

*These notes refer to the European Communities (Amendment)
Act 2002 (c.3) which received Royal Assent on 26 February 2002*

EUROPEAN COMMUNITIES (AMENDMENT) ACT 2002

EXPLANATORY NOTES

INTRODUCTION

1. These Explanatory Notes relate to the European Communities (Amendment) Act which received Royal Assent on 26 February 2002. 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.

BACKGROUND

3. The Treaty of Nice reforms the institutions of the European Union (the EU) to enable the EU to operate effectively after the accession of the applicant Member States. The key institutional changes include:
 - changes to the size and organisation of the College of Commissioners;
 - revision of the current system of weighted votes in the Council;
 - extension of qualified majority voting in the Council and co-decision with the European Parliament;
 - changes to the procedures set out in the Amsterdam Treaty for authorising a group of Member States to use the EU's institutions to move ahead with activity in certain areas, even though not all Member States want to take part (enhanced co-operation);
 - changes to the distribution of seats in the European Parliament after enlargement;
 - a package of reforms to alleviate the growing burden on the European Court of Justice and the Court of First Instance.

The UK signed the Treaty of Nice on 26 February 2001 and the Act will enable the UK to ratify the Treaty. The Treaty of Nice has been published as Command Paper Cm5090, European Community Series No. 1 (2001), entitled "Treaty of Nice amending the Treaty on European Union, the Treaties establishing the European Communities and certain related Acts including the Protocols with Final Act and Declarations".

4. The Act will extend to England, Wales, Scotland and Northern Ireland.

THE ACT

5. The Act has three substantive sections.

COMMENTARY ON SECTIONS

Section 1: Incorporation of provisions of the Treaty of Nice

6. *Subsection (1)* of this section amends section 1 of the European Communities Act 1972 (“the 1972 Act”). It does so by providing that those parts of the Treaty of Nice which relate to the European Communities are included among the Community Treaties listed in section 1. The result is that those parts of the Treaty of Nice are given effect in domestic law.
7. The Community Treaties listed in the 1972 Act initially included the three main Treaties establishing the European Economic Community (now the European Community), the European Coal and Steel Community and the European Atomic Energy Community. Further treaties have been added to the list by later Acts of Parliament. The last Treaty, provisions of which were added to the list, was the Treaty of Amsterdam in 1998.
8. The new paragraph to be inserted in the 1972 Act refers to the parts of the Treaty of Nice which relate to the European Communities. These fall into three categories: Articles 2 to 10 of the Treaty of Nice; the other provisions of the Treaty of Nice so far as they relate to those Articles; the Protocols to the Treaty of Nice. The new paragraph does not provide for those parts of the Treaty of Nice which concern co-operation in the sphere of foreign and security policy or police and judicial co-operation in criminal matters to be included. This is because they do not give rise to Community rights and obligations.
9. The first category covers Articles 2 to 10 of the Treaty of Nice. These are the parts of the Treaty of Nice which concern the European Communities. Articles 2, 3 and 4 make substantive amendments to the Treaties establishing the three Communities. Article 5 amends the Protocol on the Statute of the European System of Central Banks and of the European Central Bank. Article 6 amends the Protocol on the Privileges and Immunities of the European Communities.
10. Articles 7 to 10 of the Treaty of Nice concern the European Court of Justice (the Court of Justice). Article 7 is concerned with the Protocols on the Statute of the Court of Justice. It repeals the two existing Protocols which are annexed to the Treaty establishing the European Community (the EC Treaty) and to the Treaty establishing the European Atomic Energy Community (the Euratom Treaty). They are replaced with a single Protocol annexed to the Treaty on European Union, the EC Treaty and the Euratom Treaty. Article 10 makes consequential repeals in Council Decision [88/591/ECSC](#), EEC, Euratom of 24 October 1988 establishing a Court of First Instance of the European Communities.
11. Articles 8 and 9 set out transitional arrangements concerning the Court of Justice pending the expiry of the Treaty establishing the European Coal and Steel Community (the ECSC Treaty) in July 2002.
12. The second category of provisions which relate to the European Communities are the provisions of the Treaty of Nice which do not amend the Community Treaties as such but which relate to matters dealt with by them. They include amendments to the Treaty on European Union which also relate to matters dealt with in the Community Treaties, for example, the amendments to Article 43, the new Articles 43a and 43b, the amendments to Articles 44 and 45 and the new Article 44a of the Treaty on European Union. These are the general provisions on enhanced co-operation which apply to such co-operation not only under the Treaty on European Union but also the EC Treaty.
13. The third category covers the four Protocols to the Treaty of Nice. These are the Protocol on the enlargement of the European Union; the Protocol on the Statute of the Court of Justice; the Protocol on the financial consequences of the expiry of the ECSC Treaty and on the Research Fund for Coal and Steel; and the Protocol on Article 67 of the Treaty establishing the European Community.

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14. Subsections (2) and (3) of this section provides an enabling power to amend the definition of “the Treaties” and “the Community Treaties” in section 1(2) of the 1972 Act to include measures adopted by the Council to confer jurisdiction on the Court of Justice for disputes concerning Community industrial property rights. The legal basis for those measures will be Article 229a of the EC Treaty as inserted by the Treaty of Nice. The power can only be exercised by means of an Order in Council approved by both Houses of Parliament through the affirmative resolution procedure.

Section 2: References to the European Court etc

15. This section concerns the European Court of Justice, the Court of First Instance and the Judicial Panels to be attached to the Court of First Instance. The Treaty of Nice changes the status of the Court of First Instance so that it will no longer be attached to the Court of Justice. The Treaty also includes new provisions for the setting up of judicial panels which are to be attached to the Court of First Instance. Section 2 amends Part 2 of Schedule 1 to the 1972 Act to reflect these changes. The new definition will apply generally by virtue of the Interpretation Act 1978.

Section 3: Approval of increase in powers of European Parliament

16. This section is included to meet the requirement of section 6 of the European Parliamentary Elections Act 1978. The requirement is that “no treaty which provides for any increase in the powers of the European Parliament shall be ratified by the United Kingdom unless it has been approved by an Act of Parliament”. Several provisions in Article 2 of the Treaty of Nice increase the powers of the European Parliament, eg by increasing the occasions on which Community legislation must be adopted by co-decision between the Council and the European Parliament.

COMMENCEMENT

17. The provisions of the Act came into force on Royal Assent.

HANSARD REFERENCES

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

House of Commons		
Introduction	21 June 2001	Vol 370, Col 187
Second Reading	4 July 2001	Vol 371, Cols 263-368
Committee	11, 17 and 18 July 2001	Vol 371, Cols 809-890
		Vol 372, Cols 156-261
		Vol 372, Cols 310-392
Report	18 July 2001	Vol 372, Col 392
Third Reading	17 October 2001	Vol 372, Cols 1172-1274
House of Lords		
Introduction	18 October 2001	Vol 627, Col 711
Second Reading	1 November 2001	Vol 627, Cols 1518-1630
Committee	15, 20 and 26 November 2001	Vol 628, Cols 691-744 and 760-788
		Vol 628, Cols 1005-1025

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		Vol 629, Cols 60-106
Report	17 and 22 January 2002	Vol 630, Cols 1187-1241
		Vol 630, Cols 1389-1443
Third Reading	28 January 2002	Vol 631, Cols 26-36
Royal Assent – 26 February 2002		House of Lords Hansard Vol 631, Col 1408
		House of Commons Hansard Vol 380, Col 678