

EUROPEAN UNION (AMENDMENT) BILL

EXPLANATORY NOTES

INTRODUCTION

1. These explanatory notes relate to the European Union (Amendment) Bill as introduced in the House of Commons on 17th December 2007. They have been prepared by the Foreign and Commonwealth Office in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by Parliament.
2. The notes need to be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So where a clause or part of a clause does not appear to require explanation or comment, none is given.

BACKGROUND

3. This Bill is intended to enable the United Kingdom to ratify the Treaty of Lisbon. The United Kingdom signed the Treaty on 13 December 2007. The Treaty has been published as Command Paper CM 7294, European Community Series no. 13 (2007), entitled “Treaty of Lisbon amending the Treaty on European Union and the Treaty Establishing the European Community including the Protocols and Annexes, and Final Acts with Declarations”.
4. The Treaty of Lisbon amends the principal EU Treaties, namely, the Treaty on European Union (TEU), the Treaty establishing the European Community (TEC) and the Treaty establishing the European Atomic Energy Community.

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5. The principal changes made by the Treaty — see Articles 1 and 2 — are as follows:

- Codifying the principle that the EU has only those powers conferred on it by the Member States. Categories of competence are defined. The Treaty includes provision for competences to be transferred back to Member States from the EU.
- Institutional reforms, notably the creation of a President of the European Council elected by the European Council for a two and half year term (renewable once) and a High Representative of the Union for Foreign and Security Policy (a post which combines the existing roles of Council High Representative for the Common Foreign and Security Policy and the Commissioner for External Affairs) appointed by the European Council; the introduction of new system for calculating a Qualified Majority for the system of voting in the Council (from 2014); and a reduction in the size of the European Commission (from 2014).
- Recognition by the EU of the Charter of Fundamental Rights, subject to the Protocol on the application of the Charter to Poland and the United Kingdom. Provision for the EU to accede to the European Convention on Human Rights.
- Placing the Common Foreign and Security Policy, including the common security and defence policy, in the context of the EU's external action generally, and the creation of an External Action Service. The CFSP provisions remain in the TEU.
- The introduction of opportunities for national Parliaments to be more involved in the functioning of the European Union, including a role in ensuring that proposed legislation conforms with the principle of Subsidiarity.
- The revision of the procedure for amending the principal EU Treaties and the introduction of other procedures for Treaty revision.
- The introduction of a procedure for managing the withdrawal of a Member State from the EU.
- The succession of the EU with express legal personality to the European Community (which currently has legal personality), and the re-naming of the Treaty establishing the European Community as the Treaty on the Functioning of the Union.
- Bringing together in the Treaty on the Functioning of the Union, and revising, the provisions on asylum, migration and police and judicial cooperation under the heading of the Area of Freedom, Security and Justice, subject to revised Protocols concerning the United Kingdom's "opt in" arrangements.

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- The creation of specific competences for EU action in the areas of space policy, energy, tourism, civil protection and administrative cooperation.
- The extension of Qualified Majority Voting and co-decision of legislation by the Council and the European Parliament to new policy areas.
- Revised procedures for “enhanced co-operation”, under which fewer than all the Member States may be authorised to exercise EU competences through the EU Institutions. At least 9 Member States must participate initially and other Member States may participate following the initial authorisation. Such cooperation must not undermine the internal market or economic, social or territorial cohesion in the EU.

6. Article 4 of the Treaty of Lisbon introduces Protocol no. 1 to the Treaty, which contains amendments to the Protocols currently annexed to the TEU, TEC and the Treaty establishing the European Atomic Energy Community. The amendments include those to the current protocols for the UK’s “opt in” arrangements with respect to Title IV TEC.

7. Article 4 also introduces Protocol no. 2 to the Treaty, which amends the Treaty establishing the European Atomic Energy Community.

8. Article 5 provides for a comprehensive simplification of the numbering of Treaty articles, including cross-references within the treaties and secondary legislation of the European Union, in accordance with the table set out in the Annex to the Treaty. The numbers of articles in the TEU and the TEC which appear in the text of the articles of the Treaty of Lisbon are subject to the provisions of Article 5. The Bill and these Notes refer to articles of the TEU and the TEC as re-numbered in accordance with Article 5 and the Annex.

9. The other articles (Articles 3, 6 and 7) are formal and relate to the indefinite duration of the Treaty, ratification, and the authentic languages in which the Treaty is drawn up.

