

# EUROPEAN UNION (AMENDMENT) ACT 2008

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

11. The Act has 8 sections and a Schedule.

#### *Section 2: Addition to the list of treaties*

12. This section 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.

#### *Section 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 section 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.

#### ***Section 4: Increase of powers of the European Parliament***

23. This section 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.

#### ***Section 5: Amendment of founding Treaties***

25. This section 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 section 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 section 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.

### ***Section 6: Parliamentary control of decisions***

29. This section 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 section 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 section 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 section 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 section 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.