

# EUROPEAN UNION ACT 2011

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### **Part 1: Restrictions on Treaties and Decisions Relating to EU**

#### **Restrictions relating to amendments of TEU or TFEU**

#### *Section 5: Statement to be laid before Parliament*

65. This section makes provision about how the first condition in *sections 2(1)(a)* and *3(1)(a)* is to be met. A Minister of the Crown would need to lay a statement before Parliament within two months of either the agreement of a treaty at an Inter-Governmental Conference, or the agreement of an Article 48(6) decision at a European Council. In either case, the required statement would need to set out the Minister's assessment as to whether the proposed treaty or Article 48(6) decision would fall within *section 4* of this Act, namely whether the proposal would transfer power or competence from the UK to the EU. The assessment should set out the Minister's reasoning for this judgement.
66. *Subsection (4)* of this section refers to the 'significance condition' set out in *section 3(4)*, in respect of an Article 48(6) decision where the Minister of the Crown judges that the Article 48(6) decision would fall within *section 4(1)(i)* or *4(1)(j)*, but where the Minister views such a move as not being significant. As set out above, the Minister would in this case judge that a transfer of power would take place between the UK and the EU. *Subsection (4)* provides that in this case, the Minister would need to lay before Parliament a statement making clear that a transfer of power would take place, but that he/she judges that this proposed transfer of power would not be significant, and the reasons for this judgement.
67. As with all Ministerial decisions, it would be possible for a member of the public to be able to seek to challenge in the Courts the judgement of the Minister as provided in the statement required under *section 5*.
68. The December 2010 European Council agreed in principle to amend Article 136 of TFEU, by means of an Article 48(6) decision, to allow for a permanent mechanism to replace the European Financial Stabilisation Mechanism and the larger European Financial Stability Facility. The Article 48(6) decision itself was agreed at the Spring European Council in March 2011. The Government made clear that it intended that the provisions of this Act should apply in full to this Article 48(6) decision, which requires approval by all Member States of the EU, even though the decision was adopted by the European Council before the Act comes into force.
69. *Subsection (6)* would enable this Article 48(6) decision to be considered in accordance with the provisions of this Act by providing that the statement required by this section should be laid no later than two months after the commencement date rather than two months after the decision at EU level.