



Isle of Man
Government

Reiltys Ellan Vannin



Council of Ministers

Consultation on the European Union (Amendment) Bill 2013

Revised Bill and Consultation Document

Chief Secretary's Office
Oik yn Ard-scrudeyr

October 2013

European Union (Amendment) Bill 2013

(Revised consultation document)

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European Union (Amendment) Bill 2013

1. Introduction

- 1.1 On 16 August 2013 a consultation document was published concerning the European Union (Amendment) Bill 2013 which had been drafted to make certain amendments to the European Communities (Isle of Man) Act 1973 ("the 1973 Act").
- 1.2 After the consultation document was published in August a further issue with the 1973 Act came to the attention of the Council of Ministers which decided that the additional issue should also be dealt with by the current Bill and that the consultation exercise should be extended to allow time for this additional issue to be considered. The closing date for comments is now **Friday 8 November 2013**.
- 1.3 This document augments and replaces the original consultation document. It includes the revised draft of the Bill, provides information on the original amendments, gives background on the new amendments that have been added to the Bill, and the opportunity has also been taken to address some misunderstandings that may have arisen about the effect of the amendments that were set out in the original draft version of the Bill.
- 1.4 Although this document has been substantially rewritten and it includes additional information compared to the original version of the consultation document on this Bill, only the part relating to "Application Orders" and what is now clause 3 of the Bill is entirely new from the previous consultation document.

Chief Secretary's Office
10 October 2013

2. Summary of the effects of the Bill

- 2.1 The primary purpose of the European Union (Amendment) Bill started out as being to amend the European Communities (Isle of Man) Act 1973 ("the 1973 Act") consequential on the treaty concerning the accession of the Republic of Croatia to the European Union, and also the Protocol on the concerns of the Irish people on the Treaty of Lisbon, by adding these treaties to the definition of "the Treaties" or "the EU Treaties" set out in section 1(1) of the 1973 Act.
- 2.2 However, during initial consideration of the Bill the Council of Ministers agreed that it should in future be possible to make such amendments in a more efficient manner. It was therefore proposed that the Council of Ministers should, subject to the approval of Tynwald, be able to amend the definition of "the Treaties" or "the EU Treaties" by an Order, rather than an Act of Tynwald being required in each case.
- 2.3 Subsequently, an issue came to light that could arise with certain Orders made under section 2A of the 1973 Act which include a reference to an EU instrument (or part of the instrument) as amended from time to time (this is known as an "ambulatory reference"). The Council of Ministers agreed that this issue should be dealt with in the current Bill and it decided that the most effective way to do this was to amend the Tynwald procedure for Orders made under section 2A of the Act and make certain other amendments in respect of Orders made under that section of the Act. The main change proposed by the Council of Ministers is that in future these Orders should be subject to the normal Tynwald approval procedure rather than the current procedure under which a draft of such Orders must be laid before Tynwald twice and moved for approval before they can be made. Council also agreed that where an Order has included an ambulatory reference and there are amendments to the applied EU instrument after the Order has been made, a person should be able to ask for a copy of the EU instrument as applied to the Island to be prepared to show the later amendments.
- 2.4 Detailed information concerning each of the issues referred to above is provided in the following sections of this document.

3. The Island's relations with the EU and obligations under that relationship

- 3.1 The Isle of Man has had a limited formal relationship with the European Union and its predecessors (the European Economic Community and then the European Community) since 1 January 1973 when the Treaty concerning the Accession of Denmark, Ireland and the United Kingdom ("the Accession Treaty") came into force. The Island's relationship is set out in *Protocol No.3 on the Channel Islands and the Isle of Man to the Act concerning the conditions of the Accession and the adjustments to the Treaties* that was annexed to the Accession Treaty, which is commonly known as "Protocol 3"¹.
- 3.2 Since 1973 there have been a number of treaties which have either amended how the European institutions work or have provided for the accession of new Member States.

¹ A copy of Protocol 3 can be found at:

<http://www.gov.im/lib/docs/cso/protocol3relationshipwiththeeu.pdf>

Basically, under Protocol 3 the Isle of Man is part of the customs territory of the EU, there is free movement of agricultural and manufactured goods between the Island and the EU, certain rules relating customs matters and to agricultural products and items derived from those products apply directly to the Island, and the Island must apply the same treatment to all persons from the EU. Otherwise, EU rules do not generally apply directly to the Isle of Man.

In each case these treaties have left Protocol 3 unchanged and, indeed, to amend the Protocol would require the agreement of all the (currently 28) Member States. Therefore, for all the changes over the years to the body that is now known as the European Union, no greater range of EU law has become applicable to the Island as a result of treaties that have made those changes². However, whilst no more European law has applied to the Island as a result of these treaties, the nature of the body with which the Island has the Protocol 3 relationship has changed.

- 3.3 The Isle of Man's Protocol 3 relationship has been implemented in Manx law since 1 September 1973 when the 1973 Act came into operation. For each of the various amending and accession treaties it has been necessary to amend the 1973 Act to ensure that it continues to accurately implement the Island's relationship under Protocol 3 and the Island's obligations under that relationship. In a sense, the body with which the Island has a relationship through Protocol 3 is in large part described for the purposes of Manx law by reference to the definition of "**the Treaties**" or "**the EU Treaties**" in section 1(1) of the 1973 Act.
- 3.4 To the limited extent that any new EU Treaty falls within Protocol 3 (and only to that extent) there is an obligation under international law for the Island to comply with the treaty from the time that it comes into force.

4. The Croatia Accession Treaty

- 4.1 In the case of the accession treaties, such as that for Croatia³, this has meant that the Protocol 3 relationship has applied between the Island and a greater number of countries than previously and, by virtue of article 4 of Protocol 3, the Island is under an obligation to treat Croatia in the same way as the other EU Member States. Croatia became a Member State of the EU on 1 July 2013 and that fact should be reflected in the law of the Island.
- 4.2 However, as in the UK, obligations under international treaties that apply (in whole or in part) to the Isle of Man do not have automatic effect as part of the law of the Island – they must be given effect through domestic legislation. All that is generally necessary for the Island's obligations under the EU Treaties (to the extent they are within Protocol 3) to be implemented in Manx law is for them to be added to the list of EU Treaties in section 1(1) of the 1973 Act. Adding the Croatia Accession Treaty to the list of the main EU treaties set out in the 1973 Act will ensure that the Island's law is not in breach of its international obligations under Protocol 3 so far as they relate to Croatia's membership of the EU.

5. The Irish Protocol

- 5.1 The Protocol on the concerns of the Irish people on the Treaty of Lisbon ("the Irish Protocol")⁴ was adopted as a result of the initial rejection of the Treaty of Lisbon by the

² In addition to the direct effects of the EU on the Island through the Protocol 3 relationship, the EU also of course has indirect effects on the Isle of Man either through the Island's constitutional relationship with the UK or merely because the EU is a powerful and influential body on the global stage. Effects through the UK are unavoidable with the Island being a Crown Dependency. Even if the Island became independent, which would sever the Protocol 3 relationship, the EU would inevitably have an effect on the Island as a powerful neighbour and main trading partner.

³ A copy of Croatia Accession Treaty can be found at:
<http://eur-lex.europa.eu/JOHtml.do?uri=OJ:L:2012:112:SOM:EN:HTML>

⁴ A copy of the Irish Protocol can be found at:
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:060:0131:0139:EN:PDF>

people of Ireland in a referendum. Some background on the development of the Irish Protocol, its purpose and the reason it should be included in the defined list of EU Treaties in the 1973 Act is set out in the following paragraphs.

