

EXPLANATORY MEMORANDUM TO
THE EUROPEAN COMMUNITIES (DESIGNATION) ORDER 2007

2007 No. 193

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 designates the Secretary of State, any Northern Ireland Department and the National Assembly for Wales so that they may exercise the powers conferred by section 2(2) of the European Communities Act 1972 (“section 2(2)”) in relation to the prevention and remedying of land contamination. It also designates the Secretary of State and any Northern Ireland department so that they may exercise the powers conferred by section 2(2) in relation to the creation, operation, regulation or dissolution of companies and other forms of business organisation.

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 regulations, orders, 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 The National Assembly for Wales (“the Assembly”) may be designated for the purposes of section 2(2) by virtue of section 29(1) of the Government of Wales Act 1998.

Council 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

- 4.4 The purpose of the Directive is “to establish a framework of environmental liability based on the ‘polluter-pays’ principle, to prevent and remedy environmental damage”. Environmental damage covers serious damage to water, land, protected species and natural habitats. The Directive provides for certain categories of person who cause environmental damage (‘operators’) to undertake remedial works in order to restore the affected site

or species to its prior state or, in the case of land damage, to remove significant risks to human health.

- 4.5 In England and Wales, some of the Directive's obligations are already partially given effect in existing domestic legislation, principally relating to: water pollution, over-abstraction and damage from impoundment (under the Water Resources Act 1991 and associated regulations); land contamination (under Part 2A of the Environmental Protection Act 1990 and associated regulations); and the operation of installations subject to pollution prevention and control ('PPC') (under the Pollution Prevention and Control Regulations 2000).
- 4.6 In Northern Ireland, existing domestic legislation gives partial effect to some of the Directive's obligations, principally: the Water (Northern Ireland) Order 1999; the Environment (Northern Ireland) Order 2002; the Waste and Contaminated Land (Northern Ireland) Order 1997; the Industrial Pollution Control (Northern Ireland) Order 1997; and associated regulations.
- 4.7 However, the powers available to the Secretary of State, the Assembly and Northern Ireland departments under existing legislation are not sufficient to effect full implementation of the Directive in relation to damage to land. Therefore, regulations will be made under section 2(2), as described in Section 7 of this Explanatory Memorandum.
- 4.8 The Directive must be fully implemented by 30 April 2007.

Reference to EEA State in Companies Act 1985 and Companies Act 2006

- 4.9 The Companies Act 1985 ("1985 Act") and the Companies Act 2006 ("2006 Act") include provisions that refer to "EEA State". In each Act, the definition of "EEA State" (at section 744 and section 1170 respectively) does not include Bulgaria and Romania. This is because Bulgaria and Romania are not yet members of the EEA. However, it was always intended that the references to "EEA State" would include any State that is for the time being a Member State of the EC as well as any other State that is for the time being a contracting party to the EEA Agreement. Therefore, regulations will be made under section 2(2) to amend the definition, as described in Section 7 of this Explanatory Memorandum.

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 “in relation to the prevention and remedying of land contamination”

England and Wales

- 7.1 Once designated, the Secretary of State for Environment, Food and Rural Affairs and the Assembly propose to make regulations using the powers under section 2(2). They will address any significant overlaps with existing legislation by drafting specific provisions in the implementing regulations.

Northern Ireland

- 7.2 Once designated, Northern Ireland departments intend to use powers under Part III of the Waste and Contaminated Land (Northern Ireland) Order 1997, concurrently with section 2(2).

Designation “in relation to the creation, operation, regulation or dissolution of companies and other forms of business organisation”

- 7.3 Once designated, the Secretary of State for Trade and Industry and Northern Ireland departments will make regulations under section 2(2) to amend the definition of EEA State for the purposes of the Companies Acts so that the definition includes Bulgaria and Romania.

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.

- 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
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14th February 2007