

# European Union Bill

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## EXPLANATORY NOTES

Explanatory notes to the Bill, prepared by the Foreign and Commonwealth Office, are published separately as Bill 45 – EN.

## EUROPEAN CONVENTION ON HUMAN RIGHTS

Mr Secretary Straw has made the following statement under section 19(1)(a) of the Human Rights Act 1998:

In my view the provisions of the European Union Bill are compatible with the Convention rights.

# European Union Bill

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**B I L L**

TO

Make provision in connection with the Treaty signed at Rome on 29th October 2004 establishing a Constitution for Europe; and to require a referendum to be held about it.

**B**E IT ENACTED by the Queen’s most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

**PART 1**

THE EU TREATY

**1 Revision of meaning of “the Treaties” etc.**

(1) In section 1 of the European Communities Act 1972 (c. 68) (“the 1972 Act”), for subsection (2) (the Treaties) substitute—

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“(2) In this Act ‘the Treaties’ or ‘the EU Treaties’ means the EU Treaty, taken with each of the following—

(a) the Euratom Treaty, that is to say, the treaty establishing the European Atomic Energy Community signed at Rome on 25th March 1957, as modified and supplemented by or under the Community Treaties and the EU Treaty;

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(b) the Act concerning the election of representatives of the European Parliament by direct universal suffrage which was annexed to Council Decision 76/787/ECSC, EEC, Euratom of 20th September 1976, as it has effect, with modifications, under the EU Treaty;

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(c) the Agreement on the European Economic Area signed at Oporto on 2nd May 1992, together with the Protocol adjusting that Agreement signed at Brussels on 17th March 1993, as they have effect on the entry into force of the EU Treaty;

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(d) the Communities’ own resources decisions, as they have effect in accordance with the EU Treaty;

(e) every external or ancillary agreement;

- and the expressions defined in Schedule 1 to this Act have the meanings given by that Schedule.
- (2A) In this Act ‘the EU Treaty’ means the treaty establishing a Constitution for Europe signed at Rome on 29th October 2004, except the common foreign and security policy provisions. 5
- (2B) In subsection (2)(d) ‘the Communities’ own resources decisions’ means the following decisions on the Communities’ system of own resources—
- (a) the decisions of the Council of the Communities of 7th May 1985, 24th June 1988 and 31st October 1994; and 10
  - (b) the decision of the Council of the European Union of 29th September 2000.
- (2C) In subsection (2)(e) ‘external or ancillary agreement’ means any of the following—
- (a) a treaty, so far as still in force on the entry into force of the EU Treaty, which was entered into by the member States (with or without other countries) before 22nd January 1972 as ancillary to any one or more of the pre-accession treaties (as they had effect at the time); 15
  - (b) a treaty, so far as still in force on the entry into force of the EU Treaty, which was previously entered into by the United Kingdom as ancillary to any one or more of the Community Treaties (as they had effect at the time); 20
  - (c) a treaty, so far as still in force on the entry into force of the EU Treaty, which was previously entered into (with or without member States) by the Communities or by any of them; 25
  - (d) so much of any treaty as has been or is entered into by the United Kingdom (whether before or after the entry into force of the EU Treaty) as ancillary to the EU Treaties or any of them;
  - (e) so much of any treaty as is entered into, after the entry into force of the EU Treaty, by the European Union or Euratom (with or without member States) otherwise than in reliance on anything contained in the common foreign and security policy provisions.” 30
- (2) In subsection (3) of that section (Orders in Council declaring treaties to be Community Treaties)— 35
- (a) for “Community Treaties” substitute “EU Treaties”; and
  - (b) for the words from “after” to “that date” substitute “after the entry into force of the EU Treaty”.
- (3) In subsection (4) of that section (meaning of “treaty”), for “subsections (2) and (3)” substitute “subsections (2) to (3)”. 40
- (4) Schedule 1 (which substitutes a new Schedule of definitions for Schedule 1 to the 1972 Act and amends the Interpretation Act 1978 (c. 30) and corresponding provision applying in Scotland and Northern Ireland) has effect.
- (5) Any Order in Council made before the commencement of subsection (1) of this section under section 1(3) of the 1972 Act that declares that a treaty is to be regarded as one of the Community Treaties is to have effect, after the commencement of subsection (1) of this section, as an Order in Council under 45

section 1(3) of that Act declaring it to be a treaty that is to be regarded as one of the EU Treaties.

- (6) The treaty establishing a Constitution for Europe signed at Rome on 29th October 2004 is approved for the purposes of section 12 of the European Parliamentary Elections Act 2002 (c. 24) (approval of treaties relating to European Parliament). 5

## 2 Parliamentary approval for Treaty changes

- (1) This section applies to a European decision under Article IV-444 or IV-445 of the EU Treaty (simplified revision procedures relating to qualified majority voting and legislative procedures or internal EU policies and action). 10
- (2) A decision to which this section applies may be recognised in law only if it falls by virtue of this section to be treated as listed in section 1(2) of the 1972 Act as one of the EU Treaties.
- (3) A decision under Article IV-444 (majority voting and legislative procedures) shall be treated as listed in section 1(2) of the 1972 Act as one of the EU Treaties only if the initiative for the decision is approved by Parliament. 15
- (4) For this purpose the initiative for a decision is approved by Parliament if—
- (a) the House of Commons sent a message to the House of Lords asking for its opinion on whether the House of Commons should resolve to approve the initiative; and 20
  - (b) the initiative was approved by a resolution of the House of Commons not less than 20 sitting days after the House of Lords received the message.
- (5) Her Majesty may by Order in Council provide for a decision under Article IV-445 to be treated as listed in section 1(2) of the 1972 Act as one of the EU Treaties. 25
- (6) No recommendation may be made to Her Majesty in Council to make an Order in Council under subsection (5) unless a draft of the Order has been—
- (a) laid before Parliament; and
  - (b) approved by a resolution of each House. 30
- (7) A decision which—
- (a) provides for an increase of the powers of the European Parliament, and
  - (b) by virtue of this section falls to be treated as listed in section 1(2) of the 1972 Act as one of the EU Treaties,
- shall be deemed to have been approved for the purposes of section 12 of the European Parliamentary Elections Act 2002 (approval of treaties relating to European Parliament). 35
- (8) In this section “sitting day” means a day on which the House of Lords sits.

## 3 Statements on subsidiarity

- (1) This section applies where a draft European legislative act is transmitted to Parliament in accordance with Article 4 of Protocol 2 to the EU Treaty (the application of the principles of subsidiarity and proportionality). 40

- (2) Before the end of six weeks from the date of transmission, the responsible Minister must lay before Parliament a statement about whether, in his opinion, the draft legislative act complies with the principle of subsidiarity.
- (3) In this section “the responsible Minister” means the Minister of the Crown with responsibility in relation to the matters to which the draft legislative act relates; but where there is more than one such Minister, the duty imposed by this section may be discharged by any one or more of them. 5

#### 4 Amendments of enactments and continuity

- (1) Schedule 2 (which modifies the 1972 Act and other enactments, and also subordinate legislation, for purposes connected with giving effect to the EU Treaty and contains continuity and transitional provisions) has effect, but subject to the provisions of any order or regulations under this section. 10
- (2) A Minister of the Crown may, by order or regulations, make such consequential and other modifications of enactments and subordinate legislation as he considers necessary or expedient for, or in connection with – 15
- (a) making provision that gives effect, or has the equivalent effect, in the law of the United Kingdom (or of any part of it) to provision made by Article IV-438 of the EU Treaty (succession and legal continuity); or
- (b) setting out the effect, in relation to a particular enactment or particular subordinate legislation, of a general modification made by Part 3 of Schedule 2. 20
- (3) A Minister of the Crown may, by order or regulations, amend any enactment or subordinate legislation so as –
- (a) to modify references to particular provisions of the Community Treaties or to particular provisions of the Treaty on European Union that are not included in those Treaties; 25
- (b) to modify references to a description of instrument capable of being made under or in accordance with the Community Treaties;
- (c) to modify references to anything else having effect by reference to the Communities or any of them, to the Community Treaties, to a Community institution, to a Community instrument, to a Community obligation or to an enforceable Community right, obligation or restriction; 30
- (d) to preserve the validity of anything done under or for the purposes of provision made by or under the Community Treaties; 35
- (e) to secure continuity of the law which by virtue of the 1972 Act was in force immediately before the entry into force of the EU Treaty;
- (f) otherwise to make transitional provision in connection with the entry into force of that Treaty.
- (4) Any order or regulations under this section may also – 40
- (a) disapply or otherwise modify the effect in relation to any particular enactment or subordinate legislation of any general modification made under Part 3 of Schedule 2; or
- (b) modify the effect in a particular description of cases of any saving or transitional provision contained in that Schedule. 45
- (5) The power of a Minister of the Crown to make provision by order or regulations under this section includes power –