- 5.2 After the rejection of the Treaty of Lisbon in the Irish referendum earlier that year, in December 2008 the European Council⁵ agreed that the concerns of the Irish people in respect of the Lisbon Treaty relating to taxation policy, the right to life, education and the family, and Ireland's traditional policy of military neutrality would be addressed to the mutual satisfaction of Ireland and the other Member States, by way of legal guarantees.
- 5.3 In June 2009, the Heads of State or Government of the then 27 Member States of the European Union, meeting within the European Council, adopted a Decision on the concerns of the Irish people on the Treaty of Lisbon ("the Decision"). The Decision gave a legal guarantee that certain matters of concern to the Irish people would be unaffected by the entry into force of the Treaty of Lisbon. Its content was fully compatible with the Treaty of Lisbon and it did not necessitate any re-ratification of that Treaty. The Heads of State and Government also agreed that, at the time of the conclusion of the next accession Treaty, the provisions of the Decision would be set out in a Protocol to be attached to the to the Treaty on European Union ("TEU") and the Treaty on the Functioning of the European Union ("the TFEU"). The legal guarantees that had been provided led to the approval of the Treaty of Lisbon in a second referendum held in Ireland in October 2009.
- 5.4 The Treaty of Lisbon entered into force on 1 December 2009 and it was added to the list of EU Treaties in the 1973 Act by the European Union (Amendment) Act 2011.
- 5.5 The Irish Protocol clarifies, but does not change either the content or the application of the TEU and the TFEU and it in no way alters the relationship between the EU and its Member States. Its sole purpose is to enshrine in the Treaties, by means of a new Protocol annexed to them, the guarantees set down in the Decision referred to above. It only contains three substantive articles:
 - Article 1 confirms that nothing in the Treaty of Lisbon relating to the Charter of Fundamental Rights of the EU or in the area of Freedom, Security and Justice policy affects in any way the scope and applicability of the protections of the right to life, the family and education in the Constitution of Ireland.
 - Article 2 of the Irish Protocol confirms that nothing in the Treaty of Lisbon makes any change of any kind, for any Member State, to the extent or operation of the competence of the EU in relation to taxation.
 - Article 3 concerns security and defence. It confirms that the Treaty of Lisbon does not affect or prejudice Ireland's policy of military neutrality; or prejudice the security and defence policy of any Member State. It also confirms that the Treaty of Lisbon does not provide for the creation of an EU army; and that it is for each Member State to decide in accordance with their own legal requirements whether it wishes to participate in any military operation that is established on a case by case basis to undertake, for example, peacekeeping duties.
- 5.6 The extent to which the Irish Protocol applies to the Isle of Man under Protocol 3 may be very limited, but it is nevertheless a important clarification of certain matters

⁵ The Heads of State or Government of the Member States of the European Union meet every six months in what is known as the European Council.

covered by the Treaty of Lisbon, without changing that Treaty, and it is therefore considered useful for it to be included in the defined list of EU Treaties in the 1973 Act.

- 5.7 It has been suggested in a response to the consultation on the Bill that inserting the Croatia Accession Treaty and the Irish Protocol into the definition of the “the Treaties” or “the EU Treaties” in the 1973 Act amounts to the augmentation of Protocol 3. That is not the case. It does not augment Protocol 3 nor does it change Protocol 3 in any way. Rather it implements the Island’s international obligations that exist under Protocol 3 as it stands, and which have applied to the Island since the Isle of Man agreed and entered into Protocol 3 more than 40 years ago.

6. Procedure for changes to the definition of “the Treaties” or “the EU Treaties”

- 6.1 At present the only way to add a new EU Treaty to the list in the definition in section 1(1) of the 1973 Act is with a further Act of Tynwald. The Council of Ministers has come to the conclusion that it should be possible to bring Manx legislation in this area into line with the Island’s international obligations in a timelier manner which would also have the benefit of reducing the resources of both Government and Tynwald required to deal with these matters. In the straightforward cases where all that is required to implement the Island’s obligations is to add the new EU Treaty to the list in the 1973 Act, the Council of Ministers does not consider that the current need to progress a new Act of Tynwald is necessary or that it represents a good use of the time and resources of Tynwald or the Government⁶.
- 6.2 The Council of Ministers has proposed that in future it should be possible to make this type of amendment to the 1973 Act by an Order rather than requiring an Act of Tynwald. It is proposed that this power would be strictly limited to changing the list set out in paragraph (a) onwards in the definition “the Treaties” or “the EU Treaties” in section 1(1) of the 1973 Act and that such an Order could not have effect unless it had been first approved by Tynwald.
- 6.3 It may be noted that the Treaty of Lisbon could not have been dealt with using the proposed power for the Council of Ministers to make an Order to add new EU Treaties to the list in 1973 Act, as amendments to the Act beyond simply adding that Treaty to the defined list of EU Treaties were required.
- 6.4 An amendment to the Act to take account of any possible future change to Protocol 3 would also not fall within the Order making power. Protocol 3 is defined separately to the “the Treaties” or “the EU Treaties” and the proposed Order making power would

⁶ The situation in the Isle of Man is very different to that in the United Kingdom, where all new EU treaties require an Act of Parliament to have effect in the law of the UK, and on which the Island’s current procedures were based.

As an EU Member State the UK has to ratify each new EU treaty for it to come into force, and each such treaty has full (and, potentially, far-reaching) effect in the UK. Parliamentary approval to primary legislation as part of the ratification process is therefore appropriate.

Although the Isle of Man is advised and consulted by the UK Government when any new EU treaty is proposed the Isle of Man is not a member of the EU and so it does not have to ratify these treaties. If a new EU treaty is ratified by all the Member States and it comes into force, by virtue of Protocol 3 (to the extent that it falls within Protocol 3) it automatically creates international obligations for the Island. If the Isle of Man fails to implement these obligations this could lead to difficulties with the UK and the EU. However, although the Protocol 3 relationship may be expanded to encompass the new country(ies) when there is an accession treaty other than that new EU treaties have little direct effect on the Island (although there can potentially be indirect effects through changes to voting rights/procedures, etc). The Council of Ministers therefore considers that secondary legislation that is subject to the Tynwald approval is an appropriate legislative procedure for the Isle of Man.

not allow the Council of Ministers to change the definition of Protocol 3 or any references to Protocol 3 by Order. Amendment of the 1973 Act to reflect any substantive change to the Island's Protocol 3 relationship with the EU⁷ would still require an Act of Tynwald for it to be implemented in the law of the Island.

- 6.5 It has been suggested during the early part of the consultation exercise that the proposed "fast track" Order making power will mean that the Isle of Man will be subject to a range of new EU Directives (such as those dealing with criminal justice matters). This is absolutely not the case. No new types of EU Directives (or Decisions or Regulations) will apply to the Island as a result of the Order making power. EU legislation that falls within the scope of Protocol 3 will continue to apply directly to the Isle of Man whether or not the Council of Ministers has the new power. Equally, EU legislation that is outside the scope of Protocol 3 will still not apply directly to the Island.
- 6.6 It has been suggested that making legislative changes by secondary legislation such as an Order somehow removes them from the control of Tynwald. This is a misunderstanding of the position. It is of course entirely appropriate for certain matters to only be dealt with by Acts (primary legislation), but it is very long established practice for the Legislature, both here in the Isle of Man and in the Island's neighbours, after due consideration to agree to the inclusion of certain delegations in its Acts so that the Executive can make certain changes and carry out actions in the future without the need for a further Act. There are a number of types of the secondary or subordinate legislation, with the most common being Orders and Regulations⁸.
- 6.7 There are basically three levels of Tynwald control imposed by the primary legislation over Orders and Regulations based on their importance, sensitivity, etc:
- Tynwald affirmative procedure;
 - Tynwald negative resolution procedure; and
 - Lay before Tynwald only or no procedure specified.
- 6.8 In the case of the affirmative procedure a debate in Tynwald is required every time to formally approve the Order or Regulations. Usually this approval is required before the Order or Regulations can come into operation but sometimes the Order or Regulations can come into operation prior to Tynwald approval but they must go to Tynwald as soon as practicable after that and if approval is not given they cease to have effect.
- 6.9 Orders and Regulations that are subject to the negative resolution procedure can be made and come into operation but then must be laid before Tynwald as soon as practicable afterwards. These items are not normally debated but if any Member of Tynwald objects to them they can put down a Motion for Order or Regulations to be annulled. There then will be a full debate and if the Motion is successful the Order or Regulations will cease to have effect.

