



**Isle of Man**  
**Government**

*Reiltys Ellan Vannin*

**Report on matters relating to the Royal Assent and any  
implications relating to the Island regarding the United  
Kingdom's membership of the European Union**

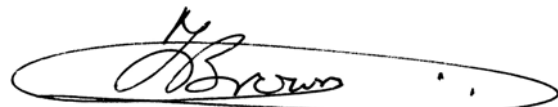
**Council of Ministers**



**To: The Hon N Q Cringle, President of Tynwald and the Honourable Council and Keys in Tynwald Assembled**

**Report of the Constitutional and External Relations Committee  
of the Council of Ministers'**

1. At the February 2008 sitting Tynwald resolved:  
*"That Tynwald requests the Council of Ministers to report by no later than July 2008 on matters relating to the Royal Assent and any implications relating to the Island regarding the United Kingdom's membership of the European Union."*
2. However, in order give an opportunity to consider these pertinent matters more fully, the Constitutional and External Relations Committee decided that by broadening the scope of this report, beyond the strict confines of the amended resolution, the contents of the report would be more useful and informative for Honourable Members.
3. The Report of the Council of Ministers' Constitutional and External Relations Committee on these matters is attached.
4. The Council of Ministers has approved the Report and its conclusions.
5. Since completion of the Report of the Committee, the Irish Republic has rejected the Lisbon Treaty in a referendum held on 12th June 2008. The future of the Treaty is now uncertain as it cannot come in force unless it is ratified by all 27 Member States.
6. The present position is that the parliaments of 19 Member States have completed their ratification procedures. However, the Czech Republic cannot complete its ratification process unless the Czech Constitutional Court delivers a positive opinion on the accordance of the Lisbon Treaty with the Czech constitutional order. The decision of the Court is due to be announced later this year, possibly in September or October.
7. The leaders of the 27 EU Member States met in Brussels at the European Council on 19th and 20th June at which discussions took place on the implications for the Treaty following the Irish referendum. Arising out the deliberations of the European Council, EU leaders agreed to a proposal from Ireland that this issue should be considered further at its meeting on 15th October 2008.
8. It may therefore be that the Lisbon Treaty will meet the same fate as the EU Constitutional Treaty and the information in this Report concerning the changes to be made by it will be irrelevant. Alternatively, a solution may evolve to allow the Lisbon Treaty to be implemented, perhaps in a modified form or with additional opt outs.
9. The Isle of Man Government will continue to monitor developments closely in respect of the ratification of the Lisbon Treaty or any subsequent measures which ensue to ensure that the impact and implications for the Isle of Man including matters relating to the Royal Assent and any implications relating to the Island regarding the United Kingdom's membership of the European Union are fully considered. If necessary a further report will be made to Tynwald.
10. Council invites Tynwald to receive the Report of the Constitutional and External Relations Committee.

A handwritten signature in black ink, appearing to read 'J A Brown', enclosed within a large, horizontal oval shape.

Hon J A Brown MHK, Chief Minister



**A REPORT FROM THE CONSTITUTIONAL AND EXTERNAL RELATIONS COMMITTEE  
TO THE COUNCIL OF MINISTERS**

**ON THE EFFECTS OF THE LISBON TREATY ON THE ISLE OF MAN,  
INCLUDING ANY CHANGES TO THE ROYAL ASSENT**

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## 1. Preamble

### 1.1 Government Strategic Policy

#### 1.1.1 The overall aim of the Isle of Man Government is:

***"To protect and promote the well being of the family and provide for the economic and social inclusion of all the Island's community"***

#### 1.1.2 There are four main strategic themes – or policy priorities – which contribute to achieving this overall aim, as outlined in the Isle of Man Government Strategic Plan 2007-2011.

#### 1.1.3 One of these four policy priorities concerns "Income, Employment and the Economy", and its purpose is:

*"To raise the standard of living of all the people of the Island through the ongoing development of a successful economy and the sharing of its benefits with all in our community".*

#### 1.1.4 Supporting this policy priority, one of Government's Strategic Aims is:

*"To protect and promote the Island's international relationships", which in turn is underpinned by the Government Strategic Objective: "To defend and develop our formal relationships with the UK and Europe".*

### 1.2 Government structures in place 'to defend and develop our formal relationship with the UK and Europe'

#### 1.2.1 Whilst a number of Government Departments are in frequent contact with officials in the United Kingdom and the European Union, under current arrangements external relations issues are the collective responsibility of the Council of Ministers, with the Chief Minister leading and reporting to Tynwald on constitutional and external relations matters – including the Isle of Man's relationship with the EU.

#### 1.2.2 The Constitutional and External Relations Committee of the Council of Ministers provides political advice and guidance to Council on EU matters, amongst other things, and is supported by the Chief Secretary and other senior officers, working alongside the External Relations Division.

### 1.3 Monitoring changes in the EU – day to day and landmark changes

#### 1.3.1 The External Relations Division, working in conjunction with Brussels based legal advisers White & Case, along with several other Government Departments, monitors developments within the EU. It does so, broadly speaking, in two ways:

#### 1.3.2 Firstly, the constant flow of legislation and proposals is monitored and lists are compiled for the information of relevant Government Departments, Members of Tynwald and the public. Similarly, policy proposals, opinions and consultation exercises are also monitored and brought the attention of the relevant Government Departments for consideration of their impact on the Isle of Man; and this in turn feeds in to a planned programme of visits and meetings with EU officials, undertaken by Isle of Man Government Ministers and officers.

1.3.3 Secondly, what might be called “landmark changes” - amendments to EU primary legislation (the Treaties) - are also tracked and assessed in order to consider their effect of the Isle of Man, and its relationship with Europe.

#### 1.4 Landmark/Treaty changes – ‘widening’ and ‘deepening’

1.4.1 Over the years, various amendments to the European Union Treaties have resulted in the ‘widening’ (increase in number of Member States and geographical scope of the EU) or the ‘deepening’ (increase in the powers and competencies of the European institutions) of relations within the European Union. (This is discussed in more detail at Section 3).

#### 1.5 Tynwald

1.5.1 Since October 2007, the Lisbon Treaty has been the subject of Tynwald questions and motions, and it has prompted interest from some members of the general public.

1.5.2 At the February 2008 sitting, it was resolved –

**That Tynwald requests the Council of Ministers to report by no later than July 2008 on matters relating to the Royal Assent and any implications relating to the Island regarding the United Kingdom’s membership of the European Union.**

1.5.3 However, in order give an opportunity to consider these pertinent matters more fully, the Constitutional and External Relations Committee has decided to broaden the scope of this report, beyond the strict confines of the amended resolution. By taking this approach, the Committee hopes that the contents of the report will be more useful and informative in presenting the Isle of Man Government’s perspective on these matters and that it will address some of the concerns of Honourable Members.

1.5.4 **This report, seeks to answer the following questions –**

- **What are the main features of the Lisbon Treaty? (See section 5a)**
- **What will be the impact of the Treaty on the Isle of Man? (5b)**
- **Will the Treaty cause or allow either the UK or EU to legislate for the Isle of Man without the approval of Tynwald? (5c)**
- **Will the Treaty affect the Island’s constitutional relationship with the United Kingdom? (5d)**
- **As a consequence of the above, will the Royal Assent or the Royal Prerogative, insofar as it is relevant to the Isle of Man, be altered? (6)**
- **What are the future prospects for the EU, how will they affect the Island, and how can the Island protect itself against any possible ill effects? (7a)**
- **Would the Isle of Man benefit from altering its relationship with the EU, and/or seeking out membership of an alternative organisation? (7b)**

- 1.5.5 In addressing these issues the Constitutional and External Relations Committee would make two points:
- 1.5.6 The European Union is a reality over which the Isle of Man has little or no control; even if the Island's relationship with it were to change radically the EU would still have an effect on the Island and as a near and powerful neighbour the Island would have to deal with it largely on the EU's terms.
- 1.5.7 Speculating on what impact the EU might or might not have on the Island in the future is not helpful and it could serve to create a negative perception that could be very harmful to business confidence in the Island. It is much better for the Isle of Man Government to use its resources to seek early intelligence about EU changes or initiatives, to assess whether they may be detrimental to the Island and, where appropriate, make the Island's concerns heard and, if it is not possible to effect any change to the proposals, take advantage of any opportunities and minimise any damage from threats. This report is not, therefore, speculative in nature.



## 2. Executive Summary

### 2.1 What are the main features of the Lisbon Treaty?

- 2.1.1 The Lisbon Treaty (or Reform Treaty) arose out of the failed Constitutional Treaty. Whilst it retained many (or most) of the elements of the earlier one, it did not *replace* the existing treaties as the Constitutional Treaty was designed to do, but *amended* them instead. Consequently, the Lisbon Treaty might be viewed as an amending treaty, rather than a consolidating treaty.
- 2.1.2 **It is the Committee's view that, in line with other commentators, there is little practical difference between the Constitutional Treaty and the Lisbon Treaty in the changes it makes to the institutions and operation of the EU. However, whilst its substance is similar, its style is quite different – a key point made by the Governments of many Member States in support of their argument against the need to hold a referendum. Since the Isle of Man is not a Member State, however, this question is not of relevance.**
- 2.1.3 In the preamble to the Treaty itself it is stated that the signatories wish to:
- 2.1.4 *Complete the process started by the Treaty of Amsterdam and by the Treaty of Nice with a view to enhancing the efficiency and democratic legitimacy of the Union and to improving the coherence of its action.*
- 2.1.5 In simple terms, the purpose of the Lisbon Treaty is:
- to create more streamlined institutions in a Union of 27 members;
  - to extend and clarify the role of the EU in international affairs/external relations;
  - to change the decision-making process in certain policy areas (which in effect removes the national veto on certain issues); and
  - to give national parliaments a say in certain areas.
- 2.1.6 The Lisbon Treaty contains many of the changes that the Constitutional Treaty attempted to introduce, including –
- A politician to be chosen to be president of the European Council (for a 2½ year term) as opposed to the current system whereby each Member State takes a turn for 6 months;
  - A new post (which combines the roles of the current external affairs commissioner and foreign policy representative) of 'High Representative of the Union for Foreign Affairs and Security Policy';
  - A smaller European Commission, with fewer Commissioners than there are Member States (from 2014);
  - A redistribution of weighting of votes (as deployed in the Qualified Majority Voting – or QMV – system);
  - New powers for the European Commission, European Parliament and European Court of Justice, for example in the field of justice and home affairs (a removal of the pillar structure as outlined in Section 3 of this report);
  - Removal of the national veto in a number of areas (a change from unanimity to QMV).

