



European Union Act 2011

2011 CHAPTER 12

PART 1

RESTRICTIONS ON TREATIES AND DECISIONS RELATING TO EU

Introductory

1 Interpretation of Part 1

- (1) This section has effect for the interpretation of this Part.
- (2) “TEU” means the Treaty on European Union.
- (3) “TFEU” means the Treaty on the Functioning of the European Union.
- (4) A reference to a treaty which amends TEU or TFEU includes a reference to—
 - (a) a treaty resulting from the application of Article 48(2) to (5) of TEU (ordinary revision procedure);
 - (b) an agreement under Article 49 of TEU (admission of new members).
- (5) An “Article 48(6) decision” means a decision under Article 48(6) of TEU (simplified revision procedure).
- (6) Except in a reference to “the European Council”, “the Council” means the Council of the European Union.
- (7) A reference to a Minister of the Crown voting in favour of or otherwise supporting a decision is a reference to a Minister of the Crown—
 - (a) voting in favour of the decision in the European Council or the Council, or
 - (b) allowing the decision to be adopted by consensus or unanimity by the European Council or the Council.

Restrictions relating to amendments of TEU or TFEU

2 Treaties amending or replacing TEU or TFEU

- (1) A treaty which amends or replaces TEU or TFEU is not to be ratified unless—
 - (a) a statement relating to the treaty was laid before Parliament in accordance with section 5,
 - (b) the treaty is approved by Act of Parliament, and
 - (c) the referendum condition or the exemption condition is met.
- (2) The referendum condition is that—
 - (a) the Act providing for the approval of the treaty provides that the provision approving the treaty is not to come into force until a referendum about whether the treaty should be ratified has been held throughout the United Kingdom or, where the treaty also affects Gibraltar, throughout the United Kingdom and Gibraltar,
 - (b) the referendum has been held, and
 - (c) the majority of those voting in the referendum are in favour of the ratification of the treaty.
- (3) The exemption condition is that the Act providing for the approval of the treaty states that the treaty does not fall within section 4.

3 Amendment of TFEU under simplified revision procedure

- (1) Where the European Council has adopted an Article 48(6) decision subject to its approval by the member States, a Minister of the Crown may not confirm the approval of the decision by the United Kingdom unless—
 - (a) a statement relating to the decision was laid before Parliament in accordance with section 5,
 - (b) the decision is approved by Act of Parliament, and
 - (c) the referendum condition, the exemption condition or the significance condition is met.
- (2) The referendum condition is that—
 - (a) the Act providing for the approval of the decision provides that the provision approving the decision is not to come into force until a referendum about whether the decision should be approved has been held throughout the United Kingdom or, where the decision also affects Gibraltar, throughout the United Kingdom and Gibraltar,
 - (b) the referendum has been held, and
 - (c) the majority of those voting in the referendum are in favour of the approval of the decision.
- (3) The exemption condition is that the Act providing for the approval of the decision states that the decision does not fall within section 4.
- (4) The significance condition is that the Act providing for the approval of the decision states that—
 - (a) the decision falls within section 4 only because of provision of the kind mentioned in subsection (1)(i) or (j) of that section, and
 - (b) the effect of that provision in relation to the United Kingdom is not significant.

4 Cases where treaty or Article 48(6) decision attracts a referendum

- (1) Subject to subsection (4), a treaty or an Article 48(6) decision falls within this section if it involves one or more of the following—
 - (a) the extension of the objectives of the EU as set out in Article 3 of TEU;
 - (b) the conferring on the EU of a new exclusive competence;
 - (c) the extension of an exclusive competence of the EU;
 - (d) the conferring on the EU of a new competence shared with the member States;
 - (e) the extension of any competence of the EU that is shared with the member States;
 - (f) the extension of the competence of the EU in relation to—
 - (i) the co-ordination of economic and employment policies, or
 - (ii) common foreign and security policy;
 - (g) the conferring on the EU of a new competence to carry out actions to support, co-ordinate or supplement the actions of member States;
 - (h) the extension of a supporting, co-ordinating or supplementing competence of the EU;
 - (i) the conferring on an EU institution or body of power to impose a requirement or obligation on the United Kingdom, or the removal of any limitation on any such power of an EU institution or body;
 - (j) the conferring on an EU institution or body of new or extended power to impose sanctions on the United Kingdom;
 - (k) any amendment of a provision listed in Schedule 1 that removes a requirement that anything should be done unanimously, by consensus or by common accord;
 - (l) any amendment of Article 31(2) of TEU (decisions relating to common foreign and security policy to which qualified majority voting applies) that removes or amends the provision enabling a member of the Council to oppose the adoption of a decision to be taken by qualified majority voting;
 - (m) any amendment of any of the provisions specified in subsection (3) that removes or amends the provision enabling a member of the Council, in relation to a draft legislative act, to ensure the suspension of the ordinary legislative procedure.
- (2) Any reference in subsection (1) to the extension of a competence includes a reference to the removal of a limitation on a competence.
- (3) The provisions referred to in subsection (1)(m) are—
 - (a) Article 48 of TFEU (social security),
 - (b) Article 82(3) of TFEU (judicial co-operation in criminal matters), and
 - (c) Article 83(3) of TFEU (particularly serious crime with a cross-border dimension).
- (4) A treaty or Article 48(6) decision does not fall within this section merely because it involves one or more of the following—
 - (a) the codification of practice under TEU or TFEU in relation to the previous exercise of an existing competence;
 - (b) the making of any provision that applies only to member States other than the United Kingdom;
 - (c) in the case of a treaty, the accession of a new member State.