⁷ As has been mentioned, any such change would require the approval of all (currently 28) Member States of the EU. However, if the United Kingdom was to leave the EU (for example, following the referendum proposed by the Conservative Party by the end of 2017 if that party forms the next UK Government after the 2015 General Election) then Protocol 3 would cease to have effect.

⁸ There are no hard and fast rules about what should be an Order and what should be Regulations. It largely down to tradition and historic/established practice.

- 6.10 For items which only have to be laid before Tynwald or where no procedure is set out in the Act for a particular piece of secondary legislation⁹, there is no formal legal mechanism for them to be debated and potentially rejected or annulled. However, if a Member strongly objected to a particular item they could still put down a Motion that related to that item for debate.
- 6.11 Every item of secondary legislation that is laid before Tynwald, whether or not it is for debate or not, must be accompanied by an Explanatory Memorandum for Members. Members may of course also request further information about items of secondary legislation if they so wish.
- 6.12 As referred to above it is proposed that the new power for the Council of Ministers to make an Order to amend the definition of the “the Treaties” or “the EU Treaties” in section 1(1) of the 1973 Act would be subject to the strongest level of Tynwald control over secondary legislation, i.e. such an Order would have to be debated and approved in Tynwald before it could come into operation. It is the case that the majority of secondary legislation that requires Tynwald approval receives it but there have been occasions where items have been rejected following debate. There have also been occasions where items have been withdrawn before a vote that may have been lost – such items may be returned (perhaps with amendments and with additional explanation) for debate in another sitting of Tynwald.
- 6.13 It should be emphasised that this proposed new power is completely unrelated to the existing Order making power in section 2A of the Act, under which the Council of Ministers can, with the approval of Tynwald, apply EU legislation to the Island which may not be directly applicable under Protocol 3. Information about section 2A of the 1973 Act and proposed amendments to that section is set out below.

7. Application Orders

- 7.1 This part of the consultation document concerns the proposed amendments that have been included in the European Union (Amendment) Bill since the consultation on the Bill was first launched. To assist readers in understanding the reason for the additional proposed amendments it may first be helpful to provide some background information on the Council of Ministers’ powers under sections 2A to 2C of the 1973 Act.
- 7.2 EU legislation that applies directly to the Isle of Man by virtue of Protocol 3 can be implemented/enforced in the Island by Regulations made by the Council of Ministers under section 2B of the 1973 Act, which includes the power to create offences for breaches of the EU legislation that applies to the Isle of Man¹⁰ and the Island’s obligations under that legislation.
- 7.3 However, there are also occasions when it is considered important and/or appropriate for the Isle of Man to voluntarily implement EU legislation that does not, or may not, apply directly to the Island under Protocol 3. Regulations to implement this EU legislation cannot be made unless an Order has first been made under section 2A of the 1973 Act to apply the EU legislation in question (or certain provisions of it) as part

⁹ In practice such items are generally laid before Tynwald anyway – for example, Appointed Day Orders to bring Acts into operation.

¹⁰ The maximum penalties that can be imposed for such offences are:

- (i) in the case of on conviction on information, custody for 2 years, a fine, or both;
- (ii) on summary conviction, custody for 3 months, a fine of £5,000 (if not calculated on a daily basis) or a fine of £200 a day, or both.

of the law of the Island. There are a number of reasons for making such an “application Order”.

- 7.4 Perhaps the most important, and certainly the most frequent, use of this power is in relation to the implementation of EU sanctions measures. These measures may largely not be directly applicable to the Island under Protocol 3 but for the purposes of protecting the Island’s reputation it is Isle of Man Government policy to comply with UN, EU and UK international sanctions. Using the powers in the 1973 Act is the most straightforward and effective way of implementing both EU and UN sanctions because, in addition to implementing its own sanctions, the EU adopts legislation to implement UN Security Council Security Resolutions. By implementing this EU legislation the Island can comply with the UN measures in an equivalent way to the UK and the EU Member States.
- 7.4 Another case where it may be desirable to make an application Order is where EU legislation is certainly applicable to the Island in part under Protocol 3 but there is legal uncertainty whether it is applicable in its entirety. If Regulations are made to fully implement the piece of EU legislation in question, without an applicable Order being made first, there could then be doubt over whether there is actually a legal power for the Regulations to cover all necessary circumstances. This may mean that one set of rules will legally have effect in some circumstances and another set of rules will have effect in other related circumstances.
- 7.5 When an Order is made to apply a piece of EU legislation to the Island the Order can apply that legislation to such extent and subject to such exceptions, adaptations and modifications as considered to be necessary or desirable. These exceptions, etc are possible because, like any other secondary legislation made under an Act of Tynwald, Orders made under section 2A of the 1973 Act are purely Manx pieces of legislation – and the power to make, amend or revoke these Orders is only subject to the Isle of Man Government and Tynwald. The power in section 2A the 1973 Act basically allows a piece of EU legislation (or parts of it) to be used as a template for making similar Manx legislation in an efficient and effective manner.
- 7.6 It is a legal requirement of the 1973 Act that all Orders made under section 2A of the Act must have annexed to them a copy of the text of the EU legislation applied by the Order which incorporates the exceptions, adaptations and modifications specified in the Order.
- 7.7 For a number of years it was usual when making certain Orders under section 2A of the 1973 Act to modify the EU legislation so that any reference in that legislation to an Annex to the legislation was construed as being a reference to the Annex as amended from time to time (i.e. “an ambulatory reference”)¹¹.
- 7.8 However, the question of whether there was an appropriate legal basis for Orders under section 2A of the 1973 Act to include ambulatory references was called into doubt some years ago when it was noted that the UK had legislated to give it a specific

¹¹ This was considered to be particularly important in the application of EU sanctions legislation so that, for example, the lists of persons who were subject to having their bank accounts frozen were automatically kept in line with those in the UK and the rest of the EU. These lists may be updated frequently by the EU. In the case of sanctions against persons linked to Al-Qaida (*Council Regulation (EC) No 881/2002*), for example, there have been over 200 amendments in the last 11 years. Without the ability to use an ambulatory reference a new amendment Order would be required every time. This would not only be burdensome and bureaucratic, even the delay of a few days between the EU lists being updated and the lists being updated in the Isle of Man could potentially lead to the Island being used as a loophole to move funds that would otherwise be frozen.

power in this area¹². For a time therefore, to avoid any legal uncertainty, ambulatory references were not used but their use was put on a proper statutory basis by the European Union (Amendment) Act 2011 which inserted section 2C into the 1973 Act so that they could again be used.

7.9 In summary:

- Section 2A – power for the Council of Ministers make Orders to apply EU legislation to the Island that may not be applicable under Protocol 3; text of the EU legislation as modified in its application to the Island attached to Order;
- Section 2B – power for the Council of Ministers to make Regulations to implement/enforce EU legislation that applies to the Island under Protocol 3 or which has been applied by an Order made under section 2A;
- Section 2C – Orders made under section 2A and Regulations made under section 2B can refer to EU legislation as that legislation is amended from time to time by the EU.

7.10 There are currently two quite different Tynwald procedures that apply where the Council of Ministers wishes to make an Order under section 2A of the 1973 Act – one that applies to EU sanctions legislation and one that applies to all other EU legislation.

7.11 When the Order relates to EU sanctions legislation it can be made and come into operation with immediate effect but it must then be moved for approval in Tynwald as soon practicable after it was made or it ceases to have effect. When the Order does not relate to the application of EU sanctions legislation a draft of the proposed Order must be laid before two sittings of Tynwald and the draft Order moved for approval at the second sitting before the Order can be made. An Order that is subject to the two Tynwald requirement is not laid before Tynwald for a third time when it has actually been made but obviously there must be no substantive changes¹³ from the draft Order that was laid before Tynwald.

7.12 The potential problem that has recently come to light relates to an Order made under section 2A of the 1973 Act that is subject to the two-Tynwald requirement and which includes a reference to EU legislation as amended from time to time.