## 2.2 **What will be the impact of the Treaty on the Isle of Man?**

### 2.2.1 **Direct effect – Protocol 3**

2.2.2 The section of the Treaty which refers to the Isle of Man is not altered, but is re-numbered as Article 311a(5). The Treaty does not, therefore, alter the material effect of the EU upon the Isle of Man, nor the scope of the Island's relationship with the EU.

2.2.3 In addition, the text of Protocol 3 to the United Kingdom's Act of Accession is unchanged.

2.2.4 The Committee concludes, therefore, that:

**The legal relationship between the Isle of Man and the European Union, as expressed by Protocol 3 to the UK's Act of Accession, is not altered by the Lisbon Treaty.**

### 2.3 **Indirect effects**

2.3.1 The scope of the European Union's effect on the Island does, however, extend beyond the limits of Protocol 3. It is through the Island's close relationship with the United Kingdom that practical and constitutional implications must be assessed. However, it must also be accepted that the EU would have indirect effects on the Island even if the Isle of Man were a completely independent sovereign state.

2.3.2 In terms of the practical arrangements between the UK and the Isle of Man, there are two issues to bear in mind.

2.3.3 Firstly, that the United Kingdom has attached a number of caveats to its signature of the Treaty, referred to as its 'red lines' which limit the effect of the Treaty on the UK, and in turn, and by implication, their indirect effects on the Isle of Man. The 'red lines', their scope and efficacy are discussed below, but in terms of their limiting the effects of the Lisbon Treaty on the UK and the Isle of Man is concerned, the Committee concludes that –

2.3.4 **The UK's so called 'red lines' act as a further limit on the Treaty in certain areas of importance to the UK – allowing for opt outs or 'brakes' to be applied – which in turn act to further distance the Isle of Man from the EU in these policy areas.**

2.3.5 Secondly, the areas where the Isle of Man *may* be indirectly affected by the EU are those which lie within the legislative competence of Tynwald. It is, therefore, a matter of choice as to whether Isle of Man legislation is kept in line with the UK and, by implication, the EU.

2.3.6 **The Committee concludes that in those areas where bilateral agreements or other close ties within the UK influence the effects of the EU on the Isle of Man, it remains the case that these matters remain within the legislative competence of the Isle of Man Government, and ultimately, with Tynwald.**

2.4 **Will the Treaty cause or allow either the UK or EU to legislate for the Isle of Man without the approval of Tynwald?**

2.4.1 There is no evidence to suggest that the EU's legislative competence, in relation to the Isle of Man, has been expanded. Similarly, any duty imposed on the UK to adopt EU legislation in new areas will be tempered by its own "red lines". If EU legislation is adopted by the UK and falls within one of the areas which falls outside Protocol 3, but within an area where the Isle of Man has a bilateral agreement with the UK, then the Isle of Man Government - and ultimately, Tynwald - may decide whether it chooses to follow.

2.4.2 **The Committee concludes that the Lisbon Treaty does not cause or allow either the UK or EU to legislate for the Isle of Man in any new area without the approval of Tynwald.**

2.5 **Will the Treaty effect the Island's constitutional relationship with the United Kingdom, or the Royal Assent and Royal Prerogative?**

2.5.1 There is nothing to suggest that the constitution of the UK is to be amended by its signature of the Treaty, nor is its constitutional relationship with the Crown Dependencies altered.

2.5.2 The Committee further concludes, therefore, that

**The constitutional relationship between the Isle of Man and the UK – as a dependency of the Crown – is not altered by the Lisbon Treaty, nor is its future security undermined by the UK's continued membership of the European Union.**

2.5.3 **It is not the case, therefore, that current arrangements relating to the granting of Royal Assent, nor the exercise of the Royal Prerogative, will be affected. In addition, the UK will not be compelled by the EU to legislate for the Island.**

2.6 **The future of the EU and the Isle of Man's relation with it**

2.6.1 With regards to the future, it would appear that the EU itself has few plans for significant institutional or constitutional reform in the short or medium term, and several trends within the EU and its member states are pointing towards a slowing down of, or even a halt to, the process of European integration, both in terms of its geographical scope (widening) and its areas of competence (deepening).

2.6.2 **The Committee concludes, therefore, that whilst it is not helpful to speculate on hypothetical effects of the EU on the Isle of Man, there is little to suggest that there will be further changes to the scope and structure of the Treaties – and therefore to the EU itself – in the short to medium term. However, it is strongly recommended that the rigorous monitoring of developments within the EU be continued.**

2.6.3 Within the constraints of the Isle of Man's constitutional status as a dependency of the Crown there is no realistic opportunity for full membership of the EU in its own right. Nor is there an opportunity for withdrawal from Protocol 3, or full membership under the umbrella of the UK without the assistance of the UK, and unanimous support of all other EU member states.

2.6.4 **The Committee would also conclude that the Isle of Man Government should continue to explore options for closer ties with other bodies including the WTO (World Trade Organisation) and the EFTA (European Free Trade Area).**

2.7 Conclusions

2.7.1 Whilst the relationship between the Isle of Man and the European Union remains fundamentally unchanged, it is acknowledged that the European Union's influence extends beyond the very limited legal scope of Protocol 3. However, this is, as it has always been, subject to the realities of the modern world; firstly, that the United Kingdom exerts a strong influence on the Isle of Man as a trading partner, and that it retains the responsibility for the defence, international relations, and good government of the Island; secondly, that the UK has devolved powers to legislate in more areas to the EU; and thirdly, as the EU has become larger and more influential, it has increasingly dictated the prevailing norms and standards in a wide range of policy areas.

2.7.2 The Committee concludes, therefore, that the Council of Ministers should:

2.7.3 **Continue to monitor changes in the overall structure of the European Union, in addition to the day to day scrutiny of legislation and policy proposals.**

2.7.4 **Monitor and review the current consultation exercise being undertaken in the UK on its own constitution.**

2.7.5 **Continue to review the possibility of establishing closer/deeper relations with other bodies such as the WTO and/or EFTA, in tandem with the retention of Protocol 3 relationship.**

### 3. Introduction to the European Union

#### 3.1 The early years

- 3.1.1 The period since the end of the Second World War has been one of unprecedented European integration. Few could have imagined in 1950, when the French Foreign Minister Robert Schuman proposed integrating the coal and steel industries of Western Europe, what the next few decades would bring.
- 3.1.2 As a result of Robert Schuman's proposal, in 1951 the Treaty establishing the European Coal and Steel Community (ECSC) was signed by its six members: Belgium, West Germany, Luxembourg, France, Italy and the Netherlands. The power to take decisions about the coal and steel industry in these countries was placed in the hands of an independent, supranational body called the "High Authority". The ECSC Treaty came into force on 23 July 1952 and Jean Monnet was its first President.
- 3.1.3 The members of the ECSC considered the undertaking to be such a success that, within a relatively few years, these same six countries decided to go further and integrate other sectors of their economies. In 1957 they signed the Treaties of Rome, creating the European Atomic Energy Community (EURATOM) and the European Economic Community (EEC). The Member States set about removing trade barriers between them and forming a "common market".
- 3.1.4 The institutions of the three European Communities were brought together by the Merger Treaty, signed in Brussels on 8 April 1965 and in force since 1 July 1967. From this point on, there was a single Commission and a single Council of Ministers as well as the European Parliament. Originally, the members of the European Parliament were chosen by the national parliaments but in 1979 the first direct elections were held, allowing the people of the Member States to vote for the candidate of their choice. Since then, direct elections have been held every five years.

#### 3.2 Expansion – the "widening" of the Community

- 3.2.1 Over the years the EU has grown in size with successive waves of accessions. Denmark, Ireland and the United Kingdom joined in 1973 followed by Greece in 1981, Spain and Portugal in 1986 and Austria, Finland and Sweden in 1995.
- 3.2.1 A further ten countries in eastern and southern Europe: Cyprus, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia and Slovenia joined the EU in 2004. Bulgaria and Romania joined in 2007, and Turkey also remains a candidate country. The EU has also not ruled out allowing the remaining countries of the Balkans to join at some point in the foreseeable future and pre-accession talks with Croatia are ongoing. In addition, a 'Stabilisation and Association Agreement' (SAA) has been signed with Serbia recently.

#### 3.3 More powers – the "deepening" of the Community

- 3.3.1 Hand in hand with the enlargement (or "widening") of the European Community there has been an increase (or "deepening") in the powers and competencies of the European institutions. Economic and political integration between the member states of the European Union means that these countries have to take joint decisions on many matters. In the early days the focus was on a common commercial policy for coal and steel and a common agricultural policy. Other policies were added as time

went by, and as the need arose. There are now common policies in a very wide range of fields – from agriculture to culture, from consumer affairs to competition, from the environment and energy to transport and trade.

### 3.4 The Treaties – continuous amendment

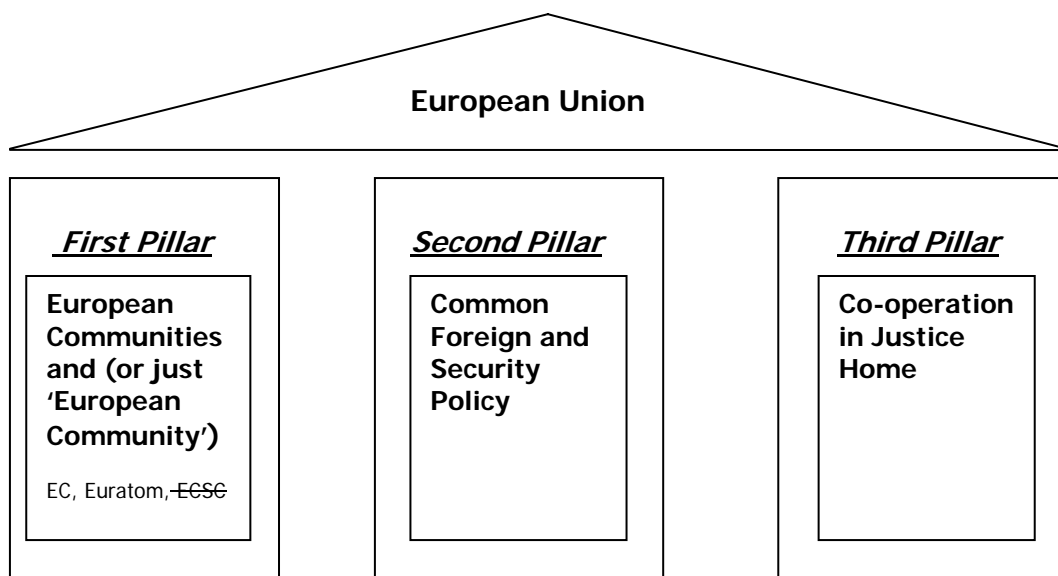
3.4.1 All the changes to the way in which the European community works have been brought about through a series of new and amending Treaties.

