

# **EUROPEAN UNION (AMENDMENT) ACT 2008**

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## **EXPLANATORY NOTES**

### **INTRODUCTION**

1. These explanatory notes relate to the European Union (Amendment) Act which received Royal Assent on 19 June 2008. They have been prepared by the Foreign and Commonwealth Office in order to assist the reader in understanding the Act. They do not form part of the Act and have not been endorsed by Parliament.
2. The notes need to be read in conjunction with the Act. They are not, and are not meant to be, a comprehensive description of the Act. So where a section or part of a section does not appear to require explanation or comment, none is given.

### **BACKGROUND**

3. This Act 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. A consolidated version of the TEU and Treaty on the Functioning of the European Union (TFEU) (the re-named TEC) has been published as Command Paper CM 7310, along with a comparative table of the current EU Treaties as amended by the Treaty of Lisbon (Command Paper CM 7311).
5. The principal changes made by the Treaty - see Articles 1 and 2 - are as follows:
  - Underlines 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.

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- 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.
  - The creation of specific competences for EU action, including in the areas of space policy, energy, tourism, civil protection and administrative cooperation.<sup>1</sup>
  - 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 Act 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.

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<sup>1</sup> Further details on competences in the Lisbon Treaty are set out in the Minister for Europe's letter of 17 January 2008 to the House of Lords EU Select Committee, to be published with the House of Lords European Union Committee's 10th Report 2007-08 *The Treaty of Lisbon: an impact assessment* (evidence, HL Paper 62-II)

## **TERRITORIAL EXTENT**

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

## **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)).

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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).

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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.

### **COMMENCEMENT**

35. [Section 3](#) and the Schedule are to be brought into force by order made by statutory instrument.

### ***Hansard References***

The following table sets out the dates and Hansard references for each stage of this Act's passage through Parliament.

Stage	Date	Hansard reference
<b>House of Commons</b>		
Introduction	17 December 2007	Vol. 469 Col
Second Reading	21 January 2008	Vol. 470 Col 1239-1324

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Stage	Date	Hansard reference
Committee	29 January 2008, 30 January 2008, 5 February 2008, 6 February 2008, 20 February 2008, 25 February 2008, 26 February 2008, 27 February 2008, 3 March 2008, 4 March 2008, and 5 March 2008	Vol. 471 Col 238-285 Vol. 471 Col 409-438 Vol. 471 Col 795-906 Vol. 471 Col 977-1087 Vol. 472 Col 369-485 Vol. 472 Col 767-874 Vol. 472 Col 922-1040 Vol. 472 Col 1097-1206 Vol. 472 Col 1454-1561 Vol. 472 Col 1598-1716 Vol. 472 Col 1751-1882
Third Reading	11 March 2008	Vol. 473 Col 152-254
<b>House of Lords</b>		
Introduction	12 March 2008	Vol. 699 Col 1516
Second Reading	1 April 2008	Vol. 700 Col 859-1038
Committee	22 April 2008, 29 April 2008, 6 May 2008, 12 May 2008, 14 May 2008, 19 May 2008 and 20 May 2008	Vol. 700 Col 1388-1496 Vol. 701 Col 131-234 Vol. 701 Col 438-554 Vol. 701 Col 803-914 Vol. 701 Col 1020-1110 Vol. 701 Col 1305-1346 Vol. 701 Col 1356-1458
Report	4 June 2008, 9 June 2008 and 11 June 2008	Vol. 702 Col 158-254 Vol. 702 Col 372-472 Vol. 702 Col 578-666
Third Reading	18 June 2008	Vol. 702 Col 1030-1099
<b>Royal Assent – 19 June 2008</b>		House of Lords Hansard Vol. 702 Col 1129
		House of Commons Hansard Vol. 477 Col 1095