7.13 The position is clear in relation to amendments made by the EU after the Order has been made (i.e. the amendments are subject to the ambulatory reference and so apply to the Island). However, the situation where the EU legislation that is to be applied to the Island is amended between it being laid before Tynwald for the first time and the Order being made after the draft Order has been approved at a second sitting of Tynwald may be less clear. There should be no substantive changes to the draft Order between it being laid before Tynwald for the first and second times, or between approval of the draft Order and the Order being made, and this has been taken as also including the text annexed to the Order. Although amendments made by the EU during the interim period may well also be subject to the ambulatory reference the Council of Ministers has agreed that the 1973 Act should be amended to remove any possible doubt for the future.

¹² Section 28 of the Legislative and Regulatory Reform Act 2006 amended the European Communities Act 1972 to provide for the use of ambulatory references in secondary legislation made by the UK to implement EU obligations.

¹³ Changes such as the insertion of the statutory document number, removal of words such as “draft” and adding the date that the draft Order was approved can of course be made.

- 7.14 The Council of Ministers considers that the most effective and appropriate way to do this is to amend the Tynwald procedure for Orders made under section 2A of the 1973 Act. The power to make an Order to apply EU legislation that may not be applicable under Protocol 3 was inserted into the 1973 Act by the European Communities (Amendment) Act 1991 and originally the same two-Tynwald procedure applied to all Orders made under section 2A. However, this was changed by the European Communities (Amendment) Act 2000 to allow for the more timely implementation of EU sanctions.
- 7.15 The Council of Ministers does not suggest that Orders that do not relate to EU sanctions should be subject to the same procedure as sanctions application Orders, which might be seen as a special case. Instead it proposes that these Orders should be subject to the normal Tynwald approval procedure under which an Order cannot come into operation unless it is approved by Tynwald.
- 7.16 It should be noted that the power in section 2A of the 1973 Act for the Council of Ministers to make an Order to apply EU legislation to the Island is not a unique power in Acts of Tynwald. For example, section 11A of the Airports and Civil Aviation Act 1987 provides that an Order made by the Department of Economic Development can apply a wide range of EU aviation related legislation to the Island that may not be directly applicable under Protocol 3. In addition, there are numerous examples of powers in Acts of Tynwald under which UK legislation can be applied to the Island by Order, where the UK legislation may have been made to implement EU Directives or so as to comply with other EU obligations. None of these Orders are subject to the two Tynwald requirement; such Orders are generally subject to the normal Tynwald approval procedure.
- 7.17 In addition to dealing with the issue relating to the use of ambulatory reference described above, the proposed change would reduce the administrative time required for Orders made under section 2A of the 1973 Act. Although there is a gradual move towards electronic circulation of Tynwald papers the proposed change would also still save a significant amount of paper by removing the requirement for 40 copies of the same document to be laid before Tynwald on two occasions.
- 7.18 Further proposed amendments to section 2A of the 1973 Act to clarify the position where Orders made under that section include ambulatory references to EU legislation will:
- confirm for the avoidance of doubt that the text in the annex attached to the Order is the applied EU legislation as it had effect at the time the Order was made; and
 - provide a mechanism for the text in the annex to the Order to be updated to take account of amendments to the applied legislation after the Order was made and for the updated text to be provided on request.

8. Consultation Process

8.1 The Council of Ministers would be grateful to receive comments on the revised draft European Union (Amendment) Bill which can be found at Appendix 1. A copy of the 1973 Act is attached at Appendix 2.

8.2 Any comments should be submitted in writing to:

Ms Anne Shimmin
Chief Secretary's Office
Government Office
Bucks Road
Douglas
Isle of Man
IM1 3PN

or by email to anne.shimmin@cso.gov.im

8.3 The closing date for the receipt of comments is now **Friday 8 November 2013**.

8.4 Unless specifically requested otherwise, any responses received may be published either in part or in their entirety. Please mark your response clearly if you wish your response and name to be kept confidential. Confidential responses will be included in any statistical summary and numbers of comments received.

8.5 When submitting your views please indicate if you are responding on behalf of an organisation.

8.6 To ensure that the process is transparent in line with the Government's Code of Conduct on Consultation responses can only be accepted if you provide your name with your response.

8.7 The purpose of consultation is not to be a referendum but an information, views and evidence gathering exercise from which to take an informed decision. In any consultation exercise the responses received do not guarantee changes will be made to what has been proposed.

EUROPEAN UNION (AMENDMENT) BILL 2013

Explanatory Memorandum

1. This Bill is promoted by the Council of Ministers.
2. If enacted, the Bill will amend the European Communities (Isle of Man) Act 1973 (“the 1973 Act”) –
 - (a) to take account of the accession of the Republic of Croatia to the European Union;
 - (b) to reflect the concerns of the Irish people on the Treaty of Lisbon;
 - (c) to enable the Council of Ministers, with Tynwald approval, to amend the 1973 Act by order so as to keep up to date the list of treaties and other measures which comprise the EU Treaties;
 - (d) to change the Tynwald procedure for the purpose of applying EU legislation to the Island; and
 - (e) to make further provisions which have effect in relation to orders which apply EU legislation to the Island and which provide for references to the EU legislation to be construed on an ambulatory basis.
3. *Clause 1* states the short title of the Act resulting from the Bill.
4. *Clause 2* amends section 1 of the 1973 Act to give effect to the amendments referred to in paragraphs (a) to (c) above.
5. *Clause 3* amends section 2A of the 1973 Act to give effect to the amendments referred to in paragraphs (d) and (e) above.
6. *Clause 4* provides for the automatic repeal of the Act resulting from the Bill (but not the amendments made to the 1973 Act) upon its promulgation.
7. It is considered that the Bill has no financial or human resource implications.
8. In the opinion of the member moving the Bill its provisions are compatible with the Convention rights within the meaning of the Human Rights Act 2001.



EUROPEAN UNION (AMENDMENT) BILL 2013

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EUROPEAN UNION (AMENDMENT) BILL 2013

A **BILL** to amend the European Communities (Isle of Man) Act 1973 consequential on the treaty concerning the accession of the Republic of Croatia to the European Union and the Protocol on the concerns of the Irish people on the Treaty of Lisbon; to enable the Council of Ministers to amend by order the list of treaties specified in the definition of ““the Treaties” or “the EU Treaties”” set out in section 1(1) of the Act; to change the Tynwald procedure for the purpose of applying EU instruments to the Island under section 2A of the Act; to make further provision in respect of orders made under section 2A of the Act which contain ambulatory references to EU instruments; and for connected purposes.

BE IT ENACTED by the Queen’s Most Excellent Majesty, by and with the advice and consent of the Council and Keys in Tynwald assembled, and by the authority of the same, as follows:—

1 Short title

The short title of this Act is the European Union (Amendment) Act 2013.

2 Section 1 amended

- (1) Section 1 (interpretation) of the European Communities (Isle of Man) Act 1973 is amended as follows.
- (2) In subsection (1), in the definition of ““the Treaties” or “the EU Treaties””, after paragraph (o) insert —
 - (p) the treaty concerning the accession of the Republic of Croatia to the European Union, signed at Brussels on 9 December 2011; and
 - (q) the Protocol on the concerns of the Irish people on the Treaty of Lisbon, adopted at Brussels on 16 May 2012; ~~22~~.
- (3) After subsection (1) insert —
 - (1A) The Council of Ministers may by order amend (including by way of adding to or deleting from) the list of provisions which are to be taken with the pre-accession treaties for the purposes of, and which are specified in, the definition of ““the Treaties” or “the EU Treaties”” in subsection (1).

- (1B) However, an order under subsection (1A) —
 - (a) may not amend Schedule 1 (the pre-accession treaties); and
 - (b) is subject to subsection (2).
- (1C) An order under subsection (1A) must not come into operation unless it is approved by Tynwald. **22**.

