the Treasury for that purpose.

7.2 In order for the Regulation to be implemented, it is necessary for new legislation to be adopted. Specifically, the Treasury proposes to extend existing legislation relating to the charging of interest on domestic National Insurance Contribution debts to cover the charging of interest on foreign National Insurance Contribution debts.

Changes to terminology or numbering arising out of the Treaty of Lisbon

7.3 The devolved administration in Northern Ireland proposes to make legislation under section 2(2) in order to ensure that the changes to terminology and numbering of the EU Treaties introduced by the Treaty of Lisbon are reflected in the law of Northern Ireland.

Defence-related products

7.4 The Secretary of State proposes to make legislation under section 2(2) to implement Directive 2009/43/EC. This Order designates the Secretary of State for that purpose.

7.5 To implement the Directive, the Secretary of State intends to amend the Export Control Order 2008⁹, which was made under the Export Control Act 2002¹⁰. These amendments will be made largely using the

⁹ S. I. 2008 No. 3231.

¹⁰ c. 28.

powers contained in the 2002 Act. However, these powers are not sufficient to allow for all the necessary changes. The Secretary of State therefore proposes to use the powers under the 2002 Act in conjunction with those under section 2(2) to amend the 2008 Order and implement the Directive.

- 7.6 Although, as mentioned above, the designation is broad enough to cover a range of future measures, exports of defence-related products from the EU have always been regulated at national level (although there are CFSP measures such as Council Common Position 2008/944/CFSP defining common rules governing control of exports of military technology and equipment) and it is Government policy for that to remain the case.

Energy and energy sources

- 7.7 The Secretary of State and the devolved administration in Northern Ireland propose to make legislation under section 2(2) to implement Directive 2009/28/EC. This Order designates the Secretary of State and any Northern Ireland department for that purpose.

- 7.8 To implement the Directive, the Secretary of State and the devolved administration in Northern Ireland propose to amend domestic legislation, such as the Renewables Obligation Order 2009¹¹ and the Renewable Transport Fuel Obligations Order 2007 (as amended by the Renewable Transport Fuel Obligations (Amendment) Order 2009)¹², and take action using existing powers, for example under the Energy Act 2008¹³. It will also be necessary for new legislation to be adopted.

8. Consultation outcome

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

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.

- 10.2 There is no impact on the public sector.

¹¹ S.I. 2009 No. 785.

¹² S.I. 2007 No. 3072.

¹³ c. 32.

11. Regulating small business

This Order does not apply to small business.

12. Monitoring and 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.

13. Contact

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