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- (a) to make provision having retrospective effect to the time of the entry into force of the EU Treaty or to a subsequent time;
- (b) to make different provision for different cases;
- (c) to make provision subject to such exemptions and exceptions as he thinks fit; 5
- (d) to make such incidental, supplemental, consequential and transitional provision as he thinks fit.
- (6) The powers of a Minister of the Crown under this section –
- (a) so far as they are exercisable in relation to a matter the exercise of functions in respect of which is within devolved competence, shall also be exercisable by the Scottish Ministers; 10
- (b) so far as exercisable in relation to a transferred matter, shall also be exercisable by a Northern Ireland department; and
- (c) so far as exercisable in relation to a matter in respect of which functions are exercisable by the National Assembly for Wales, shall also be exercisable by that Assembly. 15
- (7) A power under this section to make an order or to make regulations –
- (a) so far as it is exercisable by a Minister of the Crown, the Scottish Ministers or the National Assembly for Wales, shall be exercisable by statutory instrument; and 20
- (b) so far as it is exercisable by a Northern Ireland department, shall be exercisable by statutory rule for the purposes of the Statutory Rules (Northern Ireland) Order 1979 (S.I. 1979/1573 (N.I. 12)).
- (8) Subject to subsection (9), a statutory instrument or statutory rule containing an order or regulations under this section – 25
- (a) if made by a Minister of the Crown, shall be subject to annulment in pursuance of a resolution of either House of Parliament;
- (b) if made by the Scottish Ministers, shall be subject to annulment in pursuance of a resolution of the Scottish Parliament; and
- (c) if made by a Northern Ireland department, shall be subject to negative resolution, within the meaning of the Interpretation Act (Northern Ireland) 1954 (1954 c. 33 (N.I.)), as if it were a statutory instrument within the meaning of that Act. 30
- (9) Subsection (8) does not apply to a statutory instrument or statutory rule containing an order or regulations under this section if – 35
- (a) the instrument is made by a Minister of the Crown and a draft of the order or regulations was laid before Parliament and approved by a resolution of each House;
- (b) the instrument is made by the Scottish Ministers and a draft of the order or regulations was laid before and approved by the Scottish Parliament; or 40
- (c) the rule is made by a Northern Ireland department and a draft of the order or regulations was laid before and approved by the Northern Ireland Assembly.
- (10) In this section – 45
- “Minister of the Crown” includes the Treasury; and
- “reference”, in relation to anything, means a reference to that thing however it is worded.

- (11) Provision made by or under this section is not to be construed as in any way derogating from—
- (a) the effect by virtue of section 2(1) of the 1972 Act of Article IV-438 or IV-439 of the EU Treaty (succession, legal continuity and transitional provisions) or of Protocol 34 on the transitional provisions relating to the institutions and bodies of the Union; or 5
  - (b) the power of any person to make provision under section 2(2) of that Act (including provision amending Schedule 2 to this Act).

## PART 2

### THE COMMON FOREIGN AND SECURITY POLICY 10

#### 5 Implementation of common foreign and security policy

- (1) The Secretary of State may by regulations make provision for one or more of the following purposes—
- (a) implementing an obligation of the United Kingdom created or arising by or under the common foreign and security policy provisions or a related agreement, or enabling such an obligation to be implemented; 15
  - (b) enabling the exercise of rights enjoyed or to be enjoyed by the United Kingdom under or by virtue of those provisions or such an agreement;
  - (c) dealing with matters arising out of, or related to, such an obligation or such rights. 20
- (2) The powers conferred by this section include power to amend enactments and subordinate legislation.
- (3) The powers conferred by this section—
- (a) include power to create new criminal offences and to provide for an offence created under this section to be a summary offence, an either-way offence or an offence triable only on indictment; but 25
  - (b) do not include power to create an offence punishable, on conviction on indictment, with a term of imprisonment of more than ten years.
- (4) Where—
- (a) regulations under this section make provision for a purpose mentioned in subsection (1), 30
  - (b) the regulations contain a reference to an EU instrument, and
  - (c) it appears to the Secretary of State that it is necessary or expedient (whether or not for that purpose) for the reference to be construed as a reference to the EU instrument as amended from time to time, 35
- the regulations may make express provision to that effect.
- (5) No regulations may be made containing (with or without other provision) any provision the power to make which is conferred by this section unless—
- (a) a draft of the regulations has been laid before Parliament and approved by a resolution of each House; or 40
  - (b) the regulations contain a declaration by the Secretary of State that the urgency of the matter makes it necessary for the regulations to be made without that approval.
- (6) Regulations under this section that contain such a declaration—
- (a) must be laid before Parliament after being made; and 45

- (b) if not approved by a resolution of each House before the end of 40 days beginning with the day on which they were made, shall cease to have effect at the end of that period;
- but, where regulations cease to have effect in accordance with this subsection, that does not affect anything previously done under them, or prevent the making of new regulations to the same or similar effect. 5
- (7) In subsection (6) “40 days” means 40 days computed as provided for in section 7(1) of the Statutory Instruments Act 1946 (c. 36).
- (8) The powers of the Secretary of State under this section –
- (a) so far as they are exercisable in relation to a matter the exercise of functions in respect of which is within devolved competence, shall also be exercisable by the Scottish Ministers; and 10
- (b) so far as they are exercisable in relation to a transferred matter, shall also be exercisable by a Northern Ireland department.
- (9) In relation to regulations made under this section by the Scottish Ministers – 15
- (a) references in this section to Parliament, or to either or each House of Parliament, shall have effect as references to the Scottish Parliament;
- (b) the reference in subsection (5)(b) to the Secretary of State shall have effect as a reference to the Scottish Ministers; and
- (c) the reference in subsection (7) to section 7(1) of the Statutory Instruments Act 1946 shall have effect as a reference to Article 13(1) of the Scotland Act 1998 (Transitory and Transitional Provisions) (Statutory Instruments) Order 1999 (S.I. 1999/1096). 20
- (10) In relation to regulations made under this section by a Northern Ireland department – 25
- (a) references in this section to Parliament, or to either or each House of Parliament, shall have effect as references to the Northern Ireland Assembly;
- (b) the reference in subsection (5)(b) to the Secretary of State shall have effect as a reference to the Northern Ireland department in question; 30
- (c) the reference in subsection (6)(b) to 40 days shall have effect as a reference to the statutory period (within the meaning of section 41(2) of the Interpretation Act (Northern Ireland) 1954 (1954 c. 33 (N.I.))); and
- (d) subsection (7) shall be omitted.
- (11) Her Majesty may by Order in Council provide for provision made under this section to extend, with modifications, to a British overseas territory. 35
- (12) In this section “common foreign and security policy provisions” means the following provisions of the treaty establishing a Constitution for Europe signed at Rome on 29th October 2004 –
- (a) Article I-16 (competence in common foreign and security policy); 40
- (b) Article I-28 (the Union Minister for Foreign Affairs);
- (c) Articles I-40 and I-41 (specific provision relating to common foreign and security policy);
- (d) Chapter II of Title V of Part III (Articles III-294 to III-313 on the common foreign and security policy); 45
- (e) Article III-376 (jurisdiction of European Court in relation to the common foreign and security policy matters);

- (f) Protocol 23 on permanent structured co-operation established by Articles I-41(6) and III-312; and
- (g) the other provisions of the treaty so far only as they apply for the purposes of, or in relation to, provisions falling within paragraphs (a) to (f) and are not provisions relating to the resources of the European Union. 5
- (13) In this section “related agreement” means –
- (a) so much of any treaty as has been or is entered into by the United Kingdom as ancillary to the common foreign and security policy provisions; or 10
- (b) so much of any treaty as is entered into by the European Union (with or without member States) in reliance on anything contained in those provisions;
- but section 1(3) of the 1972 Act (specification of treaties by Order in Council) is to apply for determining the extent to which a treaty is to be regarded as a related agreement for the purposes of this section as it applies for determining whether a treaty is one of the EU Treaties. 15
- (14) The powers conferred by this section are not to be construed as in any way derogating from Her Majesty’s prerogative with respect to any matter, or from any power exercisable apart from this section by virtue of any enactment or rule of law. 20

### PART 3

#### REFERENDUM ON THE EU TREATY

#### 6 Holding a referendum

- (1) A referendum shall be held throughout the United Kingdom and Gibraltar on the day specified by an order made by a Minister of the Crown. 25
- (2) The question to be asked in the referendum is –  
“Should the United Kingdom approve the Treaty establishing a Constitution for the European Union?”
- (3) A Minister of the Crown may by order make provision in relation to the referendum which – 30
- (a) determines the referendum period for the purposes of Part 7 of the Political Parties, Elections and Referendums Act 2000 (c. 41); and
- (b) requires ballot papers to be used by voters in Wales, after having set out the question and the possible answers in English, to set them out again, with equal prominence, in Welsh. 35
- (4) The question in Welsh is –  
“A ddylai’r Deyrnas Unedig dderbyn y Cytuniad a fyddai’n sefydlu Cyfansoddiad i’r Undeb Ewropeaidd?”
- (5) Every power of a Minister of the Crown to make an order under this section shall be exercisable by statutory instrument. 40
- (6) An order under this section may be made only if a draft of the order has been –
- (a) laid before Parliament; and
- (b) approved by a resolution of each House.

- (7) Schedule 3 (which makes provision about the conduct of the referendum) has effect.