3 Section 2A amended

- (1) Section 2A (application to Island of EU instruments) of the European Communities (Isle of Man) Act 1973 is amended as follows.
- (2) For subsection (4) substitute —
 - 22**(4) Subject to subsection (4A), an order under this section must not come into operation unless it is approved by Tynwald. **22**.
- (3) After subsection (7) insert —
 - 22**(8) Subsections (5) to (7) are subject to subsections (9) to (13).
 - (9) Subsections (10) to (13) apply if an order made under this section provides that a reference in it to an EU instrument (or a provision of an EU instrument) is to be construed as a reference to the instrument or provision as amended from time to time (see section 2C).
 - (10) To avoid doubt, the text to be annexed under subsection (5) is the text of the legislation at the time the order is made.
 - (11) However, the Council of Ministers —
 - (a) may update the text to reflect any amendment made to the EU instrument or provision after the making of the order; and
 - (b) must update the text if a request is made in accordance with subsection (12).
 - (12) A person making a request under subsection (6) may further request that the copy to be supplied is a copy of the updated text and the Council of Ministers must comply with the request on the payment of such fee as may prescribed under the *Fees and Duties Act 1989*.
 - (13) A copy made available to purchase under subsection (12) is admissible in evidence in the same manner and to the same extent as a copy made available under subsection (6) (see subsection (7)). **22**.

4 Automatic repeal

- (1) This Act is automatically repealed on the day after its promulgation.

- (2) However, the repeal does not affect the continuing operation of the amendments made by sections 2 and 3.



Isle of Man

Ellan Vannin

EUROPEAN COMMUNITIES (ISLE OF MAN) ACT 1973

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**Isle of Man***Ellan Vannin*

EUROPEAN COMMUNITIES (ISLE OF MAN) ACT 1973

Received Royal Assent: 16 July 1973

Passed: 7 August 1973

Commenced: 1 September 1973

AN ACT to make provision in connection with the inclusion of the Isle of Man for certain purposes in the European Communities, consequent upon the enlargement thereof to include the United Kingdom.

1 Interpretation

[1972/1 P]

(1) In this Act, unless the context otherwise requires —

“**the Board**” [Repealed]¹

“**Commissioners**” [Repealed]²

“**the EU**” means the European Union, being the Union established by the Treaty on European Union signed at Maastricht on 7 February 1992 (as amended by any later Treaty);³

“**the Communities**” means the European Economic Community, the European Coal and Steel Community and the European Atomic Energy Community;

“**EU customs duty**” means, in relation to any goods, such duty of customs as may from time to time be fixed for those goods by directly applicable EU provision as the duty chargeable on importation into member States;⁴

“**EU institution**” means any institution of the EU;⁵

“**EU instrument**” means any instrument issued by an EU institution;⁶

“**EU obligation**” means any obligation created or arising by or under the Treaties;⁷

“**Economic Community**” [Repealed];⁸

“**enforceable EU right**” and similar expressions shall be construed in accordance with subsection (1) of section 2 of this Act;⁹

“**the European Court**” means the Court of Justice of the European Union;¹⁰

“**member**” in the expression “**member States**” refers to membership of the EU;¹¹

“**officer**” shall have the same meaning as “**officer**” as defined in the *Customs and Excise Management Act 1986* (an Act of Tynwald);¹²

“**the Protocol**” means Protocol No. 3 to the Act annexed to the Treaty of Accession;

“**the Treaties**” or “**the EU Treaties**” means, subject to the provisions of subsection (2) of this section, the pre-accession treaties, that is to say, those described in Schedule 1 to this Act, taken with —

- (a) the treaty relating to the accession of the United Kingdom to the European Economic Community and to the European Atomic Energy Community, signed at Brussels on the twenty-second day of January, nineteen hundred and seventy-two; and
- (b) the decision, of the same date, of the Council of the European Communities relating to the accession of the United Kingdom to the European Coal and Steel Community; and
- (c) the treaty relating to the accession of the Hellenic Republic to the European Economic Community and to the European Atomic Energy Community, signed at Athens on the 28th May 1979; and¹³
- (d) the decision, of the 24 May 1979, of the Council relating to the accession of the Hellenic Republic to the European Coal and Steel Community; and¹⁴
- (e) the treaty relating to the accession of the Kingdom of Spain and the Portuguese Republic to the European Economic Community and to the European Atomic Energy Community, signed at Madrid and Lisbon on 12th June 1985; and¹⁵
- (f) the decision, of 11th June 1985 of the Council relating to the accession of the Kingdom of Spain and the Portuguese Republic to the European Coal and Steel Community; and¹⁶
- (g) the following provisions of the Single European Act signed at Luxembourg and The Hague on 17th and 28th February 1986, namely Title II (amendment of the treaties establishing the Communities) and, so far as they relate to any of the Communities or any community institution, the preamble and Titles I (common provisions) and IV (general and final provisions); and¹⁷
- (h) Titles II, III and IV of the Treaty on European Union signed at Maastricht on 7 February 1992, together with the other provisions of the Treaty so far as they relate to those Titles, and the Protocols adopted at Maastricht on that date and annexed to the Treaty establishing the European Community with the exception of the Protocol on Social Policy on page 117 of Cm 1934; and¹⁸

- (i) the Agreement on the European Economic Area signed at Oporto on 2 May 1992 together with the Protocol adjusting that Agreement signed at Brussels on 17 March 1993; and¹⁹
- (j) the treaty concerning the accession of the Kingdom of Norway, the Republic of Austria, the Republic of Finland and the Kingdom of Sweden to the European Union, signed at Corfu on 24th June 1994; and²⁰
- (k) the following provisions of the Treaty signed at Amsterdam on 2 October 1997 amending the Treaty on European Union, the Treaties establishing the European Communities and certain related Acts —
 - (i) Articles 2 to 9;
 - (ii) Article 12; and
 - (iii) the other provisions of the Treaty so far as they relate to those Articles,and the Protocols adopted on that occasion other than the Protocol on Article J.7 of the Treaty on European Union; and²¹
- (l) the following provisions of the Treaty signed at Nice on 26th February 2001 amending the Treaty on European Union, the Treaties establishing the European Communities and certain related Acts —
 - (i) Articles 2 to 10, and
 - (ii) the other provisions of the Treaty so far as they relate to those Articles,and the Protocols adopted on that occasion; and²²
- (m) the treaty concerning the accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic to the European Union, signed at Athens on 16th April 2003; and²³
- (n) the treaty concerning the accession of the Republic of Bulgaria and Romania to the European Union, signed at Luxembourg on 25th April 2005;²⁴ and
- (o) the Treaty of Lisbon Amending the Treaty on European Union and the Treaty Establishing the European Community signed at Lisbon on 13 December 2007 (together with its Annex and protocols), excluding any provision that relates to, or in so far as it relates to or could be applied in relation to, the Common Foreign and Security Policy;²⁵

and any other treaty entered into by the EU (except in so far as it relates to , or could be applied in relation to, the Common Foreign and Security

Policy), with or without any of the member States, or entered into, as a treaty ancillary to any of the Treaties, by the United Kingdom;^{26 27}

“**the Treaty of Accession**” means the treaty referred to in paragraph (a) of the foregoing definition of the expression “the Treaties”.

- (2) If Her Majesty by Order in Council made in accordance with the provisions of subsection (3) of section 1 of the European Communities Act 1972 (an Act of Parliament) declares that a treaty specified in the Order is to be regarded as one of the EU Treaties as defined in that Act, the Order shall be conclusive that it is to be regarded as one of the EU Treaties as herein defined; but a treaty entered into by the United Kingdom after the 22nd January 1972, other than a pre-accession treaty to which the United Kingdom accedes on terms settled on or before that date, shall not be regarded as one of the EU Treaties as herein defined unless it is so specified.²⁸
- (3) For the purposes of subsections (1) and (2) of this section, the expression “treaty” includes any international agreement, and any protocol or annex to a treaty or international agreement.
- (4) Except in so far as the context otherwise requires, any reference in this Act and in any order made thereunder to any other enactment shall be construed as a reference to that enactment as repealed and re-enacted, amended, extended or applied by or under any other enactment including this Act.
- (5) It is hereby declared that sections 2 and 6 of this Act are enacted for the purposes mentioned in subsection (6) of section 2 of the European Communities Act 1972 (an Act of Parliament).

