



European Union Act 2011

2011 CHAPTER 12

PART 1

RESTRICTIONS ON TREATIES AND DECISIONS RELATING TO EU

Restrictions relating to other decisions under TEU or TFEU

6 Decisions requiring approval by Act and by referendum

- (1) A Minister of the Crown may not vote in favour of or otherwise support a decision to which this subsection applies unless—
 - (a) the draft decision is approved by Act of Parliament, and
 - (b) the referendum condition is met.
- (2) Where the European Council has recommended to the member States the adoption of a decision under Article 42(2) of TEU in relation to a common EU defence, a Minister of the Crown may not notify the European Council that the decision is adopted by the United Kingdom unless—
 - (a) the decision is approved by Act of Parliament, and
 - (b) the referendum condition is met.
- (3) A Minister of the Crown may not give a notification under Article 4 of Protocol (No. 21) on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice annexed to TEU and TFEU which relates to participation by the United Kingdom in a European Public Prosecutor's Office or an extension of the powers of that Office unless—
 - (a) the notification has been approved by Act of Parliament, and
 - (b) the referendum condition is met.
- (4) The referendum condition is that set out in section 3(2), with references to a decision being read for the purposes of subsection (1) as references to a draft decision and for the purposes of subsection (3) as references to a notification.
- (5) The decisions to which subsection (1) applies are—

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- (a) a decision under the provision of Article 31(3) of TEU that permits the adoption of qualified majority voting;
 - (b) a decision under Article 48(7) of TEU which in relation to any provision listed in Schedule 1—
 - (i) adopts qualified majority voting, or
 - (ii) applies the ordinary legislative procedure in place of a special legislative procedure requiring the Council to act unanimously;
 - (c) a decision under Article 86(1) of TFEU involving participation by the United Kingdom in a European Public Prosecutor’s Office;
 - (d) where the United Kingdom has become a participant in a European Public Prosecutor’s Office, a decision under Article 86(4) of TFEU to extend the powers of that Office;
 - (e) a decision under Article 140(3) of TFEU which would make the euro the currency of the United Kingdom;
 - (f) a decision under the provision of Article 153(2) of TFEU (social policy) that permits the application of the ordinary legislative procedure in place of a special legislative procedure;
 - (g) a decision under the provision of Article 192(2) of TFEU (environment) that permits the application of the ordinary legislative procedure in place of a special legislative procedure;
 - (h) a decision under the provision of Article 312(2) of TFEU (EU finance) that permits the adoption of qualified majority voting;
 - (i) a decision under the provision of Article 333(1) of TFEU (enhanced co-operation) that permits the adoption of qualified majority voting, where the decision relates to a provision listed in Schedule 1 and the United Kingdom is a participant in the enhanced co-operation to which the decision relates;
 - (j) a decision under the provision of Article 333(2) of TFEU (enhanced co-operation) that permits the adoption of the ordinary legislative procedure in place of a special legislative procedure, where—
 - (i) the decision relates to a provision listed in Schedule 1,
 - (ii) the special legislative procedure requires the Council to act unanimously, and
 - (iii) the United Kingdom is a participant in the enhanced co-operation to which the decision relates;
 - (k) a decision under Article 4 of the Schengen Protocol that removes any border control of the United Kingdom.
- (6) In subsection (5)(k) “the Schengen Protocol” means the Protocol (No. 19) on the Schengen *acquis* integrated into the framework of the European Union, annexed to TEU and TFEU.

7 Decisions requiring approval by Act

- (1) A Minister of the Crown may not confirm the approval by the United Kingdom of a decision to which this subsection applies unless the decision is approved by Act of Parliament.
- (2) The decisions to which subsection (1) applies are—

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- (a) a decision under the provision of Article 25 of TFEU that permits the adoption of provisions to strengthen or add to the rights listed in Article 20(2) of that Treaty (rights of citizens of the European Union);
 - (b) a decision under the provision of Article 223(1) of TFEU that permits the laying down of the provisions necessary for the election of the members of the European Parliament in accordance with that Article;
 - (c) a decision under the provision of Article 262 of TFEU that permits the conferring of jurisdiction on the Court of Justice of the European Union in disputes relating to the application of acts adopted on the basis of the EU Treaties which create European intellectual property rights;
 - (d) a decision under the third paragraph of Article 311 of TFEU to adopt a decision laying down provisions relating to the system of own resources of the European Union.
- (3) A Minister of the Crown may not vote in favour of or otherwise support a decision to which this subsection applies unless the draft decision is approved by Act of Parliament.
- (4) The decisions to which subsection (3) applies are—
- (a) a decision under the provision of Article 17(5) of TEU that permits the alteration of the number of members of the European Commission;
 - (b) a decision under Article 48(7) of TEU which in relation to any provision not listed in Schedule 1—
 - (i) adopts qualified majority voting, or
 - (ii) applies the ordinary legislative procedure in place of a special legislative procedure requiring the Council to act unanimously;
 - (c) a decision under the provision of Article 64(3) of TFEU that permits the adoption of measures which constitute a step backwards in European Union law as regards the liberalisation of the movement of capital to or from third countries;
 - (d) a decision under the provision of Article 126(14) of TFEU that permits the adoption of provisions to replace the Protocol (No. 12) on the excessive deficit procedure annexed to TEU and TFEU;
 - (e) a decision under the provision of Article 333(1) of TFEU (enhanced co-operation) that permits the adoption of qualified majority voting, where the decision relates to a provision not listed in Schedule 1 and the United Kingdom is a participant in the enhanced co-operation to which the decision relates;
 - (f) a decision under the provision of Article 333(2) of TFEU (enhanced co-operation) that permits the adoption of the ordinary legislative procedure in place of a special legislative procedure, where—
 - (i) the decision relates to a provision not listed in Schedule 1,
 - (ii) the special legislative procedure requires the Council to act unanimously, and
 - (iii) the United Kingdom is a participant in the enhanced co-operation to which the decision relates.