## 7 Entitlement to vote in the referendum

- (1) Subject to subsection (2), a person is entitled to vote in the referendum if, on the day it is held, he is – 5
- (a) an individual who would be entitled to vote as an elector at a parliamentary election in a constituency in the United Kingdom;
  - (b) a peer who would be entitled to vote as an elector at a local government election in an electoral area in Great Britain or at a local election in an electoral area in Northern Ireland; or 10
  - (c) a Commonwealth citizen who would be entitled to vote in Gibraltar as an elector at a European Parliamentary election.
- (2) A Minister of the Crown may by order made by statutory instrument make provision for the purposes of subsection (1) for disregarding alterations made after a specified date in a register of electors. 15
- (3) An order under subsection (2) may –
- (a) apply or incorporate, with or without modification, any provision of any enactment or subordinate legislation relating to elections;
  - (b) make different provision for different cases;
  - (c) make provision subject to such exemptions and exceptions as the Minister making the order thinks fit; and 20
  - (d) make such incidental, supplemental, consequential and transitional provision as that Minister thinks fit.
- (4) An order under subsection (2) may be made only if a draft of the order has been – 25
- (a) laid before Parliament; and
  - (b) approved by a resolution of each House.
- (5) In subsection (1)(b) “electoral area” means –
- (a) an electoral division or ward (or, in the case of a parish or community in which there are no wards, the parish or community) for which an election of councillors is held in England and Wales under the Local Government Act 1972 (c. 70); 30
  - (b) an electoral ward for which an election of councillors is held in Scotland under the Local Government etc. (Scotland) Act 1994 (c. 39); or
  - (c) an area for which an election of members of a district council is held in Northern Ireland under section 11 of the Electoral Law Act (Northern Ireland) 1962 (c. 14). 35

## 8 Legal challenge to the referendum result

- (1) No court may entertain any proceedings for questioning the number of ballot papers counted or votes cast in the referendum, as certified – 40
- (a) by the Chief Counting Officer, or
  - (b) by a counting officer,
- unless the proceedings are brought in accordance with this section.
- (2) The proceedings may be brought –
- (a) in England and Wales, only by a claim for judicial review; 45

- (b) in Scotland, only by a petition for judicial review;
  - (c) in Northern Ireland, only by an application for judicial review; or
  - (d) in Gibraltar, only by a claim for judicial review.
- (3) The court in England and Wales or Gibraltar must not give permission for a claim unless the claim form is filed before the end of the permitted period. 5
- (4) The court in Scotland must refuse a petition unless it is lodged before the end of the permitted period.
- (5) The court in Northern Ireland must refuse an application for leave to apply for judicial review unless it is lodged before the end of the permitted period.
- (6) In this section “the permitted period” means the period of six weeks starting with— 10
- (a) the date on which the Chief Counting Officer or (as the case may be) the counting officer gives a certificate as to the number of ballot papers counted and votes cast in the referendum; or
  - (b) if he gives more than one such certificate, the date of the last to be given. 15

#### PART 4

##### SUPPLEMENTAL

### 9 Financial provisions

- (1) *There shall be paid out of money provided by Parliament –*
- (a) *any expenditure incurred by a Minister of the Crown or government department by virtue of this Act; and* 20
  - (b) *any increase attributable to this Act in the sums payable out of such money under any other Act.*
- (2) *There shall be charged on and paid out of the Consolidated Fund –*
- (a) *any sums required to meet expenditure of the Electoral Commission in accordance with an order under paragraph 6 of Schedule 3;* 25
  - (b) *any sums required to meet expenditure falling to be so charged and paid in accordance with an order under paragraph 8 of that Schedule;*
  - (c) *any increase attributable to this Act in the sums so charged and paid under any other Act.* 30
- (3) *There shall be paid out of the National Loans Fund any increase attributable to this Act in the sums payable out of that Fund under any other Act.*
- (4) *Sums received by a Minister of the Crown or government department by virtue of this Act must be paid –*
- (a) *unless the Treasury determine that they must be paid into the National Loans Fund, into the Consolidated Fund; and* 35
  - (b) *if the Treasury do so determine, into the National Loans Fund.*
- (5) Subsection (4) does not apply where subordinate legislation made by virtue of this Act provides for the sums to be dealt with in another way.
- (6) The consent of the Treasury is required for the making of provision for the purposes of subsection (5). 40

## 10 Supplemental provisions

- (1) This Act may be cited as the European Union Act 2005.
- (2) In this Act –
  - “the 1972 Act” means the European Communities Act 1972 (c. 68);
  - “Chief Counting Officer” means the Chief Counting Officer for the referendum for the purposes of section 128(6) of the Political Parties, Elections and Referendums Act 2000 (c. 41); 5
  - “Community Treaties” and “the Communities” have the same meanings as in the 1972 Act;
  - “Community institution” means any institution of any of the Communities or an institution which is common to more than one of them; 10
  - “Community instrument” means an instrument issued by a Community institution;
  - “Community obligation” means an obligation created or arising by or under the Community Treaties (whether or not an enforceable Community obligation); 15
  - “counting officer” means a counting officer in relation to the referendum for the purposes of section 128(5) of the Political Parties, Elections and Referendums Act 2000; 20
  - “Court of the Communities” means the Court of Justice of the European Communities, the Communities’ Court of First Instance or a judicial panel attached to the Communities’ Court of First Instance;
  - “devolved competence” means devolved competence within the meaning of the Scotland Act 1998 (c. 46); 25
  - “either-way offence”, in relation to Scotland or Northern Ireland, means an offence triable either summarily or on indictment;
  - “enactment” includes Acts of the Scottish Parliament and Northern Ireland legislation and any enactment passed after the passing of this Act and before the entry into force of the EU Treaty; 30
  - “enforceable Community right” means a right to which section 2(1) of the 1972 Act applied at any time before the entry into force of the EU Treaty, and similar expressions are to be construed accordingly;
  - “modification” includes omission, addition or alteration, and cognate expressions are to be construed accordingly; 35
  - “the referendum” means the referendum to be held in pursuance of section 6;
  - “subordinate legislation” means any Order in Council, order, rules, regulations, scheme, warrant, byelaws or other instrument made (whether before or after the passing of this Act) under any Act, Act of the Scottish Parliament or Northern Ireland legislation; 40
  - “transferred matter” means a transferred matter within the meaning of section 4(1) of the Northern Ireland Act 1998 (c. 47);
  - “treaty” has the same meaning as in section 1(2) to (3) of the 1972 Act.
- (3) The enactments and instruments listed in Schedule 4 (which includes some that are spent) are repealed or revoked to the extent set out in column 2 of that Schedule. 45
- (4) Parts 1 and 2 and the repeals and revocations in Schedule 4 shall come into force on such day as a Minister of the Crown may by order made by statutory

instrument appoint; and different days may be appointed for different purposes.

- (5) An order may be made under subsection (4) only if –
- (a) the Chief Counting Officer has given a certificate under section 128(6) of the Political Parties, Elections and Referendums Act 2000 (c. 41) certifying the outcome of the referendum; and 5
  - (b) the total number of votes certified as cast in favour of the answer “Yes” exceeds the total number certified as cast in favour of the answer “No”.
- (6) Part 3 and, so far as it relates to that Part, this Part of this Act extend to Gibraltar. 10

## SCHEDULES

### SCHEDULE 1

Section 1

#### DEFINITIONS RELATING TO THE EUROPEAN UNION ETC

##### PART 1

#### SUBSTITUTION OF NEW SCHEDULE OF DEFINITIONS

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1 For Schedule 1 to the 1972 Act substitute the following Schedule –

#### “SCHEDULE 1

##### DEFINITIONS

- 1 The following expressions have the following meanings –
- ‘common foreign and security policy provisions’ has the same meaning as in section 5 of the European Union Act 2005; 10
  - ‘the Communities’ means the European Community, the European Coal and Steel Community and Euratom;
  - ‘the Community Treaties’ means the Treaties that were Community Treaties for the purposes of this Act immediately before the commencement of section 1 of the European Union Act 2005; 15
  - ‘enforceable EU right’ and similar expressions are to be construed in accordance with section 2(1) of this Act;
  - ‘EU customs duty’, in relation to any goods, means such duty of customs as may from time to time be fixed for those goods by directly applicable EU provision as the duty chargeable on importation into member States; 20
  - ‘EU institution’ means an institution of the European Union or of Euratom, or an institution which is common to them both; 25
  - ‘EU instrument’ means an instrument issued by an EU institution;
  - ‘EU obligation’ means an obligation created or arising by or under the EU Treaties (whether or not an enforceable EU obligation); 30
  - ‘Euratom’ means the European Atomic Energy Community;
  - ‘the Euratom Treaty’ has the meaning given by section 1(2)(a) of this Act;
  - ‘the European Court’ means the Court of Justice of the European Union (including any court included in that court under Article I-29 of the EU Treaty); 35
  - ‘the European Union’ means the European Union established under the EU Treaty;