1A Changes in terminology

- (1) The Council of Ministers may by order amend any statutory provision to reflect a change in terminology or numbering arising as a consequence of the Treaty of Lisbon.
- (2) An order under subsection (1) may contain any consequential, incidental, supplementary and transitional provisions which the Council of Ministers considers to be necessary or expedient.
- (3) An order under subsection (1) must be laid before Tynwald as soon as practicable after it is made, and if Tynwald at the sitting at which the order is laid or at the next following sitting resolves that it is to be annulled, it ceases to have effect.
- (4) A reference in a statutory provision to all or any of the Communities is to be treated as being or including (as the context requires) a reference to the EU from the date on which this section comes into operation.

- (5) A reference to the EU in a statutory provision includes, if and in so far as the context permits or requires, a reference to the European Atomic Energy Community.
- (6) In subsection (1), the “Treaty of Lisbon” means the treaty specified in paragraph (o) in the definition of “the Treaties” in section 1(1).²⁹

2 General implementation of the Treaties

[1972/2 P]

- (1) All such rights, powers, liabilities, obligations and restrictions from time to time created or arising by or under the Treaties, and all such remedies and procedures from time to time provided for by or under the Treaties, as (having regard to the provisions of Articles twenty-five, twenty-six and twenty-seven of the Act annexed to the Treaty of Accession and to the provisions of the Protocol) in accordance with the Treaties are without further enactment to be given legal effect or used in the Isle of Man shall, in the Isle of Man, be recognised and available in law, and be enforced, allowed and followed accordingly; and the expression “enforceable EU right” and similar expressions shall be read as referring to one to which this subsection applies.³⁰
- (2) Any enactment passed or to be passed in the Isle of Man shall be construed and have effect subject to the foregoing provisions of this section.
- (3) A certificate issued by or under the authority of the Secretary of State stating that any EU instrument does or does not apply to the Isle of Man shall be conclusive evidence of that fact.³¹

2A Application to Island of EU instruments³²

- (1) Notwithstanding the provisions of any other statutory provision, the Council of Ministers may by order apply to the Island as part of the law of the Island, to such extent and subject to such exceptions, adaptations and modifications as may be specified in the order, any instrument to which this section applies.³³
- (2) This section applies to any EU instrument (but only to the extent that such instrument does not apply as part of the law of the Island under section 2(1) of this Act).³⁴
- (3) An order under this section may include provisions repealing or amending any provision of any statutory provision (other than this section) which is inconsistent with, or is unnecessary or requires modification in consequence of the order or any instrument applied to the Island by the order.
- (4) Subject to subsection (4A), no order shall be made under this section unless a draft of the proposed order has been laid before a sitting of

Tynwald and that draft has been approved at a subsequent sitting of Tynwald.³⁵

- (4A) An order to which this subsection applies shall be laid before Tynwald as soon as practicable after it is made, and if Tynwald at the sitting at which the order is laid or at the next following sitting fails to approve it, the order shall cease to have effect.³⁶
- (4B) Subsection (4A) applies to orders made under this section in respect of EU instruments which (either in whole or in part) —
- (a) provide for the imposition, implementation, furtherance or enforcement of any embargo, sanction or restrictive measure whatsoever against or in respect of —
 - (i) any country or territory; or
 - (ii) nationals, persons (natural or legal), businesses, property, ships, aircraft or vehicles in, of or connected with any country or territory; or
 - (b) otherwise make provision in relation to any embargo, sanction or restrictive measure.³⁷
- (4C) Subsection (4A) also applies to orders made under this section which modify like orders made before the commencement of that subsection which, if they had been made after commencement, would have been orders to which subsection (4A) applies.³⁸
- (5) An order made under this section shall have annexed to it a text of the legislation applied by the order, incorporating the exceptions, adaptations and modifications specified in the order.
- (6) The Council of Ministers shall cause a copy of the text prepared under subsection (5) to be supplied to any person requesting the same on the payment of such fee as may be prescribed under the *Fees and Duties Act 1989*.³⁹
- (7) A copy made available for purchase under subsection (6), purporting to have been made under that subsection, shall be admissible in evidence in all the courts in the Island and shall, until the contrary is proved, be evidence of the contents thereof.⁴⁰

2B Implementation of EU obligations⁴¹

[P1972/68/2(2), (4) and Sch 2]

- (1) Subject to subsection (4), the Council of Ministers may by regulations make such provision as appears to it to be necessary —
- (a) for the purpose of implementing any EU obligation of the Island, or enabling any such obligation to be implemented, or of enabling any rights enjoyed or to be enjoyed by the Island under or by virtue of the Treaties to be exercised; or⁴²

- (b) for the purpose of dealing with matters arising out of or related to any such obligation or rights, or the operation from time to time of section 2(1); or
 - (c) for the purpose of implementing any instrument applied to the Island under section 2A of this Act; or⁴³
 - (d) for the purpose of dealing with matters arising out of or related to any such instrument.⁴⁴
- (2) In the exercise of any statutory power or duty, including the power to give directions or to legislate by means of orders, rules, regulations or other subordinate instrument, the person or body entrusted with the power or duty may have regard to the objects of the EU and to any such obligations or rights as aforesaid.⁴⁵
- (3) The provision that may be made under subsection (1) includes, subject to subsection (4), any such provision (of any such extent) as might be made by Act of Tynwald, and any enactment passed or to be passed, other than one contained in sections 1 to 3, shall be construed and have effect subject to the foregoing provisions of this section; but, except as may be provided by any Act passed after this section comes into operation, subsection (4) shall have effect in connection with the powers conferred by this section to make regulations.
- (4) The powers conferred by subsection (1), to make provision for the purposes in that subsection shall not include power —
- (a) to make any provision imposing or increasing taxation otherwise than in accordance with subsection (5); or
 - (b) to make any provision taking effect from a date earlier than that of the making of the instrument containing the provision; or
 - (c) subject to subsection (6), to confer any power to legislate by means of orders, rules, regulations or other subordinate instrument, other than rules of procedure for any court or tribunal; or
 - (d) to create any new criminal offence the punishment for which exceeds —
 - (i) in the case of on conviction on information, custody for 2 years, a fine, or both;
 - (ii) on summary conviction, custody for 3 months, a fine of £5,000 (if not calculated on a daily basis) or a fine of £200 a day, or both.⁴⁶
- (5) The provision that may be made under subsection (1) includes any provision imposing or increasing any charge if such charge corresponds to a charge which is imposed or increased in the United Kingdom under, or in pursuance or by virtue of, EU rules as they apply to the United Kingdom.⁴⁷

- (6) Subsection (4)(c) shall not be taken to preclude the modification of a power to legislate conferred otherwise than under subsection (1), or the extension of any such power to purposes of the like nature as those for which it was conferred; and a power to give directions as to matters of administration is not to be regarded as a power to legislate within the meaning of subsection (4)(c).
- (7) Without prejudice to the application to this section of the definition of “EU obligation” contained in section 1(1), any EU rule which deals with or relates (directly or indirectly) to –
- (a) customs matters;
 - (b) quantitative restrictions;
 - (c) levies and other import measures applied to third countries and laid down in EU rules in respect of agricultural products and products processed therefrom which are the subject of a special trade regime; or
 - (d) the free movement and observance of normal conditions of competition in trade in agricultural products,
- shall, for the purposes of this section, be deemed to create a EU obligation of the Island.⁴⁸
- (8) Where any regulations made under this section contain a declaration to the effect that the regulations are made in implementation of a EU obligation, such declaration shall be conclusive evidence of the existence of such an obligation.⁴⁹
- (9) Any regulations made under subsection (1) shall be laid before Tynwald as soon as may be after the making thereof, and if Tynwald at the sitting before which such instrument is so laid or at the next following sitting resolves that the instrument shall be annulled, the regulations shall thereupon cease to have effect.⁵⁰

2C Ambulatory references to EU instruments

- (1) A public document referred to in subsection (2) may provide that a reference in it to an EU instrument or a provision of an EU instrument is to be construed as a reference to the instrument or provision as amended from time to time.
- (2) Subsection (2) applies in respect of a public document made after this section comes into operation which –
- (a) is an order made under section 2A;
 - (b) contains regulations made under section 2B; or
 - (c) is made under an enactment or provision which is prescribed for the purposes of this section by an order made under subsection (3).