8 Decisions under Article 352 of TFEU

- (1) A Minister of the Crown may not vote in favour of or otherwise support an Article 352 decision unless one of subsections (3) to (5) is complied with in relation to the draft decision.

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- (2) An Article 352 decision is a decision under the provision of Article 352 of TFEU that permits the adoption of measures to attain one of the objectives set out in the EU Treaties (but for which those Treaties have not provided the necessary powers).
- (3) This subsection is complied with if a draft decision is approved by Act of Parliament.
- (4) This subsection is complied with if—
 - (a) in each House of Parliament a Minister of the Crown moves a motion that the House approves Her Majesty’s Government’s intention to support a specified draft decision and is of the opinion that the measure to which it relates is required as a matter of urgency, and
 - (b) each House agrees to the motion without amendment.
- (5) This subsection is complied with if a Minister of the Crown has laid before Parliament a statement specifying a draft decision and stating that in the opinion of the Minister the decision relates only to one or more exempt purposes.
- (6) The exempt purposes are—
 - (a) to make provision equivalent to that made by a measure previously adopted under Article 352 of TFEU, other than an excepted measure;
 - (b) to prolong or renew a measure previously adopted under that Article, other than an excepted measure;
 - (c) to extend a measure previously adopted under that Article to another member State or other country;
 - (d) to repeal existing measures adopted under that Article;
 - (e) to consolidate existing measures adopted under that Article without any change of substance.
- (7) In subsection (6)(a) and (b), “excepted measure” means a measure adopted after the commencement of this section and resulting from a decision in relation to which a Minister of the Crown had relied on compliance with subsection (4).

9 Approval required in connection with Title V of Part 3 of TFEU

- (1) A Minister of the Crown may not give a notification to which this subsection applies unless Parliamentary approval has been given in accordance with subsection (3).
- (2) Subsection (1) applies in relation to a notification under Article 3 of Protocol (No. 21) on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice annexed to TEU and TFEU (the “AFSJ Protocol”) that the United Kingdom wishes to take part in the adoption and application of a measure proposed under any of the following—
 - (a) the provision of Article 81(3) of TFEU (family law) that permits the application of the ordinary legislative procedure in place of a special legislative procedure;
 - (b) the provision of Article 82(2)(d) of TFEU (criminal procedure) that permits the identification of further specific aspects of criminal procedure to which directives adopted under the ordinary legislative procedure may relate;
 - (c) the provision of Article 83(1) of TFEU (particularly serious crime with a cross-border dimension) that permits the identification of further areas of crime to which directives adopted under the ordinary legislative procedure may relate.

- (3) Parliamentary approval is given if—
 - (a) in each House of Parliament a Minister of the Crown moves a motion that the House approves Her Majesty’s Government’s intention to give a notification in respect of a specified measure, and
 - (b) each House agrees to the motion without amendment.
- (4) Despite any Parliamentary approval given for the purposes of subsection (1), a Minister may not vote in favour of or otherwise support a decision under a provision falling within any of paragraphs (a) to (c) of subsection (2) unless the draft decision is approved by Act of Parliament.
- (5) A Minister of the Crown may not give a notification under Article 4 of the AFSJ Protocol that the United Kingdom wishes to accept a measure to which this subsection applies unless the notification in respect of the measure has been approved by Act of Parliament.
- (6) The measures to which subsection (5) applies are—
 - (a) a measure adopted under a provision described in any of paragraphs (a) to (c) of subsection (2), or
 - (b) a measure established under Article 81(3), 82(2)(d) or 83(1) of TFEU by virtue of a previous decision adopted, without the participation of the United Kingdom, under a provision falling within any of those paragraphs.

10 Parliamentary control of certain decisions not requiring approval by Act

- (1) A Minister of the Crown may not vote in favour of or otherwise support a decision under any of the following unless Parliamentary approval has been given in accordance with this section—
 - (a) the provision of Article 56 of TFEU that permits the extension of the provisions of Chapter 3 of Title IV of Part 3 of that Treaty (free movement of services) to nationals of a third country;
 - (b) Article 129(3) of TFEU (amendment of provisions of the Statute of the European System of Central Banks or of the European Central Bank);
 - (c) the provision of Article 252 of TFEU that permits an increase in the number of Advocates-General;
 - (d) the provision of Article 257 of TFEU that permits the establishment of specialised courts attached to the General Court;
 - (e) the provision of Article 281 of TFEU that permits the amendment of the Statute of the Court of Justice of the European Union;
 - (f) the provision of Article 308 of TFEU that permits the amendment of the Statute of the European Investment Bank.
- (2) A Minister of the Crown may not vote in favour of or otherwise support a decision to which this subsection applies unless Parliamentary approval has been given in accordance with this section.
- (3) Subsection (2) applies to a decision under Article 48(7) of TEU which in relation to a provision of TFEU applies the ordinary legislative procedure in place of a special legislative procedure not requiring the Council to act unanimously.
- (4) A Minister of the Crown may not confirm the approval by the United Kingdom of a decision under Article 218(8) of TFEU for the accession of the European Union to the

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European Convention for the Protection of Human Rights and Fundamental Freedoms in accordance with Article 6(2) of TEU unless Parliamentary approval has been given in accordance with this section.

- (5) Parliamentary approval is given if—
- (a) in each House of Parliament a Minister of the Crown moves a motion that the House approves Her Majesty's Government's intention to support the adoption of a specified draft decision, and
 - (b) each House agrees to the motion without amendment.