3.4.2 As mentioned above it was the **Merger Treaty** that first brought the ECSC, Euratom and European Economic Community together under a single Commission and Council of Ministers in 1967.

3.4.3 The **Single European Act** (SEA), signed in Luxembourg and The Hague, and which entered into force on 1 July 1987, provided for the adaptations required for the achievement of the Internal Market.

3.4.4 The **Treaty on European Union**, which was signed in Maastricht on 7 February 1992, entered into force on 1 November 1993. Often called the “Maastricht Treaty”, it changed the name of the European Economic Community to simply “the European Community”. It also introduced new forms of co-operation between the Member State governments – for example on defence, and in the area of “justice and home affairs”. By adding this inter-governmental co-operation to the existing “Community” system, the Maastricht Treaty created a new structure with three “pillars” which is political as well as economic in nature. This was the creation of the European Union (EU).

3.4.5 The resultant structure can perhaps be more easily understood in terms of the diagram below.



3.4.6 The Maastricht Treaty also set out the aim of introducing economic and monetary union (EMU), involving the introduction of a single European currency managed by a European Central Bank. That aim became a reality on 1 January 2002, when euro notes and coins replaced national currencies in twelve of the 15 countries of the European Union (Belgium, Germany, Greece, Spain, France, Ireland, Italy, Luxembourg, the Netherlands, Austria, Portugal and Finland – later joined by Cyprus, Malta and Slovenia).

- 3.4.7 The **Treaty of Amsterdam** was signed on 2 October 1997 and it entered into force on 1 May 1999: it amended and renumbered the EU and EC Treaties. Included in the changes that this Treaty introduced were the extension of qualified majority voting (QMV) for decision making by the Council, moving visa and asylum policy into the first pillar and the incorporation of the social protocol.
- 3.4.8 The **Treaty of Nice**, signed on 26 February 2001 and which entered into force on 1 February 2003, further amended the EU and EC Treaties and began the process of paving the way for the entry of a large number of new Member States by laying down new rules governing the size of the EU institutions and the way they work.
- 3.4.9 In addition, the founding treaties have been amended on several other occasions, in particular when new Member States joined in 1973 (Denmark, Ireland, United Kingdom), 1981 (Greece), 1986 (Spain, Portugal) and 1995 (Austria, Finland, Sweden). On each occasion an **Accession Treaty** was negotiated between the existing and new Member States. These Accession Treaties all made (usually minor) adaptations to the existing Treaties to allow for the new members and often contained transitional provisions because of initial differences between the old and new members, particularly in terms of their economies and laws.
- 3.4.10 The same applied with the **Treaty of Accession 2003**, which was signed on 16 April 2003 in Athens by the then 15 Member States and the 10 new states. This Treaty came into force on 1 May 2004. A further Treaty of Accession came into force on 1<sup>st</sup> January 2007, bringing the membership of the EU to 27.
- 3.4.11 It should also be noted that the first of all the community treaties, the Treaty establishing the European Coal and Steel Community (ECSC), expired on 23 July 2002, after fifty years in force.

### 3.5 Conclusion

- 3.5.1 At the conclusion of each of these Amending/Accession Treaties, Member States, including the United Kingdom, must make the necessary amendments to their domestic legislation in order to bring the changes made into effect in their own countries. Similarly, because of the Isle of Man's link with the EU through Protocol 3, and because the Isle of Man took the step of introducing its own legislation to implement the effects of the Protocol (and to a very limited extent, the Treaties) in Manx Law it is necessary for the Island to amend its own European Communities (Isle of Man) Act 1973 in order to reflect the changes made to the EU – although it is worth noting that Protocol 3 has, itself, remained unchanged since its inception in 1972.

#### 4. **The process of Treaty revision – the Constitutional Treaty and the Reform (Lisbon) Treaty**

##### 4.1 **The process for revision of the Treaties**

- 4.1.1. The Treaty on European Union contains a provision allowing for the revision of the treaties. Article 48 states that any Member State or the Commission may submit proposals to the Council for amending the treaties. This opens the way, if the Council agrees, for the convening by the President of the Council of an Intergovernmental Conference (IGC).
- 4.1.2 Amending the treaties requires the unanimous agreement of all Member States. It also requires ratification by all Member States, in accordance with their own internal procedures, before a new treaty can enter into force.
- 4.1.3 There have been a number of IGCs over recent years which have resulted in successive amending treaties, notably the Single European Act (1986), the Treaty on European Union (1992), the Treaty of Amsterdam (1997) and the Treaty of Nice (2001).<sup>1</sup>

##### 4.2 **The draft Constitutional Treaty**

- 4.2.1 In the light of the outcome of the 2000 IGC which resulted in the Nice Treaty, the European Council decided at the end of 2001 to establish a "Convention" to look at how the Union could be made more democratic, transparent and efficient. This Convention, which met between March 2002 and July 2003, drew up a Treaty establishing a Constitution for Europe which was intended to replace the existing treaties. It was subsequently submitted to an IGC and was agreed, in slightly amended form, in June 2004, and signed in October the same year.<sup>2</sup>

##### 4.3 **Reform Treaty IGC – Lisbon Treaty**

- 4.3.1 In 18 of the Member States, the Constitutional Treaty was ratified. In May and June 2005, however, the Treaty was rejected by the people of France and the Netherlands in referenda. The seven remaining Member States (including the UK) therefore halted the procedures leading to ratification.<sup>3</sup>
- 4.3.2 Following the demise of the Constitutional Treaty, and after a period of reflection, the EU leaders agreed a detailed mandate for a new reform treaty at the European Council in June 2007. This led to the Lisbon Treaty, which was agreed by the governments of the Member States in Portugal in December 2007.
- 4.3.3 The House of Commons European Scrutiny Committee was far from happy with the way in which the new treaty was produced, and indeed, went as far as to comment that "the process could not have been better designed to marginalise the role of national parliaments and to curtail public debate, until it has become too late for such debate to have any effect on the agreements which have been reached".<sup>4</sup>

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<sup>1</sup> See EU website – <http://europa.eu/>

<sup>2</sup> Ibid

<sup>3</sup> House of Lords Constitution Committee report – "European Union (Amendment) Bill and the Lisbon Treaty: Implications for the UK Constitution"

<sup>4</sup> House of Commons European Scrutiny Committee – "European Union Intergovernmental Conference: Follow-up report"



#### 4.4 **What are the main differences between the two Treaties?**

- 4.4.1 It is widely acknowledged that whilst there is a difference in the methodology employed by the Constitutional Treaty and the Lisbon Treaty – inasmuch as the former repealed/replaced all preceding texts with a new single Treaty and the latter is a treaty which *amends* the existing texts – they differ very little in terms of their content and effect.
- 4.4.2 The differences can be summarised as follows –
- Existing Treaties remain in place (rather than being replaced) and are merely amended by the Lisbon Treaty (as with previous Treaties such as Amsterdam & Nice);
  - The references to an anthem, flag etc (the ‘symbols’ of the EU) are dropped;
  - There is no explicit reference within the text of the Treaty to the primacy of EU law – this having been relegated to a ‘declaration.’

#### 4.5 **Is the Lisbon Treaty a ‘constitution in disguise’?**

- 4.5.1 The EU (and EEC before it), in common with other international organisations such as the United Nations, already has, and has always had, a constitution of sorts. The argument which has been played out in the UK media, perhaps, confuses whether the Lisbon Treaty is, in fact, the *Constitutional Treaty* in disguise, rather than ‘a constitution’ per se.

- 4.5.2 Indeed, in a European Commission document entitled “The ABC of Community Law”, published in 2000, under the chapter heading entitled “The ‘Constitution’ of the European Union”<sup>5</sup> it is noted that:

“Every social organisation has a constitution. A constitution is the means by which the structure of a political system is defined, i.e. the relationship of the various parts to each other and to the whole is specified, the common objectives are defined and the rules for making binding decisions are laid down. The constitution of the EU, as an association of States to which quite specific tasks and functions have been allotted, must thus be able to answer the same questions as the constitution of a state.”

- 4.5.3 The document continues:

“Unlike most of the constitutions of Member States, the EU constitution is not laid down in a comprehensive constitutional document, but arises from the totality of rules and fundamental values by which those in authority perceive themselves to be bound<sup>6</sup>. These rules are to be found partly in the founding Treaties or in the legal instruments produced by the Community institutions, but they also rest partly on custom”.

- 4.5.4 By this definition, therefore, the Lisbon Treaty is not a full constitution, rather it amends the EU’s existing constitution by amending sections of the existing treaties which define how the EU is structured, how it makes decisions, and in which areas it has legislative competence.

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<sup>5</sup> The ABC of Community Law – Dr Klaus-Dieter Brochardt, European Commission, 2000

<sup>6</sup> This is similar to the constitution of the UK where there is no single constitutional document

#### 4.6 Conclusion

- 4.6.1 Whilst it can be concluded that the process of Treaty revision was far from transparent, and that the Parliaments of the Member States were not involved in the formulation of the draft text and UK Government Departments given only 48 hours to comment on the draft<sup>7</sup>, the end result is not very dissimilar from that of the original Constitutional Treaty, albeit achieved in a different manner. However, the Isle of Man was able to obtain guarantees from the UK that the text and meaning of Protocol 3 was not to be altered at a very early stage of drafting, and that the Isle of Man's relationship with the EU would not, therefore, be altered.
- 4.6.2 **Whilst the Committee concludes that on the basis of the evidence from, amongst others, the various scrutiny committees of both Houses of Parliament, the process of Treaty revision and consultation on the draft text might have been viewed as lacking transparency, this is of little relevance to Isle of Man's position. What is of importance to Island is that the Isle of Man Government was able to reach a position wherein the text of Protocol 3 remains unchanged.**<sup>8</sup>

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<sup>7</sup> House of Commons European Scrutiny Committee – "European Union Intergovernmental Conference: Follow-up report"

<sup>8</sup> Information on the progress of the negotiations on the Reform Treaty (as it was called then) and the Isle of Man Government's efforts to secure the retention of Protocol 3 was provided to Members at the Chief Minister's briefing on international matters on 11<sup>th</sup> July and follow-up letter on 3<sup>rd</sup> August 2007.