- (3) The Council of Ministers may by order prescribe an enactment or a provision of an enactment in respect of which a public document which is made under the prescribed enactment or provision is a public document to which subsection (2) applies.
- (4) An order under subsection (3) may contain any consequential, incidental, supplementary and transitional provisions which the Council of Ministers considers to be necessary or expedient.
- (5) An order under subsection (3) must be laid before Tynwald as soon as practicable after it is made, and if Tynwald at the sitting at which the order is laid or at the next following sitting resolves that it is to be annulled, it ceases to have effect.
- (6) A provision in an order under section 2A or regulations under section 2B made (in either case) before this section comes into operation which contains a reference to an EU instrument or a provision of an EU instrument as amended from time to time (however expressed) is to be construed as if subsections (1) and (2) were in operation when the order or regulations were made.
- (7) However, the operation of subsection (6) does not render a person liable to civil or criminal proceedings to which the person would not be liable but for its operation.⁵¹

3 Decisions on, and proof of, Treaties and EU instruments etc⁵²

[1972/3 P]

- (1) For the purposes of all legal proceedings any question as to the meaning or effect of any of the provisions of the Treaties having effect in the Isle of Man, or as to the validity, meaning or effect of any EU instrument having effect in the Isle of Man, shall be treated as a question of law (and if not referred to the European Court, be for determination as such in accordance with the principles laid down by and any relevant decisions of the European Court or any court attached thereto).⁵³
- (2) Judicial notice shall be taken of the Treaties, of the Official Journal of the European Union and of any decision of, or expression of opinion by, the European Court or any court attached thereto on any such question as aforesaid; and the Official Journal shall be admissible as evidence of any instrument or other act thereby communicated of the EU or any EU institution.⁵⁴
- (3) Evidence of any instrument issued by a EU institution, including any judgment or order of the European Court or any court attached thereto, or of any document in the custody of a EU institution, or any entry in or extract from such a document, may be given in any legal proceedings by production of a copy certified as a true copy by an official of that institution; and any document purporting to be such a copy shall be

received in evidence without proof of the official position or handwriting of the person signing the certificate.⁵⁵

- (4) Evidence of any EU instrument may also be given in any legal proceedings by production of a copy purporting to be printed by the Queen's Printer.⁵⁶
- (5) Subsections (2) to (4) —
 - (a) shall have effect in relation to the EFTA Court (established under Article 108 of the Agreement specified in paragraph (i) of the definition of "the Treaties" in section 1(1)) as they have effect in relation to the European Court, and⁵⁷
 - (b) shall have effect in relation to the EFTA Surveillance Authority (established under that Article) as they have effect in relation to a EU institution other than the European Court.^{58 59}

4 [Repealed]⁶⁰

5 The common agricultural policy

[1972/6(4) P; 1972/6(5) P]

- (1) Agricultural levies of the EU, so far as they are charged on goods exported from the Isle of Man or shipped as stores, shall be paid to and recoverable by the Treasury or Officer; and the Treasury shall have power to make orders to make such provision supplementary to any directly applicable EU provision as the Treasury considers necessary for securing the payment of any agricultural levies so charged, including provision for the making of declarations or the giving of other information in respect of goods exported, shipped as stores, warehoused or otherwise dealt with.⁶¹
- (2) Except as otherwise provided by or under any enactment, the same agricultural levies of the EU, so far as they are charged on goods imported into the Isle of Man, shall be levied, collected by and paid to the Treasury as a EU customs duty (and there shall be allowed the same reliefs from such duty) as would be charged or allowed as and in respect of agricultural levies on goods imported into the United Kingdom under subsection (5) of section 6 of the European Communities Act 1972 (an Act of Parliament), and in relation to those levies the provisions of the *Customs and Excise Act 1993* and of any other statutory provision for the time being in force and relating to customs or excise duties on imported goods shall apply as they would apply in relation to EU customs duties and if, in connection with any EU arrangements for or related to the regulation of the market for any agricultural produce, any payment of refunds or allowances on goods exported or to be exported from the Isle of Man is to be made, then in relation to any such refund or allowance section 140 (except subsection (3) and the reference to that subsection in

subsection (2)) and section 166 of the *Customs and Excise Management Act 1986* shall apply as they apply in relation to a drawback of excise duties, and other provisions of that Act shall have effect accordingly.⁶²

- (3) In this section “agricultural levy” shall include any tax not being a customs duty, but of equivalent effect, that may be chargeable in accordance with any such EU arrangements as aforesaid.⁶³
- (4) The proceeds of the agricultural levies referred to in this section shall be accounted for by the Treasury and dealt with as part of the General Revenue of the Isle of Man.⁶⁴

6 EU offences⁶⁵

[1972/11 P]

- (1) A person who, in sworn evidence before the European Court, makes any statement which he knows to be false or does not believe to be true shall, whether he is a British subject or not, be guilty of an offence and may be proceeded against and punished in the Isle of Man as for the offence of perjury.⁶⁶
- (2) Where a report is made as to any such offence under the authority of the European Court, then an information for the offence may, in the Isle of Man, be preferred as in a case where a prosecution is ordered under section 8 of the *Perjury Act 1952*.⁶⁷

7 Furnishing of information to the EU⁶⁸

Returns and information that may under section 2 of the *Agricultural Returns Act 1955* be disclosed to the Department of Environment, Food and Agriculture may, in like manner, be disclosed in pursuance of an EU obligation to an EU institution.⁶⁹

8 [Repealed]⁷⁰

9 Amendments

- (1) and (2) [Repealed]⁷¹
- (3) [Repealed].⁷²
- (4) [Repealed]⁷³

10 [Repealed]⁷⁴

11 Citation and commencement

- (1) This Act may be cited as the European Communities (Isle of Man) Act 1973.

- (2) This Act shall come into operation when the Royal Assent thereto has been by the Governor announced to Tynwald and a certificate thereof has been signed by the Governor and the Speaker of the House of Keys, but shall take effect as from the 1st day of September 1973.

Schedule 1

[Section 1]

THE PRE-ACCESSION TREATIES

1. The “**E.C.S.C. Treaty**”, that is to say, the Treaty establishing the European Coal and Steel Community, signed at Paris on the 18th April, 1951.
2. The “**E.E.C. Treaty**”, that is to say, the Treaty establishing the European Economic Community, signed at Rome on the 25th March, 1957.
3. The “**Euratom Treaty**”, that is to say, the Treaty establishing the European Atomic Energy Community, signed at Rome on the 25th March, 1957.
4. The Convention on certain Institutions common to the European Communities, signed at Rome on the 25th March, 1957.
5. The Treaty establishing a single Council and a single Commission of the European Communities, signed at Brussels on the 8th April, 1965.
6. The Treaty amending certain Budgetary Provisions of the Treaties establishing the European Communities and of the Treaty establishing a single Council and a single Commission of the European Communities, signed at Luxembourg on the 22nd April, 1970.
7. Any treaty entered into before the 22nd January, 1972, by any of the Communities (with or without any of the member States), or, as a treaty ancillary to any treaty included in this Schedule, by the member States (with or without any other country).

Schedule 2⁷⁵



ENDNOTES

Table of Legislation History

Legislation	Year and No	Commencement

Table of Renumbered Provisions

Original	Current

Table of Endnote References

-
- ¹ Definition of “the Board” repealed by Treasury Act 1985 Sch 3.
- ² Definition of “Commissioners” repealed by GC29/80.
- ³ Definition of “the EU” inserted by European Union (Amendment) Act 2011 s 3.
- ⁴ Term “Community customs duty” replaced by “EU customs duty” and then amended by European Communities (Amendment) Act 2011 Sch.
- ⁵ Definition of “Community institution” replaced by definition of “EU institution” by European Communities (Amendment) Act 2011 Sch.
- ⁶ Definition of “Community instrument” replaced by definition of “EU instrument” by European Communities (Amendment) Act 2011 Sch.
- ⁷ Term “Community obligation” replaced by “EU obligation” by European Communities (Amendment) Act 2011 Sch.
- ⁸ Definition of “Economic Community” repealed by European Union (Amendment) Act 2011 s 6
- ⁹ Term “enforceable Community right” replaced by “enforceable EU right” by European Communities (Amendment) Act 2011 Sch.
- ¹⁰ Definition of “the European Court” substituted by European Communities (Amendment) Act 2011 Sch.
- ¹¹ Definition of “member” amended by European Communities (Amendment) Act 2011 Sch.
- ¹² Definition of “officer” modified by Customs and Excise Management Act 1986 Sch 6.
- ¹³ Para (c) added by European Communities (Greek Accession) Act 1981 s 1.
- ¹⁴ Para (d) added by European Communities (Greek Accession) Act 1981 s 1.

