



EUROPEAN UNION (AMENDMENT) BILL 2014

EXPLANATORY NOTES

These notes are circulated for the information of Members with the approval of the Member in charge of the Bill, Hon. Juan Watterson BA (Hons), ACA, MHK

INTRODUCTION

1. These explanatory notes relate to the European Union (Amendment) Bill 2014. They have been prepared by the Chief Secretary's Office in order to assist readers of the Bill. They do not form part of the Bill and have not been endorsed by the House of Keys.
2. The notes need to be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill.

SUMMARY

3. The European Union (Amendment) Bill makes a number of amendments to the European Communities (Isle of Man) Act 1973 ("the 1973 Act") to —
 - a) update the definition of "the EU Treaties" to take account of the Accession Treaty for the Republic of Croatia to the European Union¹ and the Protocol on the concerns of the Irish people on the Treaty of Lisbon ("the Irish Protocol")²;
 - b) allow the Council of Ministers, with the approval of Tynwald, to make such changes to that definition of "the EU Treaties" in future by Order. (However, any substantive change to the Island's "Protocol 3" relationship with the EU would still need to be implemented by an Act of Tynwald);
 - c) change the Tynwald procedure (to the ordinary affirmative procedure) required for making certain Orders under the 1973 Act to voluntarily apply EU legislation to the Isle of Man that may not be directly applicable by virtue of the Island's Protocol 3 relationship with the EU; and
 - d) clarify an issue, and make new provision for updates, where an Order to apply EU legislation includes a modification so that the legislation (or certain provisions of that legislation) are to be construed as having effect in the Island as they are amended from time to time by the EU (a so-called "ambulatory reference").

A copy of the 1973 Act as it currently has effect can be found at:

http://www.legislation.gov.im/cms/images/LEGISLATION/PRINCIPAL/1973/1973-0014/EuropeanCommunitiesIsleofManAct1973_1.pdf

¹ Croatia became an EU Member State on 1 July 2013. A copy of the Croatia Accession Treaty can be found at: <http://eur-lex.europa.eu/JOHtml.do?uri=OJ:L:2012:112:SOM:EN:HTML>

² The Irish Protocol clarifies but does not change either the content or the application of the Treaty on European Union and the Treaty on the Functioning of the European Union and it in no way alters the relationship between the EU and its Member States. A copy of the Irish Protocol can be found at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:060:0131:0139:EN:PDF>

4. The reasons for the amendments are, respectively, to —
 - a) implement obligations in respect of the EU arising under the Island’s Protocol 3 relationship with the Union;
 - b) allow the Island’s international obligations in this area to be generally implemented in future in a more timely and efficient manner³;
 - c) streamline the Tynwald approval procedure for making Orders under the 1973 Act which apply EU legislation to the Island and bring the procedure into line with other Acts of Tynwald (e.g. Airports and Civil Aviation Act 1987, Customs and Excise Act 1993) that can apply EU legislation to the Island; and
 - d) provide legal certainty in respect of the text annexed to an Order made under section 2A of the 1973 Act where the Order includes an ambulatory reference to the applied EU legislation, and to provide for updates to the annexed text.

COMMENTARY ON CLAUSES

5. **Clause 1** gives the Bill its short title.
6. **Clause 2** amends section 1 of the 1973 Act as follows—
 - a) The Croatia Accession Treaty and the Irish Protocol are added to the list of EU Treaties set out in the definition of “the Treaties” or “the EU Treaties” in subsection (1); and
 - b) New subsection (1A) is inserted after subsection (1). This new subsection establishes that the Council of Ministers may by Order amend the list of EU Treaties set out in the definition of “the Treaties” or “the EU Treaties” in subsection (1). Such an Order cannot come into operation unless it is approved by Tynwald.
7. **Clause 3** amends section 2A of the 1973 Act as follows—
 - a) Subsection (4) is substituted so that Orders to be made under section 2A (except where subsection (4A) applies⁴) are subject to the ordinary Tynwald approval procedure. Currently before such an Order can be made a draft of the Order must be laid before Tynwald at one sitting and the draft Order must then be moved for approval at a following sitting;
 - b) New subsections (8) to (13) are inserted into this section;
 - c) New subsection (8) states that existing subsections (5) to (7) are subject to new subsections (9) to (13) where—

³ It may be noted, as an example, that since Croatia joined the EU in July 2013 the Isle of Man has been under an international obligation to treat that country in the same way as the other EU Member States but this obligation is not yet reflected in Manx law.

⁴ Subsection (4A) concerns Orders that apply EU instruments which relate to sanctions measures. Such Orders can be made and come into operation with immediate effect but then require Tynwald approval as soon as practicable after they have been made for them to continue in operation.

- subsection (5) requires any Order made under this section to have annexed to it a copy of the text of the EU legislation applied by the order, incorporating the exceptions, adaptations and modifications specified in the order;
 - subsection (6) requires the Council of Ministers to make available on request (on payment of any fee that may be prescribed) a copy of the text prepared under subsection (5); and
 - subsection (7) establishes that a text purporting to be made available under subsection (6) is admissible in evidence in court and, until the contrary is proved, is evidence of the contents of the document;
- d) New subsection (9) states that subsections (10) to (13) apply when an Order made under this section provides that a reference in it to an EU instrument (or a provision of an EU instrument) is to be construed as a reference to the instrument or provision as amended by the EU from time to time ("an ambulatory reference");
- e) New subsection (10) confirms, for the avoidance of doubt, that the text annexed to the Order is the text of the applied EU legislation as it had effect at the time the Order was made. This would only be an issue where an Order (for example, most commonly, in relation to the application of EU sanctions measures) includes an ambulatory reference to provisions of applied EU legislation as it is not possible show possible future amendments (such as to the lists of persons who are subject to sanctions measures) in the text of the modified EU legislation annexed to the Order at the time that the Order is made;
- f) However, new subsections (11) and (12) provide that the Council of Ministers may on its own initiative have prepared a copy of the text updated to reflect any amendments that have been made to the applied EU instrument after the Order has been and which apply to the Island; or, on receipt of a request to do so, must prepare and provide (on payment of any fee that may be prescribed) such an updated text of the EU instrument as it has effect in the Island at a later date; and
- g) New subsection (13) establishes that a copy made available to purchase under subsection (12) is admissible in evidence in the same manner and to the same extent as a copy made available under subsection (6).
8. **Clause 4** repeals the Act after it has been promulgated but the repeal does not affect the continuing operation of the amendments made to the 1973 Act by clauses 2 and 3. This is now standard drafting practice for Acts which only amend other Acts of Tynwald so as to reduce unnecessary clutter of the Island's statute book.

HUMAN RIGHTS

9. It is considered that the provisions of the Bill are compatible with the Convention rights within the meaning of the Human Rights Act 2001.

FINANCIAL EFFECTS OF THE BILL AND EFFECT ON HUMAN RESOURCES

10. The Bill is not expected to increase the expenditure of Government, reduce the income of Government, or require any additional public service human resources.

COMMENCEMENT

11. The European Union (Amendment) Act 2014 will come into operation on the day that Royal Assent is announced in Tynwald.
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