## 5.a **The Lisbon Treaty**

### 5.1 **What are the main features of the Lisbon Treaty?**

- 5.1.1 The preamble of the Lisbon Treaty states that the Member States wish to “complete the process started by the Treaty of Amsterdam and by the Treaty of Nice with a view to enhancing the efficiency and democratic legitimacy of the Union and to improving the coherence of its actions”.

### 5.2 **Layout/structure of the Treaty**

- 5.2.1 The House of Lords European Union Committee explains, in its report entitled “The Treaty of Lisbon: An impact assessment”,<sup>9</sup> that:

“At present the EU is governed by two principal Treaties:

- The Treaty establishing the European Community (TEC);
- The Treaty on European Union (TEU).

- 5.2.2 The Treaty of Lisbon will not constitute a third Treaty. Nor will it replace the two current Treaties with a single Treaty. Rather, it will amend both the existing Treaties. It will also rename one of them: the TEC will become the “Treaty on the Functioning of the European Union” (TFEU, or in some commentaries TOFU). The Lisbon Treaty replaces all references in the TEU and TEC to the “Community” or “European Community” with references to the “Union”.

- 5.2.3 The Lisbon Treaty has only seven Articles; the first contains amendments to the TEU, and the second contains amendments to the TEC. There are also 11 new Protocols to be annexed to the Treaties; plus a Protocol (to the Lisbon Treaty itself) amending the pre-existing Treaty Protocols. The texts of the Treaties and Protocols have the same legal value. Finally, the Inter-Governmental Conference (IGC) which agreed the Lisbon Treaty also provided for a number of Declarations; these are political acts, but may be relevant to the Treaty’s interpretation”.<sup>10</sup>

- 5.2.4 The House of Lords Committee concludes that “The Lisbon Treaty itself is complicated and inaccessible. This was perhaps unavoidable; but it is unsatisfactory, and has hindered public debate.”

### 5.3 **Summary of the Treaty**

- 5.3.1 The Foreign and Commonwealth Office published a ten point summary of the Lisbon Treaty<sup>11</sup>, which outlines its main components as follows –

- It **amends the existing Treaties** in order to make the changes needed to make an EU of 27 work more effectively. It will allow the EU to move on from debating institutional changes and focus on issues which matter to citizens:

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<sup>9</sup> House of Lords – European Union Committee “The Treaty of Lisbon: An Impact Assessment”

<sup>10</sup> For the full text of the Treaty, go to the EU website at <http://eur-lex.europa.eu/JOHtml.do?uri=OJ:C:2007:306:SOM:EN:HTML>

<sup>11</sup> Explanatory Memorandum on the Treaty of Lisbon – Command Paper 7294 – can be found at the Foreign and Commonwealth Office online archive at <http://collections.europarchive.org/tna/20080205132101/www.fco.gov.uk/servlet/Front%3fpagename=OpenMarket/Xcelerate/ShowPage&c=Page&cid=1007029396041&a=KArticle&aid=1196173234449>

energy security, organised crime and terrorism, globalisation, further enlargement and making Europe's voice more effective internationally.

- It creates a **permanent President of the European Council**, appointed by national governments for a period of two and a half years, replacing the current system where the President of the European Council rotates every 6 months. The Council is the body through which the leaders of Member States steer the political direction of the EU. This change should provide greater continuity.
- It creates a **'High Representative of the Union for Foreign Affairs and Security Policy'**. Appointed by the European Council with agreement of the Commission President, the High Representative will conduct the Union's Common Foreign and Security Policy. The Member States will task the High Representative on foreign policy and he or she will implement commonly agreed policies. The office of High Representative will merge the two existing roles of High Representative for the Common Foreign and Security Policy and the External Relations Commissioner to bring greater coherence to the EU's external action. The High Representative will also be able to present agreed EU positions in international organisations – such as the Member State that holds the Presidency does now.
- It gives **national parliaments a voice in making European laws** for the first time. Every national parliament will receive proposals for new EU legislation directly. They may judge whether the proposal conforms to the principles of "subsidiarity" (that the EU should only act where it adds value). If one third of national parliaments object, then the proposal will be sent back for review by the Commission (the 'yellow card'). If a majority of national parliaments oppose a Commission proposal, and national governments or MEPs agree, then it can be struck down (the 'orange card').
- It **reduces the size of the European Commission** with the aim of ensuring that the Commission can work more effectively as the EU enlarges. There is currently one Commissioner from each country in the EU (27 in all). From 2014, the number of Commissioners will be reduced, so only two-thirds of Member States provide a Commissioner at any time, with every country taking equal turns.
- It **extends Qualified Majority Voting** to new policy areas. Several of the new articles that will be subject to QMV reflect the existing practice for EU legislation in that field (for example, for the appointment of a High Representative for Foreign Affairs & Security Policy). And QMV in many areas is in line with the Government's wish to see improved decision-making – for example on energy policy, humanitarian aid, and urgent financing of CFSP measures. The Lisbon Treaty will also streamline and speed up decision-making in a number of technical areas (e.g. appointments to the European Central Bank's executive board). The UK has always insisted on maintaining ultimate national control in key areas of justice and home affairs, social security, tax, foreign policy and defence. The Lisbon Treaty clarifies this position for the UK. Overall, the impact of QMV under the Lisbon Treaty will be significantly less than, for example, under the Single European Act or the Treaty of Maastricht.
- It **introduces a new system of majority voting** for national ministers in the Council. The current system of voting is known in the EU as "Qualified Majority Voting" or QMV. Under the new 'double majority' voting system ('DMV'), a threshold number of Member States representing a certain percentage of the EU's population is required to pass legislation. It means a minimum of 55% of the Member States (ie 15 out of 27 countries) representing a minimum of 65% of the EU's population must vote in favour for European legislation to be

passed. The new system will start to come into force in 2014, with a transition period to 2017. As the new system is more strongly based on population size, the UK's share of votes in the Council of Ministers will increase.

- It **increases the number of policy areas where elected MEPs in the European Parliament also have to approve EU legislation**, alongside national ministers in the Council (known in the EU as “co-decision”).
- It **simplifies the rules on ‘enhanced co-operation’ where EU countries may work together more closely on certain issues**, without affecting countries that do not want to join in. There are rules to ensure that the rights of countries which don't participate are respected: at least a third of the Member States must want to co-operate, and others must be free to join at any time if they choose.
- It **incorporates the Charter of Fundamental Rights into EU law**. The Charter sets out in one place the rights which citizens across the EU already have, for example through the European Convention on Human Rights, or through existing EU law. Its aim is to ensure that EU institutions respect those fundamental rights. The Charter reaffirms existing rights and will apply to all Member States when they implement Union law. The Charter will not extend the powers of the European Union. For the avoidance of any doubt, there is a UK-specific protocol which makes clear that the Charter will:
  - not extend the powers of any court – UK or European – to strike down UK legislation; and
  - not create any new justiciable rights in the UK. For example, it will not create any greater social or economic rights than are already

#### 5.4 **UK ‘red lines’**

5.4.1 In addition, the UK negotiated certain ‘opt-outs’ or areas where it could ‘apply the brakes’ which were collectively known as their ‘red lines’.

5.4.2 These areas are concerned with the following –

- Protection of existing labour and social legislation;
- Protection of the UK's common law system, and police and judicial processes;
- Maintenance of independent foreign and defence policy; and
- Protection of tax and social security system.

5.4.3 The red lines are elaborated at the FCO's Explanatory Memorandum on the Lisbon Treaty<sup>12</sup> as follows –

#### 5.5 **Labour and social legislation & the Charter of Fundamental Rights**

5.5.1 The FCO memorandum states that “Protection of our existing labour and social legislation is a UK red line. The Government was determined to guarantee that nothing in the Charter of Fundamental Rights would give national or European courts any new powers to strike down or reinterpret UK law, including labour and social legislation. This will be achieved in the Treaty via a package of safeguards:

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<sup>12</sup> FCO Memorandum on the Treaty of Lisbon – see footnote 10 for web address

- Improved 'horizontal' Articles in the Charter setting out its precise scope and application;
- A clear provision in the Treaty stating that the provisions of the Charter do not extend the competences of the Union in any way;
- A clear provision in the Treaty stating that courts, including the ECJ, must have due regard to the 'horizontal' Articles in the Charter and to the 'Explanations' detailing the sources of the rights contained in the Charter when interpreting its provisions;
- A specific UK Protocol guarantees that the Charter does not create any greater rights than already apply in EU law, or extend the powers of any court – European or domestic – to strike down UK laws."

## 5.6 Protection of the UK's common law system, and police and judicial processes

5.6.1 The UK Government states that "The Treaty brings the provisions on police and judicial cooperation in criminal matters (currently 'third pillar measures') into the Treaty on the Functioning of the European Union. As a consequence of this change, Qualified Majority Voting and co-decision will apply as the general rule to Justice and Home Affairs.

5.6.2 However, the Government was clear that protecting our common law system and police and judicial processes is a UK red line.

5.6.3 The UK's current opt-in arrangements for cooperation in asylum, immigration and civil justice will be extended to the areas of police and criminal judicial cooperation, giving the UK the right to choose whether to opt-in to any Justice and Home Affairs measures on a case by case basis. The amendments to the Protocol on the position of the UK and Ireland extend the UK's existing Title IV opt-in Protocol to cover all justice and home affairs matters."<sup>13</sup>

5.6.4 The House of Commons European Scrutiny Committee sees the importance of the opt-in provisions, but expresses concern over the implications should that opt-in be exercised, stating that "The 'opt-in' decision under these proposals will become one which may lead to serious consequences for the UK through the transfer of jurisdiction on important measures dealing with civil and criminal justice. It will therefore be important that the arguments for and against opting in are the subject of the closest scrutiny by Parliament and for the accountability of Ministers to the House".<sup>14</sup>

## 5.7 Maintenance of independent foreign and defence policy

5.7.1 The UK Government states that "Maintenance of our independent foreign and defence policy is a UK red line. The Treaty (Articles 10c to 28E TEU) sets out the scope of CFSP in the same terms as are already used under the earlier Treaties. It reiterates that all areas of foreign policy and matters relating to the Union's security continue to fall within the intergovernmental provisions of CFSP. CFSP continues to be defined and implemented in accordance with the Treaty on European Union and as such is kept distinct from other EU policies which are contained in the Treaty on the Functioning on the European Union. The distinct character of CFSP is reinforced

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<sup>13</sup> FCO Memorandum on the Treaty of Lisbon – see footnote 10 for web address

<sup>14</sup> House of Commons European Scrutiny Committee – European Union Intergovernmental Conference: Follow-up report

against encroachment by non-CFSP matters by the improved provisions of Article 25b TEU. This new overarching provision sets out explicitly the distinctive legal and procedural character of CFSP. It sets out the separate framework within which the CFSP is carried out, emphasising its distinctive intergovernmental nature and the fact that there is limited Commission and European Parliament participation. In particular, it is clear that legislative acts cannot be adopted, and that ECJ jurisdiction is excluded, other than in two defined areas.

