

EXPLANATORY MEMORANDUM TO
THE EUROPEAN COMMUNITIES (DESIGNATION) (NO.3) ORDER 2007
2007 No.1679

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

2. **Description**

2.1 This Order designates the Secretary of State and any Northern Ireland department so that they may exercise the powers conferred by section 2(2) of the European Communities Act 1972 (“section 2(2)”) in relation to machinery (including component parts of machines, components or equipment to be attached to or used with machines, and sub-assemblies to be incorporated into or assembled with machines). It also designates the Secretary of State, the Treasury and any Northern Ireland department in relation to auditors and the audit of accounts; the Welsh Ministers in relation to the requirement for an assessment of the impact on the environment of projects likely to have significant effects on the environment, in so far as it concerns town and country planning; and any Northern Ireland department in relation to access to education.

2.2 The Order also revokes a number of superseded designations.

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 regulation, order, rules or schemes for the purpose of enabling a Community right to be exercised or implementing a Community obligation (or dealing with matters arising out of or related to any such obligation) in relation to the subject matter of the designation.

4.3 Under the Government of Wales Act 1998, the National Assembly for Wales could be designated for the purposes of section 2(2). Following the appointment of the First Minister for Wales, the Welsh Ministers may be designated for the purposes of section 2(2) by virtue of section 59(1) of the Government of Wales Act 2006 and any functions exercisable by the National

Assembly for Wales by reason of previous designations were transferred to the Welsh Ministers¹.

Directive 2006/42/EC of the European Parliament and of the Council of 17 May 2006 on machinery

4.4 This Directive replaces Directive 98/37/EC on machinery. Directive 2006/42/EC has a wider scope than the previous Directives. For example, it includes provisions about a new category of “partly completed machinery”.

4.5 The Secretary of State is currently designated in relation to the design and construction of, and to the placing on the market and putting into service of, safety components for machinery². The Secretary of State and any Northern Ireland department are designated in relation to measures and technical requirements in respect of the manufacture, placing on the market, putting into service and use of lifting and mechanical handling appliances and their components³ and the design and construction of, and the placing on the market and putting into service of, machinery⁴. The current UK implementing measure for Community obligations in relation to machinery is the Supply of Machinery (Safety) Regulations 1992⁵, as amended.

4.6 It is not considered that the current Regulations are sufficient to implement the new Directive, or that the current designations are wide enough to cover the increased scope of the UK’s obligations in this area. This Order will enable the Secretary of State and the devolved administration in Northern Ireland to make the additional provisions required to implement the new Directive.

4.7 The new designation will supersede the existing designations set out in paragraph 4.5 above. These designations are therefore revoked.

Directive 2006/43/EC of the European Parliament and of the Council of 17 May 2006 on statutory audits of annual accounts and consolidated accounts

4.8 This Directive replaces the Eighth Company Law Directive 84/253/EEC on audit and amends Directives 78/660/EEC and 83/349/EEC. The Directive updates requirements in relation to auditors’ qualifications, registration and professional ethics; and makes new provision for external quality assurance, auditing standards, audit committees and public oversight of the profession including auditors from non-EU countries. There is also provision for co-operation between regulators in the EU and in third countries.

4.9 This Order will enable the Secretary of State, the Treasury and any Northern Ireland department to appoint competent authorities and make the secondary legislation required to implement the Directive.

¹ 2006 c.32; sections 161(5) and 162, and paragraph 30(1) and 30(2)(b) to Schedule 11.

² European Communities (Designation) (No.3) 1993 (S.I. 1993/2661). This Order refers to “safely components”.

³ European Communities (Designation) (No.2) Order 1987 (S.I. 1987/926).

⁴ European Communities (Designation) Order 1992 (S.I. 1992/707).

⁵ S.I. 1992/3073.

Further implementation in Wales of Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment (“the EIA Directive”)

4.10 The EIA Directive, as amended by Directives 97/11/EC and 2003/35/EC, imposes a requirement to carry out an environmental impact assessment (“EIA”) on the grant of “development consent” in defined circumstances. Development consent is defined as “the decision of the competent authority or authorities which entitles the developer to proceed with the project”.

4.11 The EIA Directive is implemented in Wales in relation to town and country planning by the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999⁶ and the Town and Country Planning (General Development Procedure) Order 1995⁷. The domestic legislation makes it possible for planning consent to be granted for a project via the grant of an initial outline planning permission, with certain matters reserved for future assessment. This is followed by approval of those reserved matters at a later date. The Regulations currently only provide for an EIA to be carried out in relation to the grant of outline planning permission.

4.12 The National Assembly for Wales has been designated⁸ in relation to EIAs but only in relation to situations where an EIA is required under the existing Regulations. That designation does not therefore permit the devolved administration in Wales to amend the Regulations themselves to alter the basis upon which an EIA is required. This Order will enable the devolved administration to make further secondary legislation to impose a requirement to carry out an EIA in relation to the approval of reserved matters, where appropriate.