5 Statement to be laid before Parliament

- (1) If a treaty amending TEU or TFEU is agreed in an inter-governmental conference, a Minister of the Crown must lay the required statement before Parliament before the end of the 2 months beginning with the date on which the treaty is agreed.
- (2) If an Article 48(6) decision is adopted by the European Council subject to its approval by the member States, a Minister of the Crown must lay the required statement before Parliament before the end of the 2 months beginning with the date on which the decision is adopted.
- (3) The required statement is a statement as to whether, in the Minister's opinion, the treaty or Article 48(6) decision falls within section 4.
- (4) If the Minister is of the opinion that an Article 48(6) decision falls within section 4 only because of provision of the kind mentioned in subsection (1)(i) or (j) of that section, the statement must indicate whether in the Minister's opinion the effect of that provision in relation to the United Kingdom is significant.
- (5) The statement must give reasons for the Minister's opinion under subsection (3) and, if relevant, subsection (4).
- (6) In relation to an Article 48(6) decision adopted by the European Council before the day on which this section comes into force ("the commencement date"), the condition in section 3(1)(a) is to be taken to be complied with if a statement under this section is laid before Parliament before the end of the 2 months beginning with the commencement date.

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—
- (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—
 - (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.
- (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 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.

Further provisions about referendums held in pursuance of section 2, 3 or 6

11 Persons entitled to vote in referendum

- (1) The persons entitled to vote in any referendum held in pursuance of section 2, 3 or 6 are to be as follows—
 - (a) the persons who, on the date of the referendum, would be entitled to vote as an elector at a parliamentary election in a constituency in the United Kingdom;
 - (b) the persons who, on that date, are disqualified by reason of being peers from voting as electors in parliamentary elections but—
 - (i) would be entitled to vote as electors at a local government election in any electoral area in Great Britain,
 - (ii) would be entitled to vote as electors at a local election in any district electoral area in Northern Ireland, or
 - (iii) would be entitled to vote as electors at a European Parliamentary election in any electoral region by virtue of section 3 of the Representation of the People Act 1985 (peers resident outside the United Kingdom);
 - (c) if the referendum is also held in Gibraltar, the Commonwealth citizens who, on the date of the referendum, would be entitled to vote in Gibraltar at a European Parliamentary election in the combined electoral region in which Gibraltar is comprised.
- (2) In subsection (1)(b)(i) “local government election” includes a municipal election in the City of London (that is, an election to the office of mayor, alderman, common councilman or sheriff and also the election of any officer elected by the mayor, aldermen and liverymen in common hall).

12 Separate questions

If a referendum is to be held in pursuance of any of sections 2, 3 and 6 in relation to two or more treaties or decisions, or in relation to one or more treaties and one or more decisions, a separate question must be included on the ballot paper in relation to each treaty or decision.

13 Role of Electoral Commission

Where an Act provides for a referendum to be held in pursuance of section 2, 3 or 6, the Electoral Commission—

- (a) must take whatever steps they think appropriate to promote public awareness of the referendum and how to vote in it, and
- (b) may take whatever steps they think appropriate to promote public awareness of the subject-matter of the referendum.

Supplementary

14 Consequential amendments and repeals relating to Part 1

(1) In section 5 of the European Union (Amendment) Act 2008 (amendment of founding treaties)—

- (a) in subsection (2), for the words from “amends” onwards substitute “amends the Treaty establishing the European Atomic Energy Community (signed at Rome on 25th March 1957).”, and
- (b) accordingly, in the heading, for “founding treaties” substitute “Euratom Treaty”.

(2) In section 23 of the Constitutional Reform and Governance Act 2010 (section 20 of that Act not to apply to certain descriptions of treaties), in subsection (1)—

- (a) omit paragraph (a),
- (b) in paragraph (b), for “founding Treaties” substitute “Treaty establishing European Atomic Energy Community”, and
- (c) at the end insert—

“(c) a treaty that is subject to a requirement imposed by Part 1 of the European Union Act 2011 (restrictions on treaties and decisions relating to EU).”

(3) The following enactments (which are superseded by the provisions of this Part) are repealed—

- (a) section 2 of the European Communities (Amendment) Act 1993,
- (b) section 1(2) and (3) of the European Communities (Amendment) Act 2002,
- (c) section 12 of the European Parliamentary Elections Act 2002, and
- (d) section 6 of the European Union (Amendment) Act 2008.