- ‘member’, in the expression ‘member State’ –
- (a) in relation to a time before the entry into force of the EU Treaty, refers to membership at that time of the Communities; and
  - (b) in relation to any other time, refers to membership at that time of the European Union; 5
- ‘pre-accession treaties’ means the treaties which were pre-accession treaties for the purposes of this Act before the commencement of section 1 of the European Union Act 2005.
- 2 References, in relation to the European Union or to Euratom, to an institution or to a committee, officer or employee include references to an institution, committee, officer or employee that is common to them both, but only so far as it or he is acting for the Union or (as the case may be) for Euratom. 10
- 3 (1) This paragraph applies to references to an institution, body, office or agency established or created under the EU Treaties if it is one the powers of which are exercisable at any time by its predecessor in accordance with Article IV-438(2) of that Treaty (succession and legal continuity of institutions etc.). 15
- (2) A reference to such an institution, body, office or agency in relation to a time when its powers are so exercisable includes a reference to the predecessor.” 20

## PART 2

### APPLICATION OF DEFINITIONS TO ENACTMENTS GENERALLY

- Interpretation Act 1978 (c. 30)* 25
- 2 In Schedule 1 to the Interpretation Act 1978 (defined expressions), at the end insert –
- “*Construction of expressions relating to the European Union etc*
- The expressions ‘the Treaties’ and ‘the EU Treaties’ have the same meaning as in the European Communities Act 1972 (c. 68) (see section 1(2) to (3) of that Act and section 2 of the European Union Act 2005). 30
- The expression ‘the EU Treaty’ has the same meaning as it is given for the purposes of the European Communities Act 1972 by section 1(2A) of that Act. 35
- The following expressions have the same meanings as they are given for the purposes of the European Communities Act 1972 by Schedule 1 to that Act –
- ‘enforceable EU right’ and similar expressions
  - ‘EU customs duty’ 40
  - ‘EU institution’
  - ‘EU instrument’
  - ‘EU obligation’
  - ‘Euratom’

‘the Euratom Treaty’  
‘the European Court’  
‘the European Union’  
‘member State’.

That Schedule also applies for construing references – 5

(a) to an institution, committee, officer or employee common to both the European Union and Euratom; or

(b) to an institution, body, office or agency to which Article IV-438(2) of the EU Treaty (succession and legal continuity of institutions etc.) applies. 10

‘EEA agreement’ means the agreement on the European Economic Area signed at Oporto on 2nd May 1992, together with the Protocol adjusting that Agreement signed at Brussels on 17th March 1993, as from time to time modified or supplemented by or under the EU Treaties. [the entry into force of the EU Treaty] 15

‘EEA state’, in relation to any time, means a member State or any other state which at that time is a party to the EEA agreement. [the entry into force of the EU Treaty]

References to an EU instrument that has been amended, extended or applied by another such instrument are to be construed, unless the contrary intention appears, as references to the instrument as so amended, extended or applied.” 20

*Scotland Act 1998 (Transitory and Transitional Provisions) (Publication and Interpretation etc. of Acts of the Scottish Parliament) Order 1999 (S.I. 1999/1379)*

3 In Schedule 2 to the Scotland Act 1998 (Transitory and Transitional Provisions) (Publication and Interpretation etc. of Acts of the Scottish Parliament) Order 1999 (defined expressions), at the end insert – 25

*“Construction of expressions relating to the European Union etc.*

The expressions ‘the Treaties’ and ‘the EU Treaties’ have the same meaning as in the European Communities Act 1972 (c. 68) (see section 1(2) to (3) of that Act and section 2 of the European Union Act 2005). 30

The expression ‘the EU Treaty’ has the same meaning as it is given for the purposes of the European Communities Act 1972 by section 1(2A) of that Act. 35

The following expressions have the same meanings as they are given for the purposes of the European Communities Act 1972 by Schedule 1 to that Act –

‘enforceable EU right’ and similar expressions  
‘EU customs duty’ 40

‘EU institution’

‘EU instrument’

‘EU obligation’

‘Euratom’

‘the Euratom Treaty’ 45

‘the European Court’  
‘the European Union’  
‘member State’.

That Schedule also applies for construing references –

- (a) to an institution, committee, officer or employee common to both the European Union and Euratom; or 5
- (b) to an institution, body, office or agency to which Article IV-438(2) of the EU Treaty (succession and legal continuity of institutions etc.) applies.

In an Act of the Scottish Parliament passed, or Scottish subordinate legislation made, after the entry into force of the EU Treaty – 10

‘EEA agreement’ means the agreement on the European Economic Area signed at Oporto on 2nd May 1992, together with the Protocol adjusting that Agreement signed at Brussels on 17th March 1993, as from time to time modified or supplemented by or under the EU Treaties; and 15

‘EEA state’, in relation to any time, means a member State or any other state which at that time is a party to the EEA agreement. 20

References to an EU instrument that has been amended, extended or applied by another such instrument are to be construed, unless the contrary intention appears, as references to the instrument as so amended, extended or applied.” 25

*Interpretation Act (Northern Ireland) 1954 (1954 c. 33 (N.I.))*

4 After section 44 of the Interpretation Act (Northern Ireland) 1954 insert –

**“44A Construction of expressions relating to the European Union etc.**

(1) In an enactment –

- (a) the expressions ‘the Treaties’ and ‘the EU Treaties’ have the same meaning as in the European Communities Act 1972 (c. 68) (see section 1(2) to (3) of that Act and section 2 of the European Union Act 2005); 30
- (b) the expression ‘the EU Treaty’ has the same meaning as it is given for the purposes of the European Communities Act 1972 by section 1(2A) of that Act; 35
- (c) the following expressions have the same meanings as they are given for the purposes of the European Communities Act 1972 by Schedule 1 to that Act –
  - ‘enforceable EU right’ and similar expressions 40
  - ‘EU customs duty’
  - ‘EU institution’
  - ‘EU instrument’
  - ‘EU obligation’
  - ‘Euratom’ 45
  - ‘the Euratom Treaty’
  - ‘the European Court’

- ‘the European Union’  
‘member State’.
- (2) That Schedule also applies for construing references in an enactment –
- (a) to an institution, committee, officer or employee common to both the European Union and Euratom; or
  - (b) to an institution, body, office or agency to which Article IV-438(2) of the EU Treaty (succession and legal continuity of institutions etc.) applies.
- (3) In an enactment passed or made after the entry into force of the EU Treaty –
- (a) ‘EEA agreement’ means the agreement on the European Economic Area signed at Oporto on 2nd May 1992, together with the Protocol adjusting that Agreement signed at Brussels on 17th March 1993, as from time to time modified or supplemented by or under the EU Treaties; and
  - (b) ‘EEA state’ in relation to any time, means a member State or any other state which at that time is a party to the EEA agreement.
- (4) In an enactment references to an EU instrument that has been amended, extended or applied by another such instrument are to be construed as references to the instrument as so amended, extended or applied.”

## SCHEDULE 2

Section 4

### MODIFICATION OF ENACTMENTS ETC. AND CONTINUITY PROVISIONS 25

#### PART 1

##### AMENDMENTS OF THE 1972 ACT AND RELATED SAVINGS

###### *Introductory*

- 1 This Part of this Schedule applies to the 1972 Act.

###### *General implementation of Treaties* 30

- 2 (1) In section 2 (general implementation of Treaties), for “Community”, wherever occurring, substitute “EU”.
- (2) In subsection (2) of that section –
- (a) for “by regulations” substitute “by order, rules, regulations or scheme”; and
  - (b) for “objects of the Communities” substitute “objects of the European Union or of Euratom”.
- (3) In subsection (3) of that section, for “any of the Communities or member States, or” substitute “the European Union, to Euratom or to any of the member States, to meet”.

- 
- (4) In subsection (4) of that section, for “and regulations” substitute “or orders, rules, regulations or schemes”.
- (5) After that subsection insert –
- “(4A) In relation to –
- (a) an Order in Council made under this section on the recommendation of the First Minister of the Scottish Executive, or
- (b) any statutory instrument made under this section by the Scottish Ministers,
- the word ‘designated’ wherever occurring in subsection (2) shall be disregarded and references in this section to an Act of Parliament shall be read as references to an Act of the Scottish Parliament.”
- (6) Nothing in this paragraph prevents anything from continuing to have legal effect in accordance with the EU Treaty after its entry into force if it is something which –
- (a) had legal effect immediately before that time under section 2(1) of the 1972 Act; and
- (b) is required under that Treaty to continue to have legal effect after that time (with or without modifications).
- Decisions on Treaties, instruments etc and their proof*
- 3 (1) In section 3 (decisions on Treaties and Community instruments and their proof) –
- (a) omit “or any court attached thereto”, wherever occurring;
- (b) in subsections (1) and (4), for “Community instrument”, wherever occurring, substitute “EU instrument”;
- (c) in subsection (2), for “Official Journal of the Communities” and “any of the Communities or of any Community institution” substitute, respectively, “Official Journal of the European Union” and “the European Union, Euratom or any EU institution”; and
- (d) in subsection (3), for “a Community institution”, wherever occurring, substitute “an EU institution”.
- (2) After subsection (5) of that section insert –
- “(6) So far as may be necessary for purposes connected with recognising or giving effect to any jurisdiction or decision of the European Court in relation to the subject-matter of the common foreign and security policy provisions, references in this section –
- (a) to the Treaties, or
- (b) to an EU instrument or EU institution,
- shall be construed as if those Treaties included those provisions.”
- (3) That section has effect with the modifications set out in sub-paragraph (4) in relation to –
- (a) proceedings relating to anything occurring wholly or partly before the entry into force of the EU Treaty;
- (b) decisions before that time of the Court of the Communities; and
- (c) instruments and other acts before that time of any of the Communities or of any Community institution.