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- ¹⁵ Para (e) added by European Communities (Spanish and Portuguese Accession) Act 1985 s 1.
- ¹⁶ Para (f) added by European Communities (Spanish and Portuguese Accession) Act 1985 s 1.
- ¹⁷ Para (g) added by European Communities (Amendment) Act 1988 s 1.
- ¹⁸ Para (h) added by European Communities (Amendment) Act 1994 s 1.
- ¹⁹ Para (i) added by European Communities (Amendment) Act 1994 s 2.
- ²⁰ Para (j) added by European Communities (Amendment) Act 1995 s 1.
- ²¹ Para (k) added by European Communities (Amendment) Act 1999 s 1.
- ²² Para (l) added by European Communities (Amendment) Act 2003 s 1.
- ²³ Para (m) added by European Union (Accessions) Act 2004 s 1.
- ²⁴ Para (n) added by European Communities (Amendment) Act 2007 s 1.
- ²⁵ Para (o) added by European Union (Amendment) Act 2011 s 3.
- ²⁶ Term “the Community Treaties” replaced by “the EU Treaties” by European Communities (Amendment) Act 2011 Sch.
- ²⁷ Definition of “the Treaties” or the “EU Treaties” amended by European Communities (Amendment) Act 2011 Sch.
- ²⁸ Subs (2) amended by European Communities (Amendment) Act 2011 Sch.
- ²⁹ S 1A inserted by European Union (Amendment) Act 2011 s 4.
- ³⁰ Subs (1) amended by European Communities (Amendment) Act 2011 Sch.
- ³¹ Subs (3) amended by European Communities (Amendment) Act 2011 Sch.
- ³² S 2A heading amended by European Communities (Amendment) Act 2011 Sch.
- ³³ Subs (1) amended by European Communities (Amendment) Act 2000 s 1.
- ³⁴ Subs (2) amended by European Communities (Amendment) (No.2) Act 1992 s 3 and by European Communities (Amendment) Act 2011 Sch.
- ³⁵ Subs (4) substituted by European Communities (Amendment) (No.2) Act 1992 s 2 and amended by European Communities (Amendment) Act 2000 s 1.
- ³⁶ Subs (4A) inserted by European Communities (Amendment) Act 2000 s 1.
- ³⁷ Subs (4B) inserted by European Communities (Amendment) Act 2000 s 1 and amended by European Communities (Amendment) Act 2011 Sch..
- ³⁸ Subs (4C) inserted by European Communities (Amendment) Act 2000 s 1.
- ³⁹ Subs (6) amended by European Communities (Amendment) Act 2000 s 1.
- ⁴⁰ S 2A inserted by European Communities (Amendment) Act 1991 s 1.
- ⁴¹ S 2B heading amended by European Communities (Amendment) Act 2011 Sch.
- ⁴² Para (a) amended by European Communities (Amendment) Act 2011 Sch.
- ⁴³ Para (c) added by European Communities (Amendment) Act 1991 s 1.
- ⁴⁴ Subs (1) amended by GC155/91 and by Interpretation Act 1976 s 16A. Para (d) added by European Communities (Amendment) Act 1991 s 1.
- ⁴⁵ Subs (2) amended by European Communities (Amendment) Act 2011 Sch.
- ⁴⁶ Para (d) substituted by European Union (Amendment) Act 2011 s 7.
- ⁴⁷ Subs (5) amended by European Communities (Amendment) Act 2011 Sch.
- ⁴⁸ Subs (7) amended by European Communities (Amendment) Act 2011 Sch.

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- ⁴⁹ Subs (8) amended by European Communities (Amendment) Act 2011 Sch.
- ⁵⁰ S 2B (previously s 2A, renumbered by European Communities (Amendment) Act 1991 s 1) inserted by European Communities (Amendment) Act 1988 s 3.
- ⁵¹ S 2C inserted by European Union (Amendment) Act 2011 s 8.
- ⁵² S 3 heading amended by European Communities (Amendment) Act 2011 Sch.
- ⁵³ Subs (1) amended by European Communities (Amendment) Act 1988 s 2 and by European Communities (Amendment) Act 2011 Sch.
- ⁵⁴ Subs (2) amended by European Communities (Amendment) Act 1988 s 2 and by European Communities (Amendment) Act 2011 Sch.
- ⁵⁵ Subs (3) amended by European Communities (Amendment) Act 1988 s 2 and by European Communities (Amendment) Act 2011 Sch.
- ⁵⁶ Subs (4) amended by European Communities (Amendment) Act 2011 Sch.
- ⁵⁷ Para (a) amended by European Communities (Amendment) Act 1995 s 1.
- ⁵⁸ Para (b) amended by European Communities (Amendment) Act 1995 s 1.
- ⁵⁹ Subs (5) added by European Communities (Amendment) Act 1994 s 5 and amended by European Communities (Amendment) Act 2011 Sch.
- ⁶⁰ S 4 repealed by GC38/79.
- ⁶¹ Subs (1) amended by Treasury Act 1985 Sch 2 and by European Communities (Amendment) Act 2011 Sch.
- ⁶² Subs (2) amended by GC38/79, by Treasury Act 1985 Sch 2, by Customs and Excise Management Act 1986 Sch 4, by Customs and Excise Act 1993 Sch 1 and by European Communities (Amendment) Act 2011 Sch.
- ⁶³ Subs (3) amended by European Communities (Amendment) Act 2011 Sch.
- ⁶⁴ Subs (4) amended by GC29/80 and by Treasury Act 1985 Sch 2.
- ⁶⁵ S 6 heading amended by European Communities (Amendment) Act 2011 Sch.
- ⁶⁶ Subs (1) amended by European Communities (Amendment) Act 1988 s 2 and by European Communities (Amendment) Act 2011 Sch.
- ⁶⁷ Subs (2) amended by European Communities (Amendment) Act 1988 s 2 and by European Communities (Amendment) Act 2011 Sch.
- ⁶⁸ S 7 heading amended by European Communities (Amendment) Act 2011 Sch.
- ⁶⁹ S 7 amended by Transfer of Governor's Functions Act 1992 Sch 1, by SD155/10 Sch 3 and by European Communities (Amendment) Act 2011 Sch.
- ⁷⁰ S 8 repealed by GC1/76.
- ⁷¹ Subss (1) and (2) repealed by Statute Law Revision Act 1983 Sch 2.
- ⁷² Sub (3) repealed by European Union (Amendment) Act 2011 s 6.
- ⁷³ Subs (4) repealed by GC1/76.
- ⁷⁴ S 10 repealed by GC38/79.
- ⁷⁵ Sch 2 repealed by Agricultural (Miscellaneous Provisions) Act 2008 Sch.

List of direct consultees

Tynwald Members

Clerk of Tynwald

Attorney General

Local Authorities

Chief Officers of Government Departments, Boards and Offices

Chamber of Commerce

Isle of Man Trade Union Council

Isle of Man Law Society

Positive Action Group

Code of Practice Consultation Criteria

1. Consult widely throughout the process, allowing a minimum of 6 weeks for a minimum of one written consultation at least once during the development of the legislation or policy.
 2. Be clear about what your proposals are, who may be affected, what questions are being asked and the timescale for responses.
 3. Ensure your consultation is clear, concise and widely accessible.
 4. Give feedback regarding the responses received and how the consultation process influenced the policy.
 5. Monitor your Department's effectiveness at consultation.
 6. Ensure your consultation follows best practice, including carrying out an Impact Assessment if appropriate.
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