

# **EUROPEAN UNION BILL**

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## **EXPLANATORY NOTES ON LORDS AMENDMENTS**

### **INTRODUCTION**

1. These Explanatory Notes relate to the Lords amendments to the European Union Bill, as brought from the House of Lords on 23 June 2011. They have been prepared by the Foreign and Commonwealth Office in order to assist the reader of the Bill and the Lords amendments, and to help inform debate on the Lords amendments. They do not form part of the Bill and have not been endorsed by Parliament.
2. These Notes, like the Lords amendments themselves, refer to HL Bill 55, the Bill as first printed for the Lords.
3. These Notes need to be read in conjunction with the Lords Amendments and the text of the Bill. They are not, and are not meant to be, a comprehensive description of the effect of the Lords Amendments.
4. Lords Amendments 1, 2 and 4 were tabled in the name of the Minister. The remaining Lords Amendments were opposed by the Government. In the following Commentary, an asterisk appears in the heading of each of the paragraphs dealing with non-Government amendments.

### **COMMENTARY ON LORDS AMENDMENTS**

#### **Lords Amendment 1**

5. Lords Amendment 1 would amend the definition of the phrase ‘voting in favour or otherwise supporting a decision’ in *clause 1(7)*. It would provide that the phrase includes a Minister of the Crown acting in any way that allows a decision to be adopted by the European Council or the Council in addition to a vote in support, such as an abstention, a failure to object to the adoption of the decision, or the Minister deciding to be absent from the relevant proceedings in the European Council or the Council.

#### **Lords Amendments 2 and 4**

6. Lords Amendments 2 and 4 would insert the word ‘also’ into *clause 2(2)(a)* and *clause 3(2)(a)* respectively. This would make it clear that a proposed treaty or Article 48(6) decision applying to both the United Kingdom and Gibraltar would require a referendum that includes Gibraltar as well as the United Kingdom.

#### **\*Lords Amendments 3 and 5**

7. Lords Amendments 3 and 5 would insert an additional requirement into the referendum condition provided by *clause 2* and *clause 3* respectively. The additional requirement is that the Electoral Commission has issued a certificate on the percentage of those persons entitled to vote in a referendum held in accordance with this clause who have voted in the referendum.

8. If fewer than 40% of those persons entitled to vote in a referendum have done so, then these amendments would also provide that the treaty or Article 48(6) decision can only be ratified or approved if a Minister then moves a motion in each House of Parliament seeking approval to ratify the treaty or approve the Article 48(6) decision. This motion would need to be approved by both Houses of Parliament without amendment before the Government could ratify the treaty or approve the Article 48(6) decision.

#### **\*Lords Amendments 6 to 13**

9. This group of amendments would amend the provisions in *clause 6* (decisions requiring approval by Act and by referendum), by reducing the number of decisions that require approval by referendum.

10. Lords Amendment 6 would amend *subsection (1)* to remove the requirement for a referendum to be held before a Minister could vote in favour of or otherwise support a decision mentioned in *subsection (5)*. Those decisions would therefore only require approval by Act before the Government could support those decisions in the European Council or the Council. However, two exceptions are made to this by Lords Amendments 10 to 13.

11. Lords Amendment 10 would insert a new subsection to make provision for a requirement for approval by Act and by referendum for any decision under Article 140(3) TFEU, which would make the euro the currency of the UK. Consequently, Lords Amendment 12 would omit the reference to the same decision from *subsection (5)*. Similarly, Lords Amendment 11 would insert a new subsection to make provision for a requirement for approval by Act and by referendum for any decision under Article 4 of the Schengen Protocol which would remove any border control of the United Kingdom; and Lords Amendment 13 would omit the reference to the same decision from *subsection (5)*.

12. Lords Amendments 7 and 8 would amend the provision in *clause 6(2)* in relation to a decision under Article 42(2) TEU in relation to a common EU defence. Lords Amendment 7 would make provision to require approval by Act and by referendum for any decision under Article 42(2) TEU that would permit a 'single, integrated military force'. Lords Amendment 8 would make separate provision in *clause 6* for all other decisions in relation to a common EU defence under Article 42(2) TEU. This provision would require approval by Act (but not by referendum) before the Government could notify the European Council that the decision had been adopted by the UK.

13. Lords Amendment 9 would amend *subsection (3)* to remove the requirement for approval by referendum before a Minister could give 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 the TEU and TFEU which relates to participation by the UK in a European Public Prosecutor's Office or an extension of the powers of that Office. The result would be that only approval by Act would be required before such a notification could be given. (Lords Amendment 6 would remove the equivalent requirement for approval by referendum before a notification that the UK wishes to participate in the same measures under Article 3 of the same Protocol.)

**\*Lords Amendment 14**

14. Lords Amendment 14 would replace *clause 18* with a new clause that is different in two respects. The first change would be that the words 'It is only' would be omitted from the start of the clause. The second change would be that the reference to 'an Act of Parliament' would be replaced with 'the European Communities Act 1972' to describe the route by which directly applicable and directly effective EU law falls to be recognised and available in law in the UK.

**\*Lords Amendment 15**

15. Lords Amendment 15 would insert a new clause that would make provision for the expiration of Part 1 and Schedule 1 of the Act resulting from this Bill at the end of this Parliament, subject to the mechanism provided for by the same amendment. It would permit the Secretary of State by order to revive Part 1 and Schedule 1 in a subsequent Parliament for the duration of that Parliament. The revival order would have to be laid in draft and approved by a resolution of each House of Parliament.

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*These notes refer to the Lords Amendments to the European Union Bill as brought from the House of Lords on 23 June 2011 [Bill 209]*

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