TERRITORIAL EXTENT

10. The Bill extends to the whole of the United Kingdom.

COMMENTARY ON CLAUSES

11. The Bill has 8 clauses and a Schedule.

Clause 2: Addition to the list of treaties

12. This clause amends section 1 of the European Communities Act 1972 (“the 1972 Act”). It does so by adding to the list of treaties in section 1(2) of the 1972 Act the Treaty of Lisbon (including the Annex and the Protocols to the Treaty) with the exception of those provisions that concern the European Union’s Common Foreign and Security Policy.

13. Section 1(2) of the 1972 Act originally contained a list of the Community Treaties in force when the United Kingdom joined the three European Communities – the European Coal and Steel Community, the European Economic Community (now called the European Community) and the European Atomic Energy Community (Euratom). Further treaties have been added to the list by later Acts of Parliament. The last amending Treaty to be added to the list was the Treaty of Nice, the subject of the European Communities (Amendment) Act 2002. The last addition to the list was for the Treaty concerning the accession of the Republic of Bulgaria and Romania to the European Union, the subject of the European Communities (Accessions) Act 2006.

14. The effect of adding the Treaty of Lisbon’s provisions to the list in section 1(2) is to give effect to those provisions in the law of the United Kingdom. In particular, section 2 of, and Schedule 2 to, the 1972 Act (which provide for the implementation generally of the Community Treaties) will apply in relation to the Treaty of Lisbon.

Clause 3: Changes of terminology

15. Article 1(2)(b) of the Treaty of Lisbon inserts in Article 1 of the Treaty on the European Union (TEU) a new third paragraph as follows:

“The [European] Union shall be founded on the present Treaty and on the Treaty on the Functioning of the European Union (hereinafter referred to as “the Treaties”). Those two Treaties shall have the same legal value. The Union shall replace and succeed the European Community.”

16. The Treaty of Lisbon amends other provisions of the TEU and the Treaty establishing the European Community, which it renames as the Treaty on the Functioning of the European Union (TFEU).

17. This clause makes, and provides power to make, changes in terminology used in legislation, in consequence of the changes made by the Treaty of Lisbon.

18. Subsection (1) inserts in section 1(2) of the 1972 Act a definition of “the EU”, to refer to the European Union, by reference to the Treaty of Maastricht which established it.

19. Following the changes made by the Treaty of Lisbon, Euratom will remain a Community legally distinct from the European Union. But in many cases “the EU” will be a convenient and suitable term to denote collectively the European Union and Euratom. References to the EU in legislation are to include reference to the European Atomic Energy Community where the context either permits or requires such an interpretation (subsection (2)).

20. References in legislation to the original Communities — the European Community, the European Coal and Steel Community or Euratom — or to those European Communities collectively, are to be treated as referring to the EU, or as including a reference to the EU, as the case may require (subsection (6)).

21. Subsection (3) introduces the Schedule which sets out substitutions of terminology in the 1972 Act and the Interpretation Act 1978.

22. Subsections (4) and (5) provides a power for the Secretary of State to make orders, by statutory instrument, amending legislation – primary or secondary – to reflect changes in terminology or numbering arising out of the Treaty of Lisbon and to make incidental provision. Such orders are to be subject to the negative resolution procedure.

Clause 4: Increase of powers of the European Parliament

23. This clause is to meet the requirement of section 12 of the European Parliamentary Elections Act 2002 which provides that –

“No treaty which provides for any increase in the powers of the European Parliament is to be ratified by the United Kingdom unless it has been approved by an Act of Parliament.”

24. Several provisions of the Treaty of Lisbon increase the powers of the European Parliament, by increasing the number of provisions providing for EU legislation to be adopted by co-decision of the Council and the European Parliament.

Clause 5: Amendment of founding Treaties

25. This clause concerns treaties which amend the founding EU Treaties – following the coming into force of the Treaty of Lisbon, these will be the Treaty establishing the European Union, the Treaty on the Functioning of the European Union and the Treaty establishing the European Atomic Energy Community.

26. The Treaty of Lisbon amends Article 48 of the Treaty on European Union (TEU) concerning amendment of the Treaties so as to provide for an Ordinary revision procedure and Simplified revision procedures. (The Simplified Revision

procedures, introduced by Article 48 (6) and (7) TEU as amended, are referred to in the Note on clause 6 below.)