5.7.2 The Treaty confirms that CFSP remains defined by Member States and that unanimity in decision-making will remain the norm. Two Declarations confirm that all 27 Member States agree that provisions on CFSP will not affect the responsibilities of the Member States, as they currently exist.”

5.7.3 Whilst acknowledging that there was more research to be undertaken by the Foreign Affairs Committee, the House of Commons European Scrutiny Committee notes “that – apart from a few cases where new provision will be made for voting by QMV – the largely intergovernmental nature of the CFSP (Common Foreign and Security Policy) and the ESDP will be maintained, with no significant departures from the arrangements which currently apply under the EU Treaty”.

## 5.8 Protection of tax and social security system

5.8.1 “Protection of our tax and social security system was a UK red line. The Government was clear that the UK should have the final say on any matters affecting important aspects of its social security system – including cost, scope, financial balance or structure. This was secured in the Treaty through a strengthened ‘brake’ mechanism. Under the terms of the provision, where any Member State assesses that it would affect important aspects of its social security system (including cost, scope, financial balance or structure) it may refer the proposal to the European Council. In that case the legislative procedure is suspended. The European Council then takes a decision by consensus on how to proceed. If no action is taken within four months the proposal will fall. A Declaration to the Treaty (agreed by all Member States) confirms that any decision taken by the European Council under the brake must be by consensus. So, once the brake is activated, any Member State can block a proposal and it falls – effectively therefore it amounts to a veto power”

5.8.2 The House of Commons European Scrutiny Committee sets out to examine the efficacy of the red lines in its report of November 2007<sup>15</sup> and states that “In our view, control of tax and social security was never seriously threatened. The previous Treaty establishing a Constitution for Europe contained no proposals to move to QMV in relation to tax. In relation to social security, that previous Treaty provided for measures on social security to be adopted by QMV, but also provided for an ‘emergency brake’.

**As far as we can establish, the only material change is that the ‘emergency brake’ may now be applied in cases where ‘important’ rather than ‘fundamental’ aspects of a Member State’s social security system would be affected”.**

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<sup>15</sup> House of Commons European Scrutiny Committee – European Union Intergovernmental Conference: Follow-up report

5.b **What will be the impact of the Treaty on the Isle of Man?**

5.9 **Current arrangements**

5.9.1 Before considering whether or not the Treaty will have implications for the Isle of Man it is useful to restate the present relationship between the Island and Europe.

5.9.2 The Isle of Man is neither a Member State nor an associate member of the European Union (there is no provision in the Treaty to allow for 'associate membership') but it does have a special, very limited, relationship with the Community that was negotiated by the UK Government, on behalf of and with the agreement of the Isle of Man Government, prior to the signing of the Accession Treaty in 1972.

5.9.3 Article 299, paragraph 6(c), of the Treaty establishing the European Community states:

*"this Treaty shall apply to the Channel Islands and the Isle of Man only to the extent necessary to ensure the implementation of the arrangements for those islands set out in the Treaty concerning the accession of new Member States to the European Economic Community and to the European Atomic Energy Community, signed on 22 January 1972."*

5.9.4 The arrangements referred to Article 299, paragraph 6(c), are those contained in Protocol 3 to the United Kingdom's Act of Accession, which was annexed to the 1972 Treaty of Accession. A copy of Protocol 3, with commentary, is reproduced below.

5.9.5 It should be noted that the Isle of Man's relationship is technically only with the European Community and not the European Union. Although is perhaps confusing and the terms "European Community" and "European Union" have in the past often been used interchangeably, the draft Treaty will remove references to the "European Community" (see section 5.b.i) .

5.10 **Protocol 3**

5.10.1 Under Protocol 3, the Isle of Man is part of the customs territory of the Community. It follows that there is free movement of goods in trade between the Island and the Member States. Also under the Protocol the Island must apply similar measures in relation to the trade in agricultural products as the UK. The Island's relationship with the Union allows it to trade with countries in the European Economic Area (Norway, Iceland and Liechtenstein) in a fashion generally similar to its trade with the Union itself.

5.10.2 The Isle of Man neither contributes to, nor receives anything from, the funds of the European Union, thus guaranteeing the Isle of Man's fiscal independence. Any proposal to change Protocol 3 would require the unanimous approval of all the Member States, including, of course, the UK.

5.10.3 Apart from the areas outlined above and the requirement under the Protocol that the Island must not apply rules to people from any of the Member States which are different to the rules it applies to people from the UK, European Union laws are not applicable. There may, of course, be indirect effects from EU laws that do not apply to the Island and the Isle of Man Government may, voluntarily, choose to enact legislation that is similar to, or based on, such legislation.



5.10.4 The impact that the EU has on the Island can be summarised, therefore, as arising from:

- i) Protocol 3 issues;
- ii) through agreements with the UK;
- iii) trading standards and requirements;
- iv) the Island's own choice;
- v) the general environment.

5.10.5 Point i) above may be termed the "direct" (or legal) effect of the EU on the Island, whilst points ii) to v) might be called "indirect" effects of the EU on the Island.

5.10.6 Protocol 3 is reproduced below. (The commentary in italics does not form part of the Protocol.)

#### 5.11 **Article 1**

1. The Community rules on customs matters and quantitative restrictions, in particular those of the Act of Accession, shall apply to the Channel Islands and the Isle of Man under the same conditions as they apply to the United Kingdom. In particular, customs duties and charges having equivalent effect between those territories and the Community, as originally constituted and between those territories and the new Member States, shall be progressively reduced in accordance with the timetable laid down in Articles 32 and 36 of the Act of Accession. The Common Customs Tariff and the ECSC unified tariff shall be progressively applied in accordance with the timetable laid down in Articles 39 and 59 of the Act of Accession, and account being taken of Articles 109, 110 and 119 of that Act.

*(Community rules on customs matters and quantitative restrictions shall apply to the Island as they do to the UK)*

2. In respect of agricultural products and products processed therefrom which are the subject of a special trade regime, the levies and other import measures laid down in Community rules and applicable by the United Kingdom shall be applied to third countries.

Such provisions of Community rules, in particular those of the Act of Accession, as are necessary to allow free movement and observance of normal conditions of competition in trade in these products shall also be applicable.

The Council, acting by a qualified majority on a proposal from the Commission, shall determine the conditions under which the provisions referred to in the preceding subparagraphs shall be applicable to these territories.

*(The Island shall apply Community rules in relation to competition in the trade in agricultural products)*

#### 5.12 **Article 2**

The rights enjoyed by Channel Islanders or Manxmen in the United Kingdom shall not be affected by the Act of Accession. However, such persons shall not benefit from the Community provisions relating to the free movement of persons and services.

*(Manxmen shall not benefit from the free movement of persons and services)*

#### 5.13 **Article 3**

The provision of the Euratom Treaty applicable to persons or undertakings within the meaning of Article 196 of that Treaty shall apply to those persons or undertakings when they are established in the aforementioned territories.

#### 5.14 **Article 4**

The authorities of these territories shall apply the same treatment to all natural and legal persons of the Community.

*(The Island shall apply equal treatment to all legal and natural persons of the Community)*

5.15 **Article 5**

If, during the application of the arrangements defined in this Protocol, difficulties appear on either side in relations between the Community and these territories, the Commission shall without delay propose to the Council such safeguard measures as it believes necessary, specifying their terms and conditions of application. The Council shall act by qualified majority within one month.

*(Provides a formula for resolving difficulties under the Protocol)*

5.16 **Article 6**

In this protocol, Channel Islander or Manxman shall mean any citizen of the United Kingdom and Colonies who holds that citizenship by virtue of the fact that he, a parent or grandparent was born, adopted, naturalised or registered in the Island in question; but such a person shall not for this purpose be regarded as a Channel Islander or Manxman if he, a parent or grandparent was born, adopted, or naturalised or registered in the United Kingdom. Nor shall he be so regarded if he has at any time been ordinarily resident in the United Kingdom for five years. The administrative arrangements necessary to identify those persons will be notified to the Commission.

*(Defines Manxmen and Channel Islanders)*

*[Following the coming into force of the British Nationality Act 1981, the United Kingdom made a declaration to the effect that the reference in Article 6 to "any citizen of the United Kingdom and Colonies" was to be understood as referring to "any British citizen".]*

5.b.i **Direct effects – Article 299 & Protocol 3**

5.17.1 Article 299(6)(c) is the Section of EU treaty which governs the relationship of EU with the Crown Dependencies. It has not been amended by the Lisbon Treaty, except to be re-numbered as Article 311a (5)(c) (It will eventually be Article 355(5)(c) in the consolidated text of the Treaty on the Functioning of the European Union).

5.17.2 Furthermore, in order to reflect the changes in the structure of the EU, and the fact that the European Community has been replaced by the European Union, certain 'Horizontal Amendments' have been made to the Treaties to allow for this.

5.17.3 Article 2(2)(a) of the Lisbon Treaty states that –

*"The words 'Community' and 'European Community' shall be replaced by 'Union' and any necessary grammatical changes shall be made, the words 'European Communities' shall be replaced by 'European Union', except in paragraph 6(c) of Article 299, renumbered paragraph 5(c) of Article 311a." (Italics added)*

5.17.4 This provision, whilst accommodating the change from European Community to European Union throughout the entirety of the Treaty recognises, implicitly, that the UK's Act of Accession and Protocol 3 which is attached to it, should not be altered, recognising that the Isle of Man's relationship is with what was the European Economic Community.

5.17.5 In other words, although in future the Island's formal relationship will be with the European Union rather than the part of it that is presently the European Community, because Protocol 3 is unchanged **only** those matters which have legal effect on the Island now will be applicable to the Island if the Lisbon Treaty comes into force. Nothing new by way of EU policy or law will be legally applicable to the Island because of the Lisbon Treaty.

