

**EXPLANATORY MEMORANDUM TO  
THE EUROPEAN COMMUNITIES (DESIGNATION)  
(NO.7) ORDER 2004**

**2004 No.3328**

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 and the House of Lords Committee on the Merits of Statutory Instruments.

**2. Description**

2.2 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**

3.1 None

**4. Legislative Background**

The instrument provides Ministers, The Treasury, The Lord Chancellor, Northern Ireland Departments or the national Assembly for Wales with powers to make regulations to implement the following EU legislation.

Council Regulation (EC) 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility.

This was the subject of EC document 8395/02 Rev 1 on which the Government submitted an explanatory memorandum on 10 June 2002. The House of Commons European Scrutiny Committee reported on this proposal in reports 36, 01-02; 01, 02-03; 02, 02-03; and 07, 02-03. The proposal was debated in European Standing Committee B on 22 January 2003. The proposal was considered by Sub-Committee E of the House of Lords European Union Committee and was cleared following Ministerial correspondence on 9 December 2002.

Directive 2003/98/EC of 17 November 2004 concerning the re-use of public sector information

This proposal was the subject of EC documents 11093/02, 7644/03 and 13784/03. The Government submitted explanatory memoranda dated 4 September 2002; 24 March 2003; 16 April 2003; and 7 November 2003. The House of Commons European Scrutiny Committee reported on the proposal in reports 40, 01-02; 02, 02-03; 19, 02-03; 16, 02-03; and 16, 02-03. The proposal was considered by Sub-Committee B of the House of Lords European Union Committee and was cleared following Ministerial correspondence on 17 November 2003.

Directive 2003/71/EC of 4 November 2003 concerning (a) The listing of securities on a stock exchange and information concerning listed securities; and (b) prospectuses on offers of transferable securities to the public or admission of securities to trading on a regulated market.

This proposal was the subject of EC documents 9674/01, 11505/02 and 11459/03 on which the Government submitted explanatory memoranda dated 6 July 2001, 26 September 2002 and 23 September 2003. The House of Commons European Scrutiny Committee reported on the proposal in reports 09, 01-02; 28, 01-02; 38, 01-02 ; and 33, 02-03. The proposal was considered by Sub-Committee B of the House of Lords European Union Committee.

Directive 1998/83/EC of 3 November 1998; the Drinking Water Directive.

This proposal was the subject of EC documents 7208/95, 8903/97 and 10361/98. The Government submitted explanatory memoranda dated 29 June 1995, 10 May 1996, 5 July 1997, 4 September 1997, 26 October 1997, 1 September 1998 and 14 October 1998. The House of Commons European Scrutiny Committee reported on the proposal in reports 22, 94-95; 05, 95-96; 22, 95-96; 29, 95-96; 02, 97-98; 04, 97-98; 37, 97-98; and 38, 97-98. The proposal was debated in European Standing Committee A on 27 November 1996. The proposal was considered by Sub-Committee C of the House of Lords European Union Committee and was the subject of report 04, 95-96 which was debated on 4 June 1996.

Directive 2003/41/EC of 3 June 2003 concerning Personal and Occupational Pensions.

The proposal was the subject of EC document 13420/00 on which the Government submitted explanatory memoranda on 11 December 2000 and 16 May 2002. The House of Commons European Scrutiny Committee reported on the proposal in reports 02, 00-01 and 31, 01-02. The proposal was considered by Sub-Committee A of the House of Lords European Union Committee.

Directive 2002/91/EC of 16 December 2002 on the Energy Performance of Buildings.

The proposal was the subject of EC documents 13420/00 and 8885/01 on which the Government submitted explanatory memoranda on 17 July 2001 and 21 May 2002. The House of Commons European Scrutiny Committee reported on the proposal in reports 12, 01-02, 14, 01-02 and 31, 01-02. The proposal was considered by Sub-Committee D of the House of Lords European Union Committee.