Education and non-discrimination: implementation in Northern Ireland

4.13 Article 12 of the EC Treaty prohibits discrimination on grounds of nationality within the scope of application of the EC Treaty. Articles 149 and 150 provide for the Community and the Member States to take action in the areas of education, vocational training and youth.

4.14 Article 3(a) of the Education Reform (Northern Ireland) Order 1989⁹ imposes a general duty on the Department of Education to promote the education of the people of Northern Ireland. Article 16(4) of the Education (Northern Ireland) Order 1997¹⁰ and Article 22(3) of the Education and Libraries (Northern Ireland) Order 2003¹¹ impose preferences for persons ordinarily resident in Northern Ireland in relation to admissions criteria for schools and provision of special education.

⁶ S.I. 1999/293.

⁷ S.I. 1995/419.

⁸ S.I. 2000/2812; paragraph 2(a) of Schedule 1.

⁹ S.I. 1989/2406 (N.I.20).

¹⁰ S.I. 1997/866 (N.I.5).

¹¹ S.I. 2003/424 (N.I.12).

4.15 This Order will enable the devolved administration in Northern Ireland to make regulations under section 2(2) amending the above provisions to remove the current residence requirements in place for access to education in Northern Ireland.

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

Directive 2006/42/EC of the European Parliament and of the Council of 17 May 2006 on machinery

7.1 In order to implement the Directive, the UK will have to take legislative action in relation to products which are covered by the provisions of the Directive, but which are not, or may not be, covered by any of the three existing designations referred to in paragraph 4.5. This applies in particular to what the Directive calls “lifting accessories”, “chains, ropes, and webbing”, “removable mechanical transmission devices” and “partly completed machinery”.

7.2 The Secretary of State will make the secondary legislation considered necessary to implement the Directive, which will apply to all of the UK. However, some of the areas covered by the Directive are reserved matters under the Northern Ireland Act 1998, namely consumer safety in relation to goods and technical standards and requirements in relation to certain products. It is therefore appropriate to designate the devolved administration in Northern Ireland, and this Order will allow that administration to make secondary legislation in relation to the Directive under section 2(2) if the need arises.

Directive 2006/43/EC of the European Parliament and of the Council of 17 May 2006 on statutory audits of annual accounts and consolidated accounts

7.3 The Directive will be implemented by making secondary legislation using a combination of the powers conferred by Parts 16 and 42 of the Companies Act 2006 and section 2(2). In practice, this will be done by making an Order appointing the relevant competent authority and making regulations which will include amendments to the Companies Act 2006.

7.4 The Directive must be implemented by 29 June 2008. It is intended that the regulations will be made or laid in draft by the end of 2007, to enter into force at the same time as Parts 16 and 42 of the Companies Act 2006 on 6 April 2008.

7.5 The majority of the implementing provisions will be made by the Secretary of State and the Treasury and will apply to the whole of the United Kingdom. Although company law is a transferred matter in Northern Ireland, Ministers in Northern Ireland and in Whitehall have taken the view that company law legislation should in general apply on a UK-wide basis, which is reflected by the extension of the Companies Act 2006 to the whole of the UK. However, certain aspects of company law, including the regulation of industrial and provident societies, are governed by Northern Ireland legislation and consequently the devolved administration in Northern Ireland will be required to make implementing provisions in this field.

Further implementation in Wales of Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment (“the EIA Directive”)

7.6 The UK’s existing implementation of this Directive (see paragraph 4.11) was found to be inadequate by both the European Court of Justice (ECJ) and the House of Lords in *R v London Borough of Bromley, ex parte Barker*¹². Under Article 228 of the EC Treaty, the UK is required to take the necessary measures to comply with the ECJ’s judgment. It is thus evident that further regulations are needed to properly implement the Directive in relation to the town and country planning regime in Wales.

7.7 The UK has not yet adopted provisions giving effect to the judgment. It is intended to bring such provisions into force in August 2007 in England and Northern Ireland and October 2007 in Wales and Scotland. The matter therefore needs to be urgently addressed.

7.8 The provisions necessary in relation to Wales will be made by the Welsh Ministers.

Education and non-discrimination: implementation in Northern Ireland

7.9 Article 12 of the EC Treaty prohibits discrimination on grounds of nationality. This designation will enable the devolved administration in Northern Ireland to ensure that the provision made in respect of education in Northern Ireland respects this principle of non-discrimination.

7.10 These provisions will be made by two Northern Ireland departments, the Department for Employment and Learning and the Department of Education, and will apply to Northern Ireland.

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.

¹² Case C-290/03 and [2006] UKHL 52.

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
20th June 2007