These notes refer to the European Union Act 2011 (c.12) which received Royal Assent on 19 July 2011

EUROPEAN UNION ACT 2011

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Schedules to the Act

Schedule 1: Treaty provisions where amendment removing need for unanimity, consensus or common accord would attract referendum

128. This Schedule lists those Treaty provisions which are covered by the provisions in *sections 4* and *6*, in the event of a future proposal to remove the need for unanimity, consensus or common accord (through a proposed move to simple or qualified majority voting) when making decisions in the Council or European Council on measures resulting from that Treaty provision. This means that a referendum is needed only before the UK can agree to any proposed treaty change or decision under Article 48(6) or 48(7) TEU which would remove the UK veto over agreeing proposals made under any of the Articles in *Schedule 1*. Actual use of these Articles will not require a referendum. So, for example, the UK could vote in favour of a legislative proposal made under Article 115 TFEU and no referendum would be required. However, if there was a proposal to change the voting on that Article to qualified majority voting, that would mean the UK would lose its veto and a referendum would be required before the UK could agree to such a proposal. If the UK blocked such a proposal during the negotiations because it did not support it, then no referendum would be required.

129. Set out below are those Treaty Articles where further explanation is required and such explanation has not been given in the sections above. These Articles all fall into one of the following areas:

- common foreign and security policy, or other Treaty Articles with military, defence or national security implications;
- rights of membership and enlargement, including basic structures of the EU;
- association and international agreements;
- national economic, tax, fiscal or energy policy, or the budget and financial management of the EU;
- justice and home affairs;
- citizenship and elections;
- social, social security and employment policy.

Part 1: Provisions of the Treaty on European Union

- Article 7(2) – Determination by the European Council of the existence of a serious and persistent breach by a Member State of the values referred to in Article 2 TEU, such as respect for freedom, democracy and respect for human rights.

- Article 15(4) – European Council decisions are taken by consensus, except where otherwise provided in the Treaties. The removal of the provision for consensus in this Treaty Article would change the default decision-making mechanism in the European Council.
- Article 22(1) – European Council decisions on the strategic interests and objectives of the EU specifically in respect of the EU's external (global) action and common foreign and security policy.
- Chapter 2 of Title V TEU – Specific provisions on the Common Foreign and Security Policy. The entire chapter is included because, as Article 31(1) TEU specifies that decisions under the chapter should be taken by the European Council and the Council acting unanimously "except where this Chapter provides otherwise", proposals could otherwise be agreed using a Treaty change to move other Treaty articles on CFSP to qualified majority voting without the need to alter the general principle provided by Article 31(1) TEU. The effect of the reference to the chapter as a whole is therefore that any proposal to remove the need for unanimity, consensus or common accord within this chapter of the TEU would attract a referendum.
- Article 50(3) – Where a Member State has submitted its intention to withdraw from the EU but where that Member State requests more time in order to complete the necessary preparations for withdrawal, the European Council can decide by unanimity to give more time.

Part 2: Provisions on the Treaty on the Functioning of the European Union

- Article 19(1) – Agreement in the Council on measures to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation are taken by unanimity.
- Article 21(3) – Social security or social protection measures, specifically to facilitate the free movement of EU citizens, are decided on by special legislative procedure and by unanimity in the Council.
- Article 77(3) – Provisions concerning passports, identification cards, residence permits or any other such document, specifically to enable EU citizens to exercise their rights of free movement within the EU.
- Article 87(3) – Decisions on measures concerning operational co-operation between police, customs and other law enforcement authorities.
- Article 89 – Decisions on the conditions and limitations under which the competent law enforcement authorities of one Member State may operate on the territory of another.
- Article 113 – Decisions establishing provisions to harmonise legislation concerning turnover taxes, excise duties and other forms of indirect taxation to the extent necessary to ensure the functioning of the internal market and prevent the distortion of competition.
- Article 115 – Decisions to adopt directives to approximate national laws, regulations or administrative provisions directly affecting the functioning of the internal market, but only applicable in residual areas, such as fiscal measures or measures concerning free movement of persons or rights of employees, where qualified majority voting does not apply.
- Article 126(14) – Decisions to adopt provisions which would replace the Protocol on the excessive deficit procedure, which details how the EU is to address excessive Member State government deficits.
- Article 127(6) – Conferral of specific tasks on the European Central Bank concerning prudential supervision of credit institutions and other financial institutions except insurance undertakings.
- Article 153(2)(b) – Decisions on measures concerning: (i) social security and social protection of workers; (ii) protection of workers where their employment contract is

terminated; (iii) representation and collective defence of the interests of workers and employers; and (iv) conditions of employment for legally resident third country nationals.

