

UCL POLICY BRIEFING

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SUMMARY

The brief discusses the changes brought about by the EU Act 2011, in relation to Britain's position in and attitude towards, the European Union. It considers the **EUA**;

**UK**; and,

It highlights in particular:

- the created by the Act's 'referendum locks';
- the complexity of EU law, meaning
- the potential **EU** -
- the for the Act's increased use of the referendum mechanism.

Introduction

The European Union Act 2011 (EUA) was enacted by the Coalition, which had pledged to ensure, as part of its Programme for Government, that there would be "no further transfer of sovereignty or powers" to the EU and that "any proposed treaty that transferred areas of power, or competences, would be subject to a referendum on that treaty – a 'referendum lock'." The Act received the Royal Assent on 19 July 2011 and all of its provisions duly entered into force over the following month. The EUA is an important legal development, as it introduces a number of safeguards before changes to the EU Treaties can take effect in the UK. Crucially, these safeguards include a commitment to hold a referendum for a series of substantive changes

KEY FINDINGS

- The European Union Act (EUA) risks taking away the UK's power to negotiate in Brussels without increasing either accountability or legal certainty.
- In the event of referenda being triggered, it is likely that the EU would try to find ways to enact changes swiftly with or without UK support.
- The EUA ignores several features of EU law
- The increasing provision for use of referenda, in circumstances which may not always be appropriate, risks undermining the effectiveness of referenda.

## The referendum provisions of the EUA

The Act has three headline provisions requiring a referendum, in sections 2, 3 and 6

- **Section 2** deals with amendments to the EU Treaties effected pursuant to the ordinary revision procedure, under Article 48 (2) – (5) TEU. It thus covers any treaty that amends or replaces the existing EU Treaties. Such amendments require statutory ratification as well as a referendum.
- **Section 3** deals with changes under the simplified revision procedure (Article 48 (6) TEU). The conditions for ratification are the same as those under section 2, with an added 'significance' condition. This means that only those changes that are deemed to have a significant impact on Britain's position in the EU will require a referendum under this provision.
- **Section 6** sets out a number of Treaty provisions which, if used, will automatically attract the conditions for ratification described above, namely an Act of Parliament and a referendum.

There are also several exceptions to sections 2 and 3 in section 4 of the Act, including important exclusions from the referendum condition regarding existing competences, issues that do not affect the UK and, crucially, the accession of new Member States

## Analysis

**Section 3** is highly contradictory, as it is predicated on the assumption that the simplified revision procedure will in fact be used disingenuously, in order to extend EU competences. The section introduces a paradox: the UK Prime Minister either vetoes a change, or allows it to pass but risks a referendum. This is a highly unusual and potentially dangerous situation, as it places the Prime Minister in a position where they must choose between opposing a change that might be beneficial to the UK, or allowing it to pass and then facing a referendum that could result in the UK leaving the EU. This is a clear contradiction, as the Prime Minister is effectively forced to choose between opposing a change that might be beneficial to the UK, or allowing it to pass and then facing a referendum that could result in the UK leaving the EU.

according to political outlook);

- particular groups' position in society;
- the issues it seeks to address and whether majorities should be able to determine government policy on these issues

On the whole, referenda are well suited to questions of wide-ranging political importance and coverage and less so to issues requiring broad technical knowledge (such as changes to 'passerelle' clauses). They can be extremely problematic when used to address divisive issues, such as ethnicity or the rights and status of minorities, especially in non-homogenous societies

Additionally, there are a number of organisational concerns in ensuring that a referendum is held in a transparent, fair and effective way, including

- independent oversight;
- the framing of the relevant issues posing a clear and easily intelligible question requiring a yes/no answer;
- regulating funding and expenditure;
- monitoring potential problems such as propaganda

The EUA entails risks in this regard, by calling a vote on issues with little public coverage, leaving a short-time frame to hold a referendum (so that the legislative process in the EU could resume) and, finally, by