- (4) Those modifications are that—
- (a) references to the EU Treaties include references to the Community Treaties;
  - (b) references to an EU instrument include references to a Community instrument; 5
  - (c) references to the Official Journal of the European Union include references to the Official Journal of the Communities;
  - (d) references to an EU institution include references to a Community institution; and
  - (e) the references to the European Court in section 3(2) and (3) include 10  
references to the Court of the Communities.

#### *Custom duties*

- 4 (1) In section 5 (Community customs duties)—
- (a) in subsection (1), omit “on and after the relevant date” and the words 15  
from “or, if the goods” to the end of the subsection, and for  
“Community customs duty” substitute “EU customs duty”; and
  - (b) in subsection (3), for “powers to make orders conferred by  
subsections (1) and (2) above” substitute “power to make orders  
under this section”.
- (2) In paragraph 4(6) of Schedule 2 (which makes provision as respects 20  
instruments relating to customs duties), for “a Community obligation”  
substitute “an EU obligation”.

#### *Agriculture*

- 5 In section 6 (agriculture)—
- (a) in subsection (3), for “Community arrangements” substitute “EU 25  
arrangements”;
  - (b) in subsection (4), for “Economic Community” and “Community  
provision” substitute, respectively, “European Union” and “EU  
provision”;
  - (c) in subsection (5), for “Economic Community”, “Community customs 30  
duties” and “Community arrangements” substitute, respectively,  
“European Union”, “EU customs duties” and “EU arrangements”;
  - (d) in subsection (8), for “Community arrangements” substitute “EU  
arrangements”.

#### *Community offences* 35

- 6 (1) In section 11, in subsection (1) (false statements in the European Court etc.),  
omit the words “or any court attached thereto”, in both places.
- (2) But, in that subsection, the references to the European Court shall have 40  
effect—
- (a) in the case of the first reference, in relation to statements made before  
the entry into force of the EU Treaty, and
  - (b) in the case of the second reference, in relation to reports made before  
the entry into force of that Treaty,
- as references to the Court of the Communities.

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*Furnishing information to the Communities*

- 7 In section 12 (furnishing information to the Communities), for “a Community obligation to a Community institution” substitute “an EU obligation to an EU institution”.

*Penalties for criminal offences under subordinate legislation*

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- 8 In paragraph 1 of Schedule 2 (powers to make subordinate legislation), after sub-paragraph (2) insert –

“(2A) Sub-paragraph (1)(d) does not prevent the creation of an indictable offence punishable, on conviction on indictment, with imprisonment for a term of a particular length if –

10

- (a) an obligation created or arising by or under Article III-271(1) or (2) of the EU Treaty (minimum rules with regard to the definition of criminal offences and sanctions) requires the offence to be punishable with imprisonment for a term of that length;

15

- (b) the offence may be committed in different circumstances in some of which such an obligation would require it to be so punishable; or

- (c) the offence is one committed outside the United Kingdom which, if committed in the United Kingdom, or a part of it, would be punishable, on conviction on indictment, with imprisonment for a term of that length.

20

(2B) For the purposes of sub-paragraph (2A) an obligation created or arising by or under Article III-271(1) or (2) of the EU Treaty –

- (a) requires an offence to be punishable with imprisonment for a term of a particular length, or

25

- (b) requires it to be so punishable in particular circumstances, if that obligation requires the terms capable of being imposed for that offence, or of being so imposed in those circumstances, to include a term of that length, or to include a term falling in a range of lengths that includes that length.

30

(2C) Sub-paragraph (1)(d) above shall have effect in relation to provision which –

- (a) implements an EU obligation created or arising by or under Article III-160 or III-322 of the EU Treaty (restrictions on capital movements and payments and interruptions and reductions of economic or financial relations), or enables such an obligation to be implemented,

35

- (b) deals with matters arising out of or related to any such obligation, or

40

- (c) deals with matters arising out of or related to the operation of section 2(1) of this Act in relation to provision made by or under either of those Articles,

as if for ‘two years’ there were substituted ‘ten years’.”

45

*References to future modifications of EU instruments*

- 9 (1) After paragraph 1 of Schedule 2 insert –
- “1A (1) Where –
- (a) subordinate legislation makes provision for a purpose mentioned in section 2(2) of this Act, 5
  - (b) the legislation contains a reference to an EU instrument, and
  - (c) it appears to the person making the legislation that it is necessary or expedient (whether or not for that purpose) for the reference to be construed as a reference to the EU instrument as amended from time to time, 10
- the subordinate legislation may make express provision to that effect.
- (2) In this paragraph ‘subordinate legislation’ has the same meaning as in the European Union Act 2005.” 15

*Procedure for subordinate legislation in Great Britain*

- 10 (1) In paragraph 2 of Schedule 2, in sub-paragraph (1) (power to make regulations exercisable by statutory instrument), for the words from “where” to “the power” substitute “the power to make orders, rules, regulations or schemes under section 2 or 6(6) of this Act”. 20
- (2) After that sub-paragraph insert –
- “(1A) Subject to sub-paragraph (1E), an Order in Council or other statutory instrument containing (with or without other provision) any provision falling within sub-paragraph (1B) or (1C) may be made only if a draft of it has been – 25
- (a) laid before Parliament; and
  - (b) approved by a resolution of each House.
- (1B) Provision falls within this sub-paragraph if it –
- (a) makes conduct punishable with imprisonment for a term of more than two years in circumstances in which it would not have been so punishable apart from the Order or other instrument; or 30
  - (b) increases the term of imprisonment that may be imposed for an offence that is already punishable with imprisonment for a term of two years, or that is already punishable with imprisonment for a longer term. 35
- (1C) Provision falls within this sub-paragraph if (without being excluded from this sub-paragraph by sub-paragraph (1D)) it –
- (a) implements an EU obligation created or arising by or under the provisions of Section 4 or 5 of Chapter IV of Title III of Part III of the EU Treaty (Articles III-270 to III-277 on judicial co-operation in criminal matters and police co-operation), or enables such an obligation to be implemented; or 40
  - (b) deals with matters arising out of or related to any such obligation. 45

- 
- (1D) The provision excluded from sub-paragraph (1C) is any provision which (without falling within sub-paragraph (1B)) is made solely for or in connection with the implementation of an obligation created or arising under Article III-271(2) (minimum rules imposed for harmonisation purposes with regard to criminal offences and sanctions). 5
- (1E) Sub-paragraph (1A) does not apply to any Order in Council or other statutory instrument which—
- (a) would (apart from this sub-paragraph) be subject to that sub-paragraph by reason only of provision contained in it by virtue of paragraph 1(2C) above; and 10
  - (b) contains a declaration by the person making it that the urgency of the matter makes it necessary for the Order or other instrument to be made without the approval required by sub-paragraph (1A) of this paragraph. 15
- (1F) But an Order in Council or other statutory instrument which for the purposes of this paragraph contains such a declaration—
- (a) must be laid before Parliament after being made; and
  - (b) if not approved by a resolution of each House before the end of 40 days beginning with the day on which it was made, shall cease to have effect at the end of that period. 20
- (1G) Where an Order in Council or other statutory instrument ceases to have effect in accordance with sub-paragraph (1F), that does not—
- (a) affect anything previously done under it; or
  - (b) prevent the making of a new Order or other new subordinate legislation to the same or similar effect.” 25
- (3) In sub-paragraph (2) of that paragraph, for “or regulations made in the exercise of a power so conferred” substitute “or any order, rules, regulations or scheme made in the exercise of a power conferred by section 2 or 6(6) of this Act”. 30
- (4) After that sub-paragraph insert—
- “(3) In sub-paragraph (1F) ‘40 days’ means 40 days computed as provided for in section 7(1) of the Statutory Instruments Act 1946.
- (4) In relation to—
- (a) an Order in Council made under section 2 of this Act on the recommendation of the First Minister of the Scottish Executive, or 35
  - (b) any statutory instrument made under that section by the Scottish Ministers,
- references in this paragraph to Parliament, or to each or either House of Parliament, shall have effect as references to the Scottish Parliament and the reference in sub-paragraph (3) to section 7(1) of the Statutory Instruments Act 1946 shall have effect as a reference to Article 13(1) of the Scotland Act 1998 (Transitory and Transitional Provisions) (Statutory Instruments) Order 1999.” 40 45