- Article 155(2) – Council decision implementing an EU level agreement concluded between management and labour organisations, if it covers an area of social policy set out in Article 153(2)(b) (see bullet point above).
- Article 192(2) – Decisions to adopt measures concerning the environment which: (i) are primarily of a fiscal nature; (ii) affect town and country planning, quantitative management of water resources or the availability of those resources, or land use (except waste management); and (iii) are measures significantly affecting a Member State's choice of energy sources and the general structure of its energy supply.
- Article 203 – Decisions adopting detailed rules and procedures governing the association of third countries and territories with the EU.
- Article 218(8) – Negotiation and conclusion of any agreement that: (i) covers a field in which unanimity is required for the adoption of internal rules as set out in the relevant section of the Treaties; (ii) establishes an association between third countries and the EU; (iii) provides for economic, technical and financial co-operation with a candidate country in the process of negotiating its membership of the EU; and (iv) provides for the accession of the EU to the European Convention on Human Rights.
- Article 222(3) – Decisions to adopt any Council decision under the solidarity clause that has defence implications. The EU and its Member States shall act jointly 'in a spirit of solidarity' if a Member State is the object of a terrorist attack or the victim of a natural or man-made disaster – this is known as the Treaties' 'solidarity clause'.
- Article 311 – The Treaties stipulate that the EU shall provide itself with the means necessary to achieve those objectives set out in the Treaties. Any decision setting out how the EU will be financed and how it will manage its 'own resources'.
- Article 312(2) – Decisions to adopt the EU's five-year financial framework (how the EU will manage its own expenditure over the five year period).
- Article 332 – Decisions to alter the general rule that expenditure resulting from any area of enhanced co-operation between a smaller group of Member States should be borne by those participating Member States.

Schedule 2: Election of additional MEP

130. This Schedule sets out in more detail how the additional MEP provided for by the Transitional Protocol on MEPs will be elected. It also provides that, in the event that the relevant provisions of this Schedule do not result in the successful identification of a candidate to be returned as the additional UK MEP, there will be a by-election for the additional seat.

131. *Paragraph 2* provides that the returning officer for the West Midlands electoral region (to which the additional MEP has been allocated in accordance with the recommendation of the Electoral Commission published on 26 October 2010) must first identify which registered party would have won the additional seat in accordance with the results of the European Parliamentary elections held on 4 June 2009 ('the 2009 elections'), as if the seat had already been allocated to the West Midlands at that time. As there were no individual candidates in the West Midlands region at the 2009 elections, this Schedule only provides for allocation to a registered party.

132. *Paragraph 3(1)* provides that the returning officer must then identify from the registered party's list of candidates at the 2009 elections, the candidate whose name appears highest on that list. In doing so the returning officer is to disregard those people who have already been returned as MEPs or who have died. For example, if the registered party had proposed six candidates in an electoral region and the first three candidates

on that party's list had been returned as MEPs, the returning officer would identify the fourth candidate on that party's list as being the next person to be returned as an MEP. That person is referred to as the 'first choice'.

133. *Paragraph 3(2)* makes provision for the process by which the returning officer is to contact the 'first choice' to ask them whether he or she will provide written confirmation of their willingness and ability to be returned as the MEP. The returning officer should also ask the 'first choice' to deliver a certificate signed by or on behalf of the nominating officer of the registered party, confirming that he or she may be returned.

134. *Paragraph 4* makes provision for the process that is to take place if the returning officer is unable to contact the 'first choice' candidate, or that person confirms their unwillingness or inability to stand, or if they do not provide the certificate required. It shall be at the discretion of the regional returning officer to determine the length of such a 'reasonable period'. *Paragraph 4(2)* provides that the returning officer should identify the next name on the registered party's list of candidates, disregarding any candidate who has died. In the example above, the next candidate may be the fifth candidate on that party's list, since the first three people have already been returned as MEPs and the fourth candidate was unavailable or could not be contacted within a reasonable period. This candidate is referred to as the 'subsequent choice', and the returning officer shall under *paragraph 4(3)* seek confirmation that he or she is willing and able to be returned as an MEP. In doing so the returning officer shall follow the same procedure as provided for in relation to the 'first choice'.

135. *Paragraph 5* provides that, if the 'subsequent choice' cannot be contacted within a reasonable period, or does not provide the certificate required, or is unable or unwilling to be returned as an MEP, the returning officer is to identify the next name on the list, and keep repeating the procedure until either the seat is filled or there are no more names on the registered party's list of candidates.

136. *Paragraph 6* provides for what is to happen where, after a 'subsequent choice' has been invited to fulfil the obligations in *paragraph 3(2)*, a person who was previously asked to do so ('the prior choice') then provides the requisite certificate. The statement and certificate of the 'prior choice' candidate will have no effect unless and until the 'subsequent choice' fails to return the certificate within the period of time deemed reasonable by the regional returning officer, or has indicated that they are unwilling or unable to stand. The justification for this is that 'the prior choice' will have previously been given a sufficient opportunity by the returning officer to provide the required documentation within a reasonable time period.

137. *Paragraph 7* makes provision for the process that must take place where a candidate has, on being asked by the returning officer, delivered the statement and the certificate referred to in *paragraph 3(2)*. The returning officer must declare in writing that person to be returned as an MEP, must prepare a statement containing some relevant information concerning the election, and must give a public notice of this declaration and statement and send copies of them to the Secretary of State.

138. *Paragraphs 8* and*9* provide that if the procedures set out in *paragraphs 3* to *7*fail to fill the additional seat, a by-election is to be held to fill the seat. In this case the returning officer must confirm to the Secretary of State that the seat cannot be filled in accordance with the procedure set out in *paragraphs 3* to *7*. *Paragraph 8(4)* provides that the by-election is to take place on a day specified by order of the Secretary of State and *paragraph 8(5)* provides that the by-election is to be conducted in accordance with regulations made under the 2002 Act (the European Parliamentary Regulations 2004, SI 2004/293). *Paragraph 9* specifies that the order is to be made by statutory instrument which is to be laid before Parliament after being made.