5.17.6 The Committee concludes, therefore, that

**5.17.7 The legal relationship between the Isle of Man and the European Union, as expressed by Protocol 3 to the UK's Act of Accession, is not altered by the Lisbon Treaty.**

5.b.ii **Indirect effects of the Treaty on the Isle of Man**

5.18.1. As has been discussed above, there are several ways in which the EU has an effect on the Isle of Man outside of the limitations of Protocol 3. It is clear that should the Lisbon Treaty have any ramifications for the Isle of Man, these are most likely to be felt in the areas where the Isle of Man has entered into bilateral agreements with the UK – for example in relation to social security etc – and is bound by such agreements to keep its legislation in line with the UK's and by extension, potentially, the EU. (A similar position already exists in relation to the Customs and Excise Agreement, whereby the Isle of Man voluntarily adopts measures identical to those prevailing in the EU, and which fall outside of the scope of Protocol 3, as a result of the agreement with the UK).

5.18.2 What is clear is that none of these effects are made binding on the Isle of Man without the consent of Tynwald. In other words, Tynwald retains the power to decide whether or not to adopt those measures which are covered by what we have termed 'indirect effects'. Taking each of the headings from the FCO White Paper on the main features of the Lisbon Treaty, we can ascertain that some of the changes will have no effect on the Isle of Man, as they concern themselves with the internal workings of the EU, namely –

- The creation of a permanent President of the European Council
- The creation of a 'High Representative of the Union for Foreign Affairs and Security Policy'
- Giving national parliament a voice in making European laws
- Reducing the size of the European Commission
- Increasing the number of policy areas where elected MEPs in the European Parliament also have to approve EU legislation (areas of 'co-decision')
- Simplification of the rules on 'enhanced co-operation' where EU countries may work together more closely on certain issues, without affecting countries that do not want to join in
- Changes to the Qualified Majority Voting (QMV) system to a new Double Majority Voting system (which means a minimum of 55% of the Member States – i.e. 15 out of 27 countries – representing a minimum of 65% of the EU's population must vote in favour for European legislation to be passed)

5.18.3 Furthermore, the incorporation of the Charter of Fundamental Rights into EU law will not affect the Isle of Man as these rights do not fall within the scope of Protocol 3, and also the Isle of Man has already incorporated the Convention on Human Rights into its own laws. These rights are, therefore, already enforceable in Manx Courts. (This is also an area covered by one of the UK's 'red lines').

**5.19 Extension of Qualified Majority Voting – loss of national veto**

5.19.1 However, one area of the Lisbon Treaty which *may* have an indirect effect on the Island is extension of Qualified Majority Voting.

5.19.2 The extension of Qualified Majority Voting (QMV) has the effect of removing the ability for a single Member State to veto a proposal, and the Lisbon Treaty extends the use of QMV to 50 new areas of the Treaty (see Appendix 2). Several of these areas are covered by UK opt-outs or opt-ins, and it is to these areas, therefore, that some of the 'red lines' discussed above will apply.

5.19.3 As mentioned the EU impacts the Island in the following ways,

- i) Protocol 3 issues;
- ii) through agreements with the UK;
- iii) trading standards and requirements;
- iv) the Island's own choice;
- v) the general environment.

5.19.4 Perhaps most important in terms of the possible indirect effects of the Treaty on the Island are those areas where the Isle of Man has an agreement or very close relationship with the UK. Of those areas where EU competence extends and which are now to be covered by QMV, there are close links in terms of the following –

- o Immigration and frontier controls (UK opt-in)
- o Judicial co-operation in criminal matters (UK opt-in)
- o Minimum rules for criminal offences and sanctions (UK opt-in)
- o Eurojust (structure, operation, field of action and tasks) (UK opt-in)
- o Police co-operation (data sharing and training) (UK opt-in)
- o Europol (structure, operation, field of action and tasks) (UK opt-in)
- o Social security (measures to facilitate free movement of workers) (emergency brake including a veto power)
- o Border checks (establishment of integrated management system for external borders) (UK opt-in)
- o Mechanism for peer review of Member States' implementation of policies in the Justice and Home Affairs (JHA) area (UK opt-in)
- o Crime prevention (UK opt-in)

5.19.5 Whilst these are not areas which fall within the scope of Protocol 3, clearly, they are of interest and importance to the Isle of Man, as they are areas where there is a close relationship with the UK.

5.19.6 What is important to remember, however, is that the UK has retained the right to remain outside of measures adopted in these areas, and indeed, the Isle of Man is able to monitor and discuss proposals with the UK as they progress.

## 5.20 Additional indirect effects – an example

5.20.1 Perhaps the most obvious example of an EU policy having an "indirect effect" on the Island in recent years is the case of the Savings Tax Directive. Although this Directive falls entirely outside the scope of the legally binding Protocol 3 relationship, nevertheless the Island had to adopt equivalent measures.

- 5.20.2 The actions of the UK Government in telling the other Member States that the Crown Dependencies would implement the Savings Tax Directive before the matter had been discussed with the Islands' authorities were far from exemplary (a point that the Isle of Man Government made very clear to it at the time), but the reality is that even if the Isle of Man was an independent sovereign state it is likely that the Island would have ultimately have had very little choice over adopting the Directive.
- 5.20.3 The EU and its Member States viewed the Directive as being so important they were determined that it should also apply to those international finance centres based on its periphery, and even was Switzerland was persuaded to adopt it.
- 5.20.4 With international reputation all important, the Isle of Man Government's agreement to adopt equivalent measures to the Directive (as approved by Tynwald), despite the UK's inappropriate initial actions, was the pragmatic course of action and it also demonstrated the Island's commitment to the principles of the OECD's tax transparency process.

## 5.21 **Conclusion**

- 5.21.1 The main indirect effect of the Treaty on the Isle of Man is to remove national veto in policy areas where the Island has a close relationship with the UK. These indirect effects are difficult to identify definitively, therefore, as the EU's specific policies and legislation are yet to be determined.
- 5.21.2 Furthermore, they are areas which are covered by the UK's red lines (and so may not be implemented in the UK).
- 5.21.3 **The Committee is of the opinion that this serves to underline the importance of monitoring day-to-day movements within the EU, and that Government Departments should continue to work with their UK counterparts, the External Relations Division, and with legal advisers in HM Attorney General's Chambers and in Brussels, in order to determine the effects of EU legislation and policy on the Isle of Man – particularly in those areas where it has close ties/agreements with the UK.**

**5c Will the Treaty cause or allow either the UK or EU to legislate for the Isle of Man without the approval of Tynwald?**

**5.22 How does the EU legislate?**

5.22.1 As discussed above, the Treaties themselves act as a framework (or a kind of constitution) for the EU as a whole and, as well as laying out the institutions and their powers, they also cover the legislative competency of the EU and its institutions.

5.22.2 Article 249 of the Treaty on European Union (as amended) entitled "The legal acts of the Union" states that –

*"To exercise the Union's competences, the institutions shall adopt regulations, directives, decisions, recommendations and opinions".*

5.22.3 It goes on to explain each as follows –

*"A regulation shall have general application. It shall be binding in its entirety and directly applicable to all Member States.*

*A directive shall be binding, as to the result to be achieved, upon each Member State to which it is addressed, but shall leave to the national authorities the choice of form and methods.*

*A decision shall be binding in its entirety. A decision which specifies those to whom it is addressed shall be binding only on them.*

*Recommendations and opinions shall have no binding force".*

5.22.4 When the Isle of Man requested that Protocol 3 be attached to the UK's Act of Accession to the EEC, it allowed for the EU (as it became) to legislate for the Isle of Man in areas which fall within the scope of the Protocol. The EU has, therefore, legislated for the Isle of Man since 1973, and Regulations which are applicable have direct effect in the Isle of Man, with Directives requiring local legislation for their implementation. The EU monitoring undertaken by the External Relations Division of the Chief Secretary's Office collates all such legislation and this is published on a monthly basis.

5.22.5 As far as the UK is concerned, it does not, by convention, legislate for the Isle of Man, and certainly would not do so without the consent of the Isle of Man Government. However, if the UK Government believed that the Isle of Man was failing to meet its legal obligation to properly implement EU legislation that falls within the scope of Protocol 3, it would almost certainly draw this fact to the attention of the Isle of Man Government and expect that the Island to legislate appropriately for itself.

**5.23 National Sovereignty and primacy of EU law**

5.23.1 It is a fundamental principle underpinning the operation of the EU that Member States decide to pool their *legislative competence* in certain areas (as elaborated in the Treaties) and as a result, law and policy in those areas is made at the European level. This principle has been agreed to by the national Parliaments of all the Member States in agreeing to measures necessary to allow the country to ratify the EU

treaties. Flowing from this, it has long been accepted that, “as enunciated by the ECJ since 1963, that European law takes priority over any inconsistent national law”.<sup>16</sup>

5.23.2 The UK Foreign and Commonwealth Office stated in its submission to the House of Lords Constitution Committee that:

5.23.3 *“Parliament exercised its sovereignty in passing the European Communities Act 1972 and has continued to do so in passing the legislation necessary to ratify subsequent EU Treaties. The UK Parliament could repeal the European Communities Act 1972 at any time. The consequence of such repeal is that the United Kingdom would not be able to comply with its international and EU obligations and would have to withdraw from the European Union. The Lisbon Treaty does not change that and indeed for the first time includes a provision explicitly confirming Member States’ right to withdraw from the European Union”.*<sup>17</sup>

5.23.4 The House of Lords Constitution Committee agrees with this point of view, and states that “the Lisbon Treaty would make no alteration to the current relationship between the principles of the primacy of European Union law and parliamentary sovereignty” adding that “...the United Kingdom only remains bound by European Union law as long as Parliament chooses to remain in the Union”.<sup>18</sup>

#### 5.24 **Does the Treaty impose duties on National Parliaments?**

5.24.1 Whilst the Treaty affords certain rights to national Parliaments to scrutinise legislation and to contest it when it may appear to offend the principles of subsidiarity (actions should be taken at national level where this can achieve the desired results) inherent in the Treaties, it does not impose any duties upon parliaments to do so. Indeed, when the House of Commons looked into the issue in November 2007<sup>19</sup>, it concluded that the language contained in the Treaty was not robust enough to guarantee that this was not the case. There was debate as to whether the inclusion of the word ‘shall’ in certain key areas did, in fact impose obligations on national Parliaments, and this was the subject of discussion between the Committee and the Foreign Secretary.