27. The Treaty of Lisbon amends the procedure in a number of respects. Proposals for amendments may be made by the European Parliament as well as by the Member States and the Commission as at present. It is expressly provided that amendments may serve, *inter alia*, to increase or to reduce the competences conferred on the European Union. The proposals must be notified to the national Parliaments of the Member States. A decision to examine proposed amendments must be made by the European Council (rather than the Council as at present). The European Central Bank must be consulted in the case of proposed institutional changes in the monetary area. Generally, a Convention must be convened to examine the proposals before an inter-governmental conference is convened. Such a Convention is to be composed of representatives of the national Parliaments of the Member States, the heads of State or Government of the Member States, the European Parliament and the Commission. The European Council may decide not to convene a Convention where the nature of proposed Treaty amendments would not justify establishing one.

28. This clause provides that, in future, every treaty agreed under the Ordinary revision procedure must be approved by an Act of Parliament before the United Kingdom may ratify it. Any increase in the competences of the EU will therefore be subject to prior Parliamentary approval.

Clause 6: Parliamentary control of decisions

29. This clause concerns certain provisions in the Treaty on European Union (TEU) and the Treaty on the Functioning of the Union which enable the European Council or the Council to make decisions, the effect of which is to bring about changes in certain EU policies or changes in EU procedures for adopting legislation. The provisions concerned are listed in subsection (1).

30. The list comprises:

- the two provisions for Simplified Revision procedures set out in Article 48 (6) and (7) of the TEU, as amended by the Treaty of Lisbon.

Under Article 48(6), the European Council may, by unanimity, make a decision amending provisions of Part Three of the Treaty on the Functioning of the European Union (TFEU) (which deals with Union policies), but not so as to increase EU competences. Such a decision will not come into force unless approved by all the Member States in accordance with their constitutional requirements.

Under Article 48(7), the European Council may, by unanimity, make a decision authorising the Council to act by Qualified Majority Voting in areas where Title V of the TEU or the TFEU provides for unanimity, or substitute the ordinary

legislative procedure (co-decision of the Council and the European Parliament) in areas where the TFEU provides for special legislative procedure. In either case, no such decision may be adopted if any national Parliament of a Member State makes known its opposition to the proposal for a decision

- the other provisions of the Treaties under which a decision may be made authorising the Council to act by Qualified Majority Voting in place of unanimity in specified areas, or changing the procedure for the adoption of acts in specified areas to the ordinary legislative procedure in place of special legislative procedure.

31. The clause provides that where any draft decision under the listed provisions comes before the European Council or the Council, the United Kingdom may not agree to the adoption of the decision, unless Parliamentary approval has first been given. That approval must be signified by the agreement of both Houses of Parliament to motions approving the Government's intention to support the decision.

32. The clause provides that a motion may include provision dispensing with the need for a further motion in respect of amendments to the draft decision.

Schedule: Changes of terminology

33. The Schedule, introduced by clause 3(3), provides for changes in certain terminology used in the European Communities Act 1972 and the Interpretation Act 1978. Almost all the changes involve the substitution in expressions using the word "Community" or "Communities" of the expression "EU". These substitutions reflect changes in terminology in the EU Treaties, mentioned in the note on clause 3 above.

34. References to "the European Court" are substituted for references to "the European Court or any court attached thereto", reflecting a change of nomenclature introduced by the Treaty of Lisbon.

EFFECTS OF THIS BILL ON PUBLIC EXPENDITURE AND PUBLIC SECTOR MANPOWER

35. The Bill will have no direct financial impact on the United Kingdom. The amendments to the EU Treaties resulting from the Treaty of Lisbon will not fundamentally change the objectives and activities of the European Union and will not, therefore, have significant implications for the EU budget. There will be no substantive change in the EU budgetary system, and no commitment to the provision of new resources.

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36. The Bill will not have implications for public sector manpower. Implementation of the Treaty of Lisbon and of the Bill will be activities of a similar nature to those already undertaken in implementation of the existing EU Treaties.

REGULATORY IMPACT

37. The Bill has no regulatory impact on business, charities or the voluntary sector.

EUROPEAN CONVENTION ON HUMAN RIGHTS

38. Section 19 of the Human Rights Act 1998 requires the Minister in charge of a Bill in either House of Parliament to make a statement, before second reading, about the compatibility of the provisions of the Bill with the Convention rights (as defined by section 1 of that Act).

39. On 13 December 2007, the Secretary of State for Foreign and Commonwealth Affairs made the following statement:

“In my view the provisions of the European Union (Amendment) Bill are compatible with the Convention rights.”

COMMENCEMENT

40. Clause 8 provides that, with the exception of clause 3 and the Schedule, the Bill will come into force on Royal Assent. Clause 3 and the Schedule are to be brought into force by commencement order.

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