**5. Extent**

5.1 The designations apply as described in section 7 below.

**6. European Convention on Human Rights**

6.1 Not applicable

**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:

Jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility.

This designation will enable DCA to implement provisions in Council Regulation (EC) 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility. This Regulation repeals and re-produces Council Regulation (EC) 1347/2000 of 29 May 2000, which, in matters of parental responsibility, restricted its scope to children of both spouses. Domestic Regulations will amend existing legislation. The Council Regulation applies with effect from 1 March 2005 and the relevant domestic provisions are required to be in place by that date.

The designation will extend to England, Wales and Northern Ireland. Scotland will implement its own changes.

The re-use of public sector information.

This designation will allow the Minister for the Cabinet Office to implement Directive 2003/98/EC of 17 November 2004. This Directive provides for a minimum standard of

regulation to be applied to the re-use of information held by public sector bodies and provides a procedure for a public sector body to follow in dealing with any request for re-use made to it, including time limits within which to respond and the grounds on which refusal may be made. The Directive will be implemented by means of Regulations, which must be in force no later than 1 July 2005.

(a) The listing of securities on a stock exchange and information concerning listed securities; and (b) prospectuses on offers of transferable securities to the public or admission of securities to trading on a regulated market.

The designation will allow the Treasury to implement Directive 2003/71/EC of 4 November 2003, which provides that Member States will not be able to allow a public offer of securities or an admission to a regulated market within their territories without prior approval by the competent authority of a prospectus. The scope of the Directive is only partly covered by two existing designations, which this Order revokes and incorporates into the new, broader designation.

This is not a devolved matter. The designation will extend to the whole of the United Kingdom. The Treasury will implement the Directive by means of Regulations, which must be in force no later than 1 July 2005.

The quality of water intended for domestic purposes or for use in a food production undertaking.

The designation will enable the National Assembly for Wales fully to implement Directive 1998/83/EC of 3 November 1998, the Drinking Water Directive. The objective of the Directive is to protect human health from the adverse effects of any contamination of water intended for human consumption by ensuring that it is wholesome and clean. This is a devolved matter. The Directive has not yet been implemented in Wales in relation to private water supplies and in relation to public buildings. The limitation placed on the designation reflects the manner in which similar powers have been shared between the Secretary of State and the National Assembly under section 67 of the Water Industry Act 1991.

Personal and occupational pensions.

This designation is required by the Department for Work and Pensions to implement Directive 2003/41/EC of 3 June 2003 on the activities and supervision of institutions for occupational retirement provision. The Directive must be implemented by 23 September 2005. The Department is also currently involved in the negotiation of a draft Directive which will concern the portability of all private pensions. The present designation relates, therefore, to measures in respect of personal and occupational pensions, thereby enabling the Secretary of State to implement both Directives.

A separate designation is sought in respect of Northern Ireland departments. Private pensions are a matter devolved to Northern Ireland but, as a matter of custom, the Department for Social Development Northern Ireland makes legislation which entirely mirrors that of the Department for Work and Pensions.

The energy performance of buildings.

This designation is required to implement Directive 2002/91/EC of 16 December 2002. The Directive must be implemented by 4 January 2006 and requires that Member States promote the improvement of the energy performance of buildings. Existing designations are not broad enough to cover the scope of the Directive. Implementation will, in part, take place using powers available in existing primary legislation. The matter is devolved to Northern Ireland and a separate designation is sought in respect of Northern Ireland departments.

**8. Impact**

8.1 A Regulatory Impact Assessment has not been prepared for this enabling instrument as in itself it has no impact on business, charities or voluntary bodies.

8.2 There is no impact on the public sector.

**9. Contact**

Daniel Jenkins at Cabinet Office Legal Advisers can answer any queries regarding the instrument (tel 0207 210 3434; email: [djenkins@treasury-solicitor.gsi.gov.uk](mailto:djenkins@treasury-solicitor.gsi.gov.uk))

Cabinet Office  
European Secretariat  
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