5.24.2 However, by February 2008, the House of Lords European Committee was able to conclude that “Following the deletion of the word ‘shall’ from three of the four places where it occurred, we regard it as settled that the Lisbon Treaty places no obligations on national parliaments.”<sup>20</sup>

#### 5.25 **Tynwald’s sovereignty and the primacy of EU law over Manx law**

5.25.1 In a similar manner to the United Kingdom, the Isle of Man’s parliamentary sovereignty remains unchanged by the Lisbon Treaty. The Island remains bound by EU law, to the very limited degree as is laid down in Protocol 3, as a result of Tynwald’s decision to pass the European Communities (Isle of Man) Act 1973 (and subsequent amendments). Should Tynwald wish to repeal the Act, it could do so – although this would however, contradict the terms of Protocol 3 and could only be done if the Island wished to have the Protocol rescinded as well.

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<sup>16</sup> House of Lords Constitution Committee report – “European Union (Amendment) Bill and the Lisbon Treaty: Implications for the UK Constitution”, paragraph 92

<sup>17</sup> Ibid, paragraph 93

<sup>18</sup> Ibid, paragraph 95

<sup>19</sup> House of Commons European Scrutiny Committee – European Union Intergovernmental Conference: Follow-up report

<sup>20</sup> House of Lords European Union Committee report – Treaty of Lisbon: An Impact Assessment

5d **Impact of the Lisbon Treaty on the Island's constitutional relationship with the United Kingdom**

5.26.1 The House of Lords Constitution Committee, in its report "European Union (Amendment) Bill and the Lisbon Treaty: Implications for the UK Constitution", examines the impact upon the UK and does not envisage any significant change to the operation of the UK constitution. The relationship with the Isle of Man, therefore, will similarly be unchanged.

5.26.2 Furthermore, a new provision is included within the Lisbon Treaty Article 3A(2) "explicitly stating that the Union must respect each Member State's national identities inherent in their political and constitutional structures and including regional and local self-government".<sup>21</sup> Whilst this would not apply, explicitly, to the Isle of Man, it could be taken to indicate of the EU's recognition of regional autonomy/self-governance of portions of the Member States.

5.26.3 In addition to this, the Treaty article which relates to the dependencies of the Member States (formerly Article 299) is now amended to include a new paragraph which states that:

*"The European Council may, on the initiative of the Member State concerned, adopt a decision amending the status, with regard to the Union, of a Danish, French or Netherlands country or territory referred to in paragraphs 1 and 2. The European Council shall act unanimously after consulting the Commission".*

5.26.4 Again, this does not concern the Isle of Man explicitly, but the implication is that certain Member States have chosen to make an amendment to the status of their territories simpler, whereas the UK has not.

5.27 **Conclusion**

5.27.1 **The Committee has not found any evidence to suggest that the constitutional relationship between the Isle of Man and the UK will be undermined. Provisions in the Treaty which underline the principle of regional autonomy and also provisions which relate to relations between the EU and other Member States' territories imply that the EU is not seeking to alter these relationships.**

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<sup>21</sup> House of Lords Constitution Committee report – "European Union (Amendment) Bill and the Lisbon Treaty: Implications for the UK Constitution"



## 6 **Royal Assent & the Royal Prerogative**

### 6.1 **Royal Assent - Introduction**

- 6.1.1 The Constitutional and External Relations Committee reported on “The Granting of Royal Assent to Bills” in 1998, and summarised the Royal Assent Process as follows –

“It has previously been observed, by a former Attorney General, that the most important function of the Crown in relation to the Isle of Man is the power to grant Royal Assent to Bills passed in Tynwald. The Crown has exercised this function since 1765. Previously, assent to Bills passed by Tynwald was given by the Lord of Man.”

- 6.1.2 The exercise of this power was delegated by the Crown to the Lieutenant Governor by the Royal Assent to Legislation (Isle of Man) Order 1981. The Order provides that the Secretary of State may give directions to the Lieutenant Governor in relation to the exercise of this delegated power. There remain a few instances where Bills are reserved for Royal Assent by the Crown, particularly where the Bill has an implication for the Crown’s powers or prerogatives. However, in the great majority of cases Royal Assent is granted by the Lieutenant Governor under delegated authority. The exercise of this delegated authority has the advantage of accelerating the Royal Assent process. Once the Secretary of State has issued the required direction, in most instances it is now possible for Bills to be signed in Tynwald, for them to be referred to His Excellency and for Royal Assent to be announced the same day.

- 6.1.3 The Island is a Crown Dependency and not an independent State. The Crown (in effect, the United Kingdom Government) retains ultimate responsibility for the Good Government of the Island, a position reiterated in the Kilbrandon Report of the early 1970s, and has the responsibility internationally for the Isle of Man.

- 6.1.4 If Royal Assent were to be granted on the basis of a recommendation exclusively tendered by the Isle of Man Government, this would amount to legislative independence, with the UK Government having no right to advise against legislation which it might judge to be contrary to good government or to be unacceptable internationally. However unlikely it might be that Tynwald would approve such legislation, the UK Government would not, and could not, agree to a change in the constitutional arrangements where they retained their responsibility for the Island’s good Government and their accountability internationally for the Island, but did not have the ability to recommend that the Royal Assent be withheld from legislation which they considered to be incompatible with their responsibilities.”

### 6.2 **Will the granting of Royal Assent to Bills be affected by the Lisbon Treaty?**

- 6.2.1 There is nothing to suggest that the Lisbon Treaty will affect the granting of Royal Assent to Bills. Indeed, it is difficult to see where it might be inferred from the Treaty that this process might be affected. In addition, as referred to in paragraph 5.26.2, a new provision is inserted in the Treaty “explicitly stating that the Union must respect each Member State’s national identities inherent in their political and constitutional structures and including regional and local self-government.”

- 6.2.2 **The Committee concludes that there is no evident to suggest that the granting of Royal Assent will be affected by the Lisbon Treaty.**

### 6.3 **Royal Prerogative**

6.3.1 The Royal Prerogatives are a series of historic powers officially held by the Queen that have, in practice, been passed to British Government.<sup>22</sup>

6.3.2 In domestic matters, the Royal Prerogative covers:

- the issuing and withdrawal of passports;
- the appointment and dismissal of ministers;
- the appointment of Queen's Counsel;
- the granting of honours;
- the appointment and regulation of the civil service;
- the commissioning of officers in the armed forces;
- the dissolution of Parliament;
- the calling of elections.

6.3.3 In foreign affairs, Royal Prerogative covers:

- the declaration of war;
- the making of treaties;
- the recognition of foreign states;
- the accreditation of diplomats.

6.3.4 It also allows the deployment of armed forces in the UK and abroad. One of the more unusual parts of the prerogative is the Royal ownership of swans.

6.3.5 The Royal Prerogative of Mercy was formerly used to enable the withdrawal of the death penalty, and it still allows changes in sentences.

6.3.6 The UK Government has said that new prerogative powers cannot be invented. Some of the powers have become redundant and not expected to be used again, such as the power to press gang men into the Royal Navy. In addition, some of the powers have been diluted by new legislation or judicial review.

### 6.4 **Will the Royal Prerogative be affected by the Lisbon Treaty?**

6.4.1 Despite the wealth of research and analysis undertaken by a range of bodies, no evidence has been presented that suggests that the Royal Prerogative will be affected by the Lisbon Treaty, although it must be recognised that many of the individual areas of competence outlined above are effectively carried out by the UK Government on behalf of the Crown.

6.4.2 However, the current review of certain aspects of the UK's constitution does impact upon some of the areas covered in the Royal Prerogative, and as such, it is perhaps more pertinent that the Isle of Man Government appraise the impact of this review and its recommendations.

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<sup>22</sup> House of Commons Public Administration Select Committee Session 2002-03, Press Notice No.19: [www.parliament.uk/parliamentary\\_committees/public\\_administration\\_select\\_committee/pasc\\_19.cfm](http://www.parliament.uk/parliamentary_committees/public_administration_select_committee/pasc_19.cfm)

## 6.5 Royal Assent/Prerogative – Conclusion

- 6.5.1 The Committee is of the view that there is no evidence to suggest the exercise of the Royal Assent and the Royal Prerogative will be affected by the Lisbon Treaty. However, what is of far greater significance is the current review of the UK's Constitution which is being undertaken by the Lord Chancellor and Secretary of State for Justice. The review is considering the exercise of various powers traditionally covered by the Royal Prerogative<sup>23</sup> and **the Committee concludes that the consultation exercise should be examined closely in order to ascertain whether there might be longer term constitutional issues which might affect the Isle of Man and its relationship with the Crown and the United Kingdom Government.**

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<sup>23</sup> The Governance of Britain – Constitutional Renewal – Ministry of Justice, March 2008

## 7 The future of the EU and the Isle of Man's relationship with it

7.1 (This section discusses the main issues in relatively broad terms as it has not been possible to assess the full implications and potential for altering the Island's relationship with the EU. However, the Committee makes several recommendations at the end of this section as to areas which might be explored further).

### 7a Future prospects for the EU and the Isle of Man's response

7.2.1 Whilst it not helpful to speculate on the future course of European integration, it seems likely that in the short to medium term the pace of political integration is likely to slow. That is to say that there are not likely to be any significant changes to the Treaties. However, within the framework of the existing treaties, as amended by the Lisbon Treaty, the Isle of Man Government will need to continue to monitor daily the EU's output in terms of legislation and policy very closely.

The Committee is of the view that the process of European integration is likely to slow down in the short to medium term, for the following reasons –

- The weakening of the Franco-German alliance which has proved crucial to driving forward the political agenda within the EU, and the more sceptical stance taken by the French in particular;
- The lack of new members waiting in the wings – Croatia may be a likely candidate, but it would seem that Turkey and some of the other Balkan states are still some way off;
- The balance of power having shifted towards the newer Member States means that the drive for political union is less strong, whilst the desire for economic growth, and increase in trade is increased – essentially, what might be deemed to be a British model for the EU (it must be borne in mind that the newer Members have only recently slipped the political shackles of the former Soviet Union);
- The possibility of a more Euro-sceptic UK Government (should there be a change in leadership) would mean a further brake being applied to European integration from within;
- The Lisbon Treaty contains a provision which allows for parts of the Treaties to be amended (upon the proposal of a Member State by means of unanimity) without the need for an Intergovernmental Conference (IGC);
- It could be argued that there is a limit to the extent to which political union might be realistic or indeed palatable for its members, and that the current state of the EU could be viewed as the 'high water mark';
- Facing the prospect of a global economic slow-down, it is necessary for the EU to concentrate on policies which encourage economic growth.

