

EXPLANATORY MEMORANDUM TO
THE EUROPEAN COMMUNITIES (DESIGNATION) (No. 2) ORDER 2014

2014 No. 1890

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, any Northern Ireland department and the Welsh Ministers in relation to wild animals;
- the Welsh Ministers in relation to the prevention and remedy of environmental damage.

This instrument also revokes an earlier designation in Article 2 and Schedule 1 to the European Communities (Designation) (No. 3) Order 2001 (S.I. 2001/3495) for the Secretary of State in relation to the keeping of wild animals in zoos.

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

3.1 None.

4. Legislative Context

Wild animals

4.1 In 1998 the European Community concluded an Agreement on International Humane Trapping Standards (AIHTS) with Canada and the Russian Federation (a parallel bilateral Agreement was also made between the European Community and the USA, again in 1998). The aim of the established humane trapping standards is to ensure a sufficient level of welfare of trapped wild animals, and to further improve this welfare. The European Community ratified the Agreement in 1998, followed by the Government of Canada in 1999 and the Russian Federation in 2008, which allowed the Agreement to enter into force in July 2008 and the schedule for the implementation of the provisions to start from that date.

4.2 The European Community had already adopted Council Regulation (EEC) No. 3254/91 prohibiting, *inter alia*, the use of leghold traps in the Community. For the implementation of AIHTS, the European Commission adopted a proposal in July

2004 for a Directive introducing humane trapping standards for certain animal species. This proposal was, however, withdrawn in June 2012. Member States are therefore required to take action themselves to implement obligations arising from the AIHTS.

Prevention and remedy of environmental damage

- 4.4 A designation for Welsh Ministers is required in relation to the prevention and remedy of environmental damage to allow Welsh Ministers to implement changes to Directive 2004/35/EC of the European Parliament and of the Council of 21 April 2004, on environmental liability with regard to the prevention and remedying of environmental damage (ELD), in respect of Wales. The ELD was amended by Article 38 of Directive 2013/30/EU of the European Parliament and of the Council of 12 June 2013 on safety of offshore oil and gas operations (OSD).
- 4.5 The purpose of the ELD is to establish a framework based on the polluter pays principle to prevent and remedy environmental damage. The ELD defines “environmental damage” as damage to protected species and natural habitats, damage to water and soil.
- 4.6 Article 38(1) of the OSD amends the ELD so as to extend the scope of environmental damage to marine waters. Article 38(2) of the OSD requires that Member States shall give effect to Article 38(1) by 19 July 2015.

5. Territorial Extent and Application

- 5.1 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

Wild animals

- 7.1 As discussed in paragraph 4.3 each Member State is now required to implement the AIHTS. The target date for implementation is February 2015. In order to achieve this implementation, a new designation is needed for the Secretary of State, any Northern Ireland Department and the Welsh Ministers. This will enable the implementation to be done by way of section 2(2) regulations.

Prevention and remedy of environmental damage

7.2 In Wales, the ELD was transposed by the Environmental Damage (Prevention and Remediation) (Wales) Regulations 2009 (SI 2009/995) (“2009 Regulations”). The 2009 Regulations, made by the Welsh Ministers, came into force on 6th May 2009.

7.3 Changes will need to be made to the 2009 Regulations to extend them to cover new areas. As set out above, the amendment to the ELD extends the scope of environmental damage to include damage to marine waters and the seabed. This designation will enable Welsh Ministers to amend the 2009 Regulations to extend them to marine waters and the seabed. This, in turn, will help to prevent environmental damage being caused to marine waters and the seabed and enable enforcement action to be taken against polluters in respect of damaged caused to marine waters and the seabed.

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.

10. Impact

10.1 An Impact Assessment has not been prepared for this instrument as it is an enabling instrument, which in itself has no impact on business, charities or voluntary bodies.

11. Regulating small business

11.1 The Order does not apply to small businesses.

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 designations 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@cabinet-office.gsi.gov.uk) can answer any queries regarding the instrument.