*Procedure for subordinate legislation in Northern Ireland*

- 11 (1) Paragraph 3 of Schedule 2 is to become sub-paragraph (1) of that paragraph with the following amendments –
- (a) in that sub-paragraph for “regulations”, wherever occurring, substitute “order, rules, regulations or scheme”; and 5
  - (b) after that sub-paragraph insert the sub-paragraphs set out in sub-paragraph (2).
- (2) The sub-paragraphs inserted in paragraph 3 are –
- “(2) Subject to sub-paragraph (6), regulations containing (with or without other provision) any provision falling within sub-paragraph (3) or (4) may be made only if a draft of them has been laid before and approved by the Northern Ireland Assembly. 10
  - (3) Provision falls within this sub-paragraph if it –
    - (a) makes conduct punishable with imprisonment for a term of more than two years in circumstances in which it would not have been so punishable apart from the regulations; or 15
    - (b) increases the term of imprisonment that may be imposed for an offence that is already punishable with imprisonment for a term of two years, or that is already punishable with imprisonment for a longer term. 20
  - (4) Provision falls within this sub-paragraph if (without being excluded from this sub-paragraph by sub-paragraph (5)) it –
    - (a) implements an EU obligation created or arising by or under the provisions of Section 4 or 5 of Chapter IV of Title III of Part III of the EU Treaty (Articles III-270 to III-277 on judicial co-operation in criminal matters and police co-operation), or enables such an obligation to be implemented; or 25
    - (b) deals with matters arising out of or related to any such obligation. 30
  - (5) The provision excluded from sub-paragraph (4) is any provision which (without falling within sub-paragraph (3)) is made solely for or in connection with the implementation of an obligation created or arising under Article III-271(2) (minimum rules imposed for harmonisation purposes with regard to criminal offences and sanctions). 35
  - (6) Sub-paragraph (2) does not apply to any regulations which –
    - (a) would (apart from this sub-paragraph) be subject to that sub-paragraph by reason only of provision contained in them by virtue of paragraph 1(2C) above; and 40
    - (b) contain a declaration by the person making the regulations that the urgency of the matter makes it necessary for them to be made without the approval required by sub-paragraph (2).
  - (7) But regulations which for the purposes of this paragraph contain such a declaration – 45
    - (a) must be laid before the Northern Ireland Assembly after being made; and

- (b) if not approved by a resolution of the Assembly within the statutory period, beginning with the day on which the regulations were made, shall cease to have effect at the end of that period.
- (8) In sub-paragraph (7) ‘the statutory period’ has the meaning given by section 41(2) of the Interpretation Act (Northern Ireland) 1954 (1954 c. 33 (N.I.)). 5
- (9) Where regulations cease to have effect in accordance with sub-paragraph (7), that does not— 10
- (a) affect anything previously done under them; or
- (b) prevent the making of new regulations to the same or similar effect.
- (10) In sub-paragraphs (2) to (9) ‘regulations’ means any order, rules, regulations or scheme made by a Northern Ireland Minister or Northern Ireland department under a power conferred by this Act.” 15

*Saving for existing subordinate legislation under 1972 Act*

- 12 (1) Subordinate legislation made under the 1972 Act before the entry into force of the EU Treaty is to continue to have effect after the entry into force of that Treaty notwithstanding any modification by this Act of the power under which it was made. 20
- (2) Provisions having effect in accordance with this paragraph so have effect with the modifications made by Part 3 of this Schedule and by orders and regulations under section 4.

## PART 2 25

## SPECIFIC MODIFICATIONS OF ENACTMENTS OTHER THAN THE 1972 ACT

*Civil Jurisdiction and Judgments Act 1982 (c. 27)*

- 13 In section 24(1)(c) and (2)(c) of the Civil Jurisdiction and Judgments Act 1982 (cases in which interim relief available), for “Article 68 of the Treaty establishing the European Community”, in each place, substitute “Article III-369 of the EU Treaty”. 30

*European Communities (Amendment) Act 1993 (c. 32)*

- 14 (1) The European Communities (Amendment) Act 1993 is amended as follows.
- (2) In section 2 (economic and monetary union)— 35
- (a) for the words from “to move to” to “1992)” substitute “to adopt the euro in accordance with Protocol 13 to the EU Treaty (the protocol on certain provisions relating to the United Kingdom as regards economic and monetary union)”; 40
- (b) after “economic policies” insert “and”; and
- (c) for the words from “Article 2” onwards substitute “Article I-3 of that Treaty as provided for in Articles III-178 and III-179.”

- (3) In section 3 (annual report by the Bank of England), for “Article 108 of the Treaty establishing the European Community” substitute “Article III-189 of the EU Treaty”.
- (4) In section 4 (information for Commission), for “Article 103(3) of the Treaty establishing the European Community” substitute “Article III-179(3) of the EU Treaty”. 5
- (5) In section 5 (convergence criteria) –
- (a) for “Article 103(3) of the Treaty establishing the European Community” substitute “Article III-179(3) of the EU Treaty”;
  - (b) for “Article 2” substitute “Article I-3”; and 10
  - (c) for “Articles 103 and 104c” substitute “Articles III-179 and III-184”.
- (6) In section 6 (Committee of the Regions), for “Article 198a of the Treaty establishing the European Community” substitute “Article I-32 of the EU Treaty”.
- Government of Wales Act 1998 (c. 38)* 15
- 15 In section 29 of the Government of Wales Act 1998 (implementation of EU law) –
- (a) in subsections (2) and (3), for “regulations”, wherever occurring, substitute “any order, rules, regulations or scheme”; and
  - (b) in subsection (3), for “Paragraph 2(2)” substitute “Paragraph 2(1A) to (3)”. 20
- Scotland Act 1998 (c. 46) and Northern Ireland Act 1998 (c. 47)*
- 16 (1) In each of –
- (a) section 34(3) of the Scotland Act 1998 (meaning of reference for preliminary ECJ ruling in relation to Bills in the Scottish Parliament), and 25
  - (b) section 12(3) of the Northern Ireland Act 1998 (which defines that expression in relation to Bills in the Northern Ireland Assembly), for the words from “European Court” onwards substitute “European Court under Article III-369 of the EU Treaty.” 30
- (2) This paragraph applies only in relation to references to the European Court made after the entry into force of the EU Treaty.
- 17 In section 119(4) of the Scotland Act 1998 (application of provisions relating to the Consolidated Fund to section 2(3) of the 1972 Act), for “Community obligation” substitute “EU obligation”. 35
- 18 In paragraph 1(2) of Schedule 4 to the Scotland Act 1998 (provisions protected from modification by the Scottish Parliament), after paragraph (f) insert –
- “(g) section 5 of the European Union Act 2005 so far as it confers powers on the Secretary of State.” 40
- Financial Services and Markets Act 2000 (c. 8)*
- 19 In section 417(4)(b) of the Financial Services and Markets Act 2000 (meaning of “establishment”), for “Article 48 of the Treaty” substitute “Article III-142 of the EU Treaty”.

*Export Control Act 2002 (c. 28)*

- 20 (1) In section 5(3) of the Export Control Act 2002 (meaning of “international obligation”), for the words from “joint action” onwards substitute “a European decision under the common foreign and security policy provisions (within the meaning of section 5 of the European Union Act 2005).” 5
- (2) Nothing in this paragraph –
- (a) prevents the imposition of controls for the purpose of giving effect to positions adopted and decisions taken before the entry into force of the EU Treaty; or 10
- (b) affects controls imposed for that purpose before that time.

*European Union (Accessions) Act 2003 (c. 35)*

- 21 In section 2(11) of the European Union (Accessions) Act 2003 (freedom of movement of workers), in the definition of “worker”, for “Article 39 of the Treaty establishing the European Community” substitute “Article III-133 of the EU Treaty”. 15

*Criminal Justice Act 2003 (c. 44)*

- 22 In section 76(4)(c) of the Criminal Justice Act 2003 (leave to appeal against acquittal etc.), for “Article 31 or 34 of the Treaty on European Union” substitute “section 4 of Chapter IV of Title III of Part III of the EU Treaty”. 20

*References to specific treaty articles relating to competition*

- 23 (1) In the enactments specified in sub-paragraph (2), references to an Article of the treaty establishing the European Community that is set out in column 1 of the following table shall have effect as references to the Article of the EU Treaty set out in column 2. 25

<i>Article of EC Treaty</i>	<i>Article of EU Treaty</i>	
33	III-227	
81	III-161	
81(1)	III-161(1)	30
81(3)	III-161(3)	
82	III-162	
84	III-164	
86	III-166	

- (2) Those enactments are – 35
- (a) section 36A(3)(c) and (d) of the Gas Act 1986 (c. 44);
- (b) section 9A(4)(c) and (d) of the Company Directors Disqualification Act 1986 (c. 46);

- (c) section 43(3)(c) and (d) of the Electricity Act 1989 (c. 29);
  - (d) section 31(3)(c) and (d) of the Water Industry Act 1991 (c. 56);
  - (e) section 67(3)(c) and (d) of the Railways Act 1993 (c. 43);
  - (f) the Competition Act 1998 (c. 41);
  - (g) section 86(3)(c) and (d) of the Transport Act 2000 (c. 38); 5
  - (h) sections 77 and 371 of the Communications Act 2003 (c. 21) and paragraph 6(7)(a) of Schedule 11 to that Act; and
  - (i) section 22(3)(c) and (d) of the Channel Tunnel Rail Link Act 1996 (c. 61).
- (3) Where by virtue of this paragraph an enactment specified in sub-paragraph (2) is to have effect as conferring a power or imposing a duty by reference to contraventions of an Article of the EU Treaty set out in column 2 of the table in sub-paragraph (1), the enactment is to have effect as if the contraventions by reference to which – 10
- (a) the power is to be exercisable, or 15
  - (b) the duty is to be performed,
- included pre-commencement contraventions of the corresponding Article of the treaty establishing the European Community that is set out in column 1 of that table.
- (4) In sub-paragraph (3) “pre-commencement contravention” means a contravention before the entry into force of the EU Treaty. 20

*References to specific treaty articles relating to EU citizenship*

- 24 (1) In the provisions specified in sub-paragraph (2) the references to Article 17 or 17.1 of the Treaty establishing the European Community (including those framed as references to Article 8.1 of that Treaty as amended by Title II of the Treaty on European Union) shall each have effect as a reference to Article I-10 of the EU Treaty. 25
- (2) Those enactments are –
- (a) the definition of “citizen of the Union” in section 4(1) of the City of London (Various Powers) Act 1957 (1957 c. x); 30
  - (b) the definition of “citizen of the Union” in section 130(1) of the Electoral Law Act (Northern Ireland) 1962 (1962 c. 14 (N.I.));
  - (c) section 79(2A) of the Local Government Act 1972 (c. 70);
  - (d) the definition of “citizen of the Union” in section 3(2) of the Local Government Act (Northern Ireland) 1972 (1972 c. 9 (N.I.)); 35
  - (e) the definition of “citizen of the Union” in section 29(2) of the Local Government (Scotland) Act 1973 (c. 65);
  - (f) the definition of “citizen of the Union” in section 202(1) of the Representation of the People Act 1983 (c. 2);
  - (g) the definition of “citizen of the Union” in section 10(1) of the Elected Authorities (Northern Ireland) Act 1989 (c. 3); 40
  - (h) the definition of “citizen of the Union” in section 20(8) of the Greater London Authority Act 1999 (c. 29);
  - (i) the definition of “citizen of the European Union” in section 17 of the European Parliamentary Elections Act 2002 (c. 24); and 45
  - (j) section 4(5) of the Communications Act 2003.

*References to provisions of UK accession treaty relating to the Channel Islands and Isle of Man*

- 25 In the definition of “national” in each of—
- (a) section 24(1) of the Pharmacy Act 1954 (c. 61),
  - (b) section 55(1) of the Medical Act 1983 (c. 54), and
  - (c) section 15(2) of the Dentists Act 1984 (c. 24), and paragraph 1(3) of Schedule 4 to that Act, 5
- for the words from “Article” to “Community provisions” substitute “Article 9 of Protocol 8 to the EU Treaty (Channel Islands and Isle of Man) is not to benefit from provisions of Union law”.

## PART 3 10

## MODIFICATIONS OF GENERAL APPLICATION

*Introductory*

- 26 (1) This Part of this Schedule applies, except so far as the context otherwise requires, to—
- (a) provisions contained in enactments (other than the 1972 Act) which were passed before the entry into force of the EU Treaty; and 15
  - (b) provisions contained in subordinate legislation made before that time.
- (2) In this Part of this Schedule, a provision to which this Part of this Schedule applies is referred to as a “relevant existing provision”. 20
- (3) A modification by this Part of this Schedule of references to anything applies to references to that thing however they are worded.

*References to “the Communities”*

- 27 (1) In every relevant existing provision, a reference to the Communities is to have effect, in relation to times after the entry into force of the EU Treaty, as a reference to the European Union and Euratom or either of them. 25
- (2) In every relevant existing provision, a reference to the European Community or to the European Coal and Steel Community is to have effect, in relation to times after the entry into force of the EU Treaty, as a reference to the European Union. 30

*References to Community law*

- 28 (1) Where a relevant existing provision refers to Community law in a context in which that expression is not defined by a relevant existing provision, that reference is to have effect, in relation to times after the entry into force of the EU Treaty, as a reference to the law of the European Union. 35
- (2) Where a relevant existing provision refers to Community law in a context in which a definition contained in such a provision applies to the expression—
- (a) the defined expression, and
  - (b) the definition, as modified by or under this Act,
- are to be read, in relation to times after the entry into force of the EU Treaty, as if, in each case, the words “European Union law” were substituted for 40

“Community law”, and as if the definition were appropriately repositioned in any alphabetical order in which it appears.

*References to the Community Treaties*

- 29 In every relevant existing provision –
- (a) a reference to the Community Treaties is to have effect, in relation to times after the entry into force of the EU Treaty, as a reference to the EU Treaties; 5
  - (b) a reference to a specific treaty that is one of the Community Treaties but not included in the definition of the EU Treaties is to have effect, in relation to such times, as a reference to the EU Treaty; and 10
  - (c) a reference to the Treaty on European Union which includes a reference to provisions of that treaty that are not included in the Community Treaties is also to have effect, in relation to such times, as a reference to the EU Treaty.

*References to Community institutions* 15

- 30 (1) In every relevant existing provision a reference to an institution of the Communities is to have effect, so far as necessary for the purpose of –
- (a) giving effect to that provision in relation to acts or omissions taking place after the entry into force of the EU Treaty, or
  - (b) conferring or imposing any right or obligation in relation to times after its entry into force, 20
- as references to the corresponding EU institution.
- (2) Where on the entry into force of the EU Treaty any Community or other obligation falling to be discharged in relation to a Community institution has arisen but has not yet been discharged, that obligation is to have effect after the entry into force of that Treaty as an obligation falling to be discharged in relation to the corresponding EU institution. 25

*References to “the European Court”*

- 31 In every relevant existing provision a reference to the European Court is to have effect, in relation to times before the entry into force of the EU Treaty, as a reference to the Court of the Communities. 30

*References to Community instruments*

- 32 (1) In every relevant existing provision, a reference to a Community instrument (apart from references to which sub-paragraph (2) applies) is to have effect, so far as necessary for the purpose of giving effect to the provision in relation to instruments issued or made after the entry into force of the EU Treaty, as a reference to an EU instrument. 35
- (2) In every relevant existing provision a reference to a Community instrument of a particular description is to have effect, so far as necessary for that purpose, as a reference to the corresponding description of EU instrument. 40

*Other references to some other Community obligations etc.*

- 33 (1) In every relevant existing provision the following references are to have effect, in relation to times after the entry into force of the EU Treaty, as follows –
- (a) references to agricultural levies of the Economic Community are to have effect as references to agricultural levies of the European Union; 5
  - (b) references to Community customs duties are to have effect as references to EU customs duties;
  - (c) references, in terms, to Community legislation are to have effect as references to legislative acts of the European Union; 10
  - (d) references, in terms, to a Community obligation, are to have effect as references to an EU obligation;
  - (e) references, in terms, to directly applicable Community provisions are to have effect as references to provisions that are directly applicable under the EU Treaties; and 15
  - (f) references, in terms, to an enforceable Community right, enforceable Community obligation or enforceable Community restriction are to have effect as references, respectively, to an enforceable EU right, an enforceable EU obligation and an enforceable EU restriction.
- (2) Sub-paragraph (1) has effect in the case of a relevant existing provision only so far as necessary for the purpose of giving effect to that provision in relation (as the case may be) to – 20
- (a) agricultural levies and customs duties becoming due after the entry into force of the EU Treaty;
  - (b) legislative acts of the European Union after the entry into force of that Treaty; 25
  - (c) obligations, rights or restrictions created or arising after the entry into force of that Treaty; or
  - (d) directly applicable provisions made after the entry into force of that Treaty. 30

*Further general modification*

- 34 Relevant existing provisions are to be construed in relation to times after the entry into force of the EU Treaty with such modifications (in addition to those for which the other provisions of this Schedule provide) as are necessary for giving effect in the law of every part of the United Kingdom to the continuity of both – 35
- (a) law, and
  - (b) legal and administrative procedures,
- that is provided for by Article IV-438 of the EU Treaty.

*References to regulations under section 2(2) of the 1972 Act* 40

- 35 References in relevant existing provisions to regulations under subsection (2) of section 2 of the 1972 Act are to be read as including references to any order, rules or scheme under that subsection.

*Saving for existing subordinate legislation under enactments modified by Part 3*

- 36 (1) Subordinate legislation made under any enactment before the entry into force of the EU Treaty is to continue to have effect after the entry into force of that Treaty notwithstanding any modification by this Part of this Schedule of the power under which it was made. 5
- (2) Provisions having effect in accordance with this paragraph so have effect with the modifications made by this Part of this Schedule and by orders and regulations under section 4.

SCHEDULE 3

Section 6

CONDUCT OF THE REFERENDUM 10

*Introductory*

- 1 (1) In this Schedule “the 2000 Act” means the Political Parties, Elections and Referendums Act 2000 (c. 41).
- (2) Expressions used in this Schedule and in Part 7 of the 2000 Act have the same meanings in this Schedule as in that Part. 15

*Encouraging voting*

- 2 The Electoral Commission may do anything they think necessary or expedient for the purpose of encouraging voting at the referendum.
- 3 (1) For the purpose of encouraging voting at the referendum the Electoral Commission may, in particular, direct each counting officer to provide such information as may be specified in the direction to every person who is entitled, in the referendum, to vote in the counting officer’s voting area. 20
- (2) A direction under this paragraph may also include requirements as to the form and manner in which the information is to be sent.
- (3) A direction under this paragraph may not require the inclusion of additional information in a document or part of a document the form of which is prescribed by or under any enactment. 25
- (4) In sub-paragraph (1) “voting area”, in relation to a counting officer, means – 30
- (a) in the case of a counting officer appointed for a relevant area in Great Britain, that area;
  - (b) in the case of the Chief Electoral Officer for Northern Ireland in his capacity as a counting officer, Northern Ireland; and
  - (c) in the case of a counting officer for Gibraltar, Gibraltar.

*Provision of information to voters*

- 4 (1) This paragraph applies if the Electoral Commission have not, before the appropriate day, designated an organisation under section 108 of the 2000 Act (organisations to whom assistance is available under section 110 of that Act) in relation to each possible outcome of the referendum. 35

- (2) The Electoral Commission may take such steps as they think appropriate to provide such information for persons entitled to vote in the referendum as the Commission think is likely to promote awareness among those persons about the arguments for each answer to the referendum question.
- (3) In this paragraph “the appropriate day” means – 5
- (a) the day specified for the purposes of this paragraph in an order under subsection (6) of section 109 of the 2000 Act;
  - (b) if no such order is made and one or more applications under that section are made in relation to each possible outcome of the referendum before the 29th day of the referendum period, the 43rd day of the referendum period; and 10
  - (c) in any other case in which no such order is made, the 29th day of the referendum period.
- (4) Information provided in pursuance of this paragraph must be provided by whatever means the Electoral Commission think is most likely to secure (in the most cost-effective way) that the information comes to the notice of everyone entitled to vote in the referendum. 15

*Combination of polls*

- 5 (1) A Minister of the Crown may by order make provision for, or in connection with, the combination of polls at the referendum with those at an election or at another referendum, or both. 20
- (2) An order under this paragraph may include provision creating criminal offences.

*Payment of the charges and expenses of relevant officers by the Electoral Commission*

- 6 (1) A Minister of the Crown may by order make provision for the payment by the Electoral Commission of any of the following – 25
- (a) the charges in respect of services properly rendered, or expenses properly incurred, in connection with the referendum by a relevant officer; and
  - (b) the sum equal to any increase in the superannuation contributions required to be paid by a local authority in respect of a person in consequence of a fee paid as part of those charges. 30
- (2) The order may include provision as to –
- (a) the services and expenses, or descriptions of services and expenses, in respect of which payment may be made; 35
  - (b) the maximum amount to be paid or reimbursed in respect of such services and expenses, or descriptions of services and expenses;
  - (c) payments in advance; and
  - (d) accounts to be submitted.
- (3) Before making an order under this paragraph, the Minister in question must consult the Electoral Commission. 40
- (4) The consent of the Treasury is required for the making of an order under this paragraph.
- (5) In this paragraph “relevant officer” means – 45
- (a) a counting officer; or

- (b) a person appointed by the Chief Counting Officer or a counting officer to discharge all or any of his functions.

*Accounts relating to expenditure under paragraph 6*

- 7 (1) As soon as reasonably practicable after the holding of the referendum the accounting officer of the Electoral Commission must— 5
- (a) prepare and sign an account of the payments made by the Commission in accordance with an order under paragraph 6; and
  - (b) submit a copy of the account, as signed, to the Comptroller and Auditor General.
- (2) The account must be in such form as the Treasury direct and must set out— 10
- (a) the aggregate amount of charges and expenses falling within subparagraph 6(1)(a) in respect of which those payments have been made; and
  - (b) the aggregate amount of sums falling within paragraph 6(1)(b) in respect of which they have been made. 15
- (3) The Comptroller and Auditor General must—
- (a) examine and certify the account submitted to him under this paragraph; and
  - (b) lay a copy of the account, as certified, and of his report on it before each House of Parliament. 20

*Gibraltar*

- 8 (1) A Minister of the Crown may by order make such provision as he considers appropriate for the purposes of, or in connection with, one or both of the following—
- (a) the holding of the referendum in Gibraltar; and 25
  - (b) the regulation there of the conduct of the referendum.
- (2) The provision that may be included in an order under this paragraph includes, in particular—
- (a) provision about any matter as respects which the Political Parties, Elections and Referendums Act 2000 (c. 41) makes provision for the United Kingdom in connection with referendums; 30
  - (b) provision for applying any provision made under section 7(2) to Gibraltar with modifications;
  - (c) provision about donations to political parties and others who campaign, or are proposing to campaign, for one or other of the possible outcomes to the referendum; 35
  - (d) provision imposing obligations in relation to the referendum on the providers of programme services;
  - (e) provision conferring functions in relation to the referendum on any public authority in Gibraltar that is responsible for regulating those providers; 40
  - (f) provision conferring jurisdiction on courts in Gibraltar that are specified in the order or which are determined in the manner so specified;
  - (g) provision conferring jurisdiction in relation to matters arising in Gibraltar on courts in the United Kingdom; 45

- (h) provision for expenses incurred by specified persons in accordance with the order to be charged on and paid out of the Consolidated Fund.
- (3) Before making an order under this paragraph the Minister in question must consult both – 5
- (a) the Government of Gibraltar; and
- (b) the Electoral Commission.
- (4) An order under this paragraph may –
- (a) provide for conduct to constitute a criminal offence under the law of Gibraltar; 10
- (b) extend and apply to Gibraltar, with or without modification, the provisions of any enactment or subordinate legislation relating to any matter mentioned in sub-paragraph (2);
- (c) modify any such enactment or subordinate legislation (including any imposing criminal liability) so far as it has effect in relation to any part of the United Kingdom; 15
- (d) modify or apply or incorporate, with or without modification, the provisions of any legislation in force in Gibraltar relating to elections or referendums or to any such matter.
- (5) The capacity of the Gibraltar legislature to make law in relation to any matter in relation to which provision may be made under this paragraph is not affected by the existence of the power conferred by this paragraph. 20
- (6) But sub-paragraph (5) is not to be construed as restricting the operation in relation to a law made by the Gibraltar legislature of the Colonial Laws Validity Act 1865 (c. 63) (under which colonial laws are void if repugnant to provision made under an Act of Parliament). 25

*Supplementary provision*

- 9 This Act does not affect the power of the Secretary of State to make provision under section 129 of the 2000 Act (orders regulating the conduct of referendums) for or in connection with the referendum. 30
- 10 Section 126 of the 2000 Act (identification of promoter and publisher of referendum materials) does not apply to any material published for the purposes of the referendum if the publication is required under or by virtue of an order under section 129 of that Act.

*Orders under this Schedule* 35

- 11 (1) Every power to make an order under this Schedule shall be exercisable by statutory instrument.
- (2) An order under paragraph 5 or 8 may be made only if a draft of the order has been – 40
- (a) laid before Parliament; and
- (b) approved by a resolution of each House.
- (3) An order under this Schedule may –
- (a) apply or incorporate, with or without modification, the provision of an enactment or subordinate legislation relating to donations, elections or referendums; 45



<i>Title and chapter or number</i>	<i>Extent of repeal or revocation</i>	
European Communities (Greek Accession) Act 1979 (c. 57)	The whole Act.	
European Communities (Spanish and Portuguese Accession) Act 1985 (c. 75)	The whole Act.	5
European Communities (Amendment) Act 1986 (c. 58)	Sections 1. Section 2(b). Section 3(4).	
European Communities (Amendment) Act 1993 (c. 32)	Section 1. Section 7.	10
European Economic Area Act 1993 (c. 51)	Section 1.	
European Union (Accessions) Act 1994 (c. 38)	The whole Act.	15
European Communities (Amendment) Act 1998 (c. 21)	The whole Act.	
Scotland Act 1998 (c. 46)	In Schedule 8, paragraph 15(3).	
Scotland Act 1998 (Transitory and Transitional Provisions) (Publication and Interpretation etc. of Acts of the Scottish Parliament) Order 1999 (S.I. 1999/1379)	In Schedule 2, the entry relating to “The Communities”, “the Treaties”, “the Community Treaties” and the other expressions defined by section 1 of, and Schedule 1 to, the European Communities Act 1972.	20
European Communities (Finance) Act 2001 (c. 22)	The whole Act.	25
European Communities (Amendment) Act 2002 (c. 3)	The whole Act.	
European Parliamentary Elections Act 2002 (c. 24)	In Schedule 3, paragraph 1.	30
European Union (Accessions) Act 2003 (c. 35)	Section 1.	

# European Union Bill

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## B I L L

To make provision in connection with the Treaty signed at Rome on 29th October 2004 establishing a Constitution for Europe; and to require a referendum to be held about it.

*Presented by Mr Secretary Straw  
supported by  
The Prime Minister, Mr Secretary Prescott,  
Mr Chancellor of the Exchequer,  
Secretary Margaret Beckett, Mr Secretary Hoon,  
Ms Secretary Hewitt, Mr Secretary Clarke,  
Mr Peter Hain, The Solicitor General,  
Mr Denis MacShane and Mr Christopher Leslie.*

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*Ordered, by The House of Commons,  
to be Printed, 25th January 2005.*

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