### 7b Alternatives to the current relationship

#### 7bi Full membership

7.3.1 It is not possible for the Isle of Man to become a full member of the EU in its own right as it is not an independent sovereign state. Independence would have a more significant and important impact on the Island than altering its relationship with the EU; most notably, upon its relationship with the UK.

7.3.2 The Isle of Man would also need to negotiate membership, presumably on its own behalf, and would have to adopt the entire body of EU law prior to membership prior to entry. Furthermore, the legislative competency currently enjoyed by Tynwald would be severely curtailed, and in all likelihood, the Isle of Man would have no MEP and no representation in either the European Commission, nor in the European Council due to its small size.

7.3.3 In short, on the face of it, if the Isle of Man were to seek full membership of the EU it would be subject to severe pitfalls.

7bii Membership of EFTA/EEA, WTO, etc

7.4.1 Membership of the EFTA or European Free Trade Area (which is a pre-requisite for inclusion in the EEA or European Economic Area Agreement between the EU and EFTA) is also only open to Sovereign States. The Faroese Government ( a dependency of the Danish Crown) is currently exploring the possibility of the becoming a Member, but they have made little progress in the last two years and they have yet to secure the agreement of the EFTA members, who would need to agree to a change in their constitution. At present there appears to be little prospect of the Faroe Islands becoming an EFTA member in the foreseeable future.

7.4.2 Again, the Isle of Man would, therefore, in all likelihood, need to become an independent sovereign state before it was able to gain access to EFTA; although being independent would not guarantee membership and any negotiations would undoubtedly still be fairly lengthy. However, this is a matter that the Isle of Man Government will continue to monitor and explore.

7.4.3 In relation to the World Trade Organisation (WTO), the UK's ratification of the Agreement establishing the WTO has been extended to the Island and the Isle of Man is therefore already included in the UK's membership of this body. The Isle of Man Government continues to explore whether it is possible for the Island to obtain benefits from this position or if it is possible for the Island to have greater direct interaction with the WTO.

7biii Amendment of, or withdrawal from, Protocol 3

7.5.1 Since agreeing to the inclusion of Protocol 3 (to the UK's Act of Accession) in 1972 the Isle of Man Government has consistently regarded that this arrangement is in the Isle of Man's best interests in terms of its relationship with the EU.

7.5.2 Whilst this remains the case, possible changes to Protocol 3 that might be envisaged could include:

- the UK's membership of the EU to apply fully to the Island – this would require the Island to adopt the entire body of EU law (known as the *acquis communautaire*);
- withdrawal from Protocol 3 (i.e. the Island not to be legal bound by any EU law – although there would of course still be "indirect effects");
- amendment of the Protocol 3 to restrict or extend the areas of EU law that apply to the Island.

7.5.3 Unless the Island became fully independent, any move to change Protocol 3 would in the first instance require the support of the United Kingdom as it is the UK

Government that for the most part would have to negotiate with the other Member States on the Island's behalf.

- 7.5.4 It should be noted that any change to Protocol 3 would require the agreement of all the Member States.
- 7.5.5 Adopting the entire body of EU law necessary to enable the Island to be fully inside the EU would be an immense and costly undertaking; and complete withdrawal would be very likely to create difficulty in the continued ease of free movement of goods and people between the Isle of Man and the rest of the EU (including the UK).
- 7.5.6 A change to Protocol 3 to, for example, restrict the amount of EU agricultural law that applies to the Island or to give the Island free access to EU financial services market might, on the face of it, appear to be attractive. However, neither the EU nor its Member States are in the business of altruism and they have no reason to want to do the Isle of Man any favours. Even if the EU were to be willing to find the time to consider any proposal to change Protocol 3 that might be put forward, it is certain that any change would have to be purchased at considerable cost to the Island. In addition, it is widely considered that if the UK were applying to join the EU in the present day an arrangement with its dependent territories such as Protocol 3 would not be achievable.

## 7.6 Conclusion

- 7.6.1 **Whilst this report does not purport to have fully considered all of the alternatives to the current arrangements, it is apparent that the Isle of Man's constitutional status as a Crown Dependency places restrictions on what it might realistically achieve.**
- 7.6.2 **It is the Committee's opinion that what might be seen as the gradual encroachment of the EU into areas of national competence – through the 'widening' of the Treaty – is likely to abate. It is therefore concluded that the Isle of Man should continue to monitor changes within the structure of the EU, and also continue explore the possibility of participation in other bodies such as EFTA and WTO.**

## 8 **Conclusion**

- 8.1 The Committee is of the opinion that the signature, ratification and coming into force of the Lisbon Treaty will have a minimal effect upon the Island in terms of its formal relationship with the European Union.
- 8.2 Those new areas which are to fall within the competence of the European Union and which are the subject of bilateral agreement between the Isle of Man and the United Kingdom are those which may have some significance for the Island. However, the Committee is of the opinion that in such areas three additional factors – or safeguards – come into play –
- UK 'red lines' mean that the UK itself will have some scope to mitigate the effects of EU legislation on the UK (and by implication, the Isle of Man) in certain areas
  - It remains the case that such bilateral agreements remain within the competence of the Isle of Man Government, and should it find them unpalatable in the future, then they may be reviewed
  - Legislation adopted in the Isle of Man in compliance with the terms of a bilateral agreement, even when it is based upon prevailing EU standards which have been adopted in the UK, is still drafted in the Isle of Man, and subject to the approval of Tynwald
- 8.3 The Committee does not find that there is any compelling evidence to suggest that the Royal Assent, nor the Royal Prerogative will be affected by the Lisbon Treaty.
- 8.4 The Committee concludes therefore, that the Council of Ministers should :-
- Continue to monitor changes in the overall structure of the European Union, in addition to the day to day scrutiny of legislation and policy proposals.
  - Keep under review the current consultation exercise being undertaken in the UK on its own constitution.
  - Continue to review the possibility of establishing closer/deeper relations with other bodies such as the WTO and/or EFTA, in tandem with the retention of Protocol 3 relationship

**Appendices – References & sources**

- *European Union (Amendment) Bill and the Lisbon Treaty: Implications for the UK Constitution* – House of Lords Constitution Committee, 6<sup>th</sup> Report of Session 2007-08 (HL Paper 84, published 28 March 2008)
- *The Treaty of Lisbon: an impact assessment* – House of Lords European Union Committee, 10<sup>th</sup> Report of Session 2007-08 (HL Paper 62-I, published 13 March 2008)
- *European Union Intergovernmental Conference: Follow-up report* – House of Commons European Scrutiny Committee, 3<sup>rd</sup> Report of Session 2007-08 (HC Paper 16-iii, published 27 November 2007)
- *The Treaty of Amsterdam – A report by the Council of Ministers* – March, 1998
- *The Granting of Royal Assent to Bills – A report by the Constitutional and External Relations Committee of the Council of Ministers* – November, 1998



## **Appendix 2**

### **MOVES TO QUALIFIED MAJORITY VOTING IN THE TREATY<sup>24</sup>**

The Treaty extends qualified majority voting in a total of 50 articles of the Treaty establishing the European Community and the Treaty on European Union. 16 of these do not apply to the UK or only apply if the UK agrees. 20 offer faster decision-making in areas where the UK wants to see much more effective EU action.

1. Immigration and frontier controls (UK opt-in)
2. Judicial co-operation in criminal matters (UK opt-in)
3. Minimum rules for criminal offences and sanctions (UK opt-in)
4. Eurojust (structure, operation, field of action and tasks) (UK opt-in)
5. Police co-operation (data sharing and training) (UK opt-in)
6. Europol (structure, operation, field of action and tasks) (UK opt-in)
7. Social security (measures to facilitate free movement of workers) (emergency brake including a veto power)
8. Co-ordination of provisions for self-employed persons (measures to facilitate self-employment in other Member States)
9. Transport (removes existing limited derogation)
10. Culture (incentive measures to promote cultural awareness and diversity)
11. Appointment of European Central Bank (ECB) executive board (UK opt-out)
12. Comitology (rules enabling Member States to oversee the Commission's exercise of its implementing powers)
13. Financial regulations (rules on budgetary and accounting procedures) .
14. Specialised courts (establishment of specialised first instance courts)
15. European Court of Justice (ECJ) statute
16. Amendments to certain parts of the statute of the European System of Central Banks
17. Presidency of Council configurations (arrangements for rotation)
18. Use of the euro (UK opt-out)
19. Measures relating to the broad economic guidelines and excessive deficit procedure (applicable only to eurozone members) (UK opt-out)
20. Border checks (establishment of integrated management system for external borders) (UK opt-in)
21. Mechanism for peer review of Member States' implementation of policies in the Justice and Home Affairs (JHA) area (UK opt-in)
22. Crime prevention (UK opt-in)
23. Implementation of own resources decisions
24. Provisions enabling repeal of the aspects of an Article related to state aids policy and the effect of the past division of Germany
25. Procedure for entry into the euro
26. Provisions enabling repeal of an Article on transport policy as it affects areas of Germany affected by its past division
27. Authorisation, co-ordination and supervision of intellectual property rights protection
28. Services of general economic interest (clarification of EU rules/principles applying public services)

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<sup>24</sup> FCO White Paper – reference

29. Diplomatic and consular protection
30. Humanitarian aid operations
31. Energy (measures on energy markets, energy security and energy saving)
32. Tourism (promotion of competitiveness and best practice)
33. Civil protection (assistance to prevent or protect against natural or man-made disasters)
34. Implementation of solidarity clause (assistance, if requested, in the event of a natural or man-made disaster)
35. Urgent financing of Common Foreign and Security Policy (CFSP) measures (start up measures for 'Petersberg' tasks)
36. Urgent aid to third countries
37. Aspects of the Common Commercial Policy (definition of general framework for its implementation)
38. European Research Area (removal of barriers to free flow of research)
39. Space policy (measures to promote joint initiatives and R&D)
40. Sport (incentive measures to promote sport)
41. Administrative co-operation (capacity building measures)
42. Membership of structured co-operation in defence (procedural issues relating to its establishment)
43. Election of European Council President
44. Appointment of High Representative of the Union for Foreign Affairs and Security Policy
45. Council review of general rules on composition of the Committee of the Regions and European Economic and Social Committee
46. Citizens' initiatives (petition procedure)
47. Principles of European administration (staff regulation measures)
48. Negotiation of withdrawal agreement
49. Judicial appointments panel (composition and operation)
50. Role of the High Representative of the Union for Foreign Affairs and Security Policy in CFSP implementing measures (measures proposed by the High Representative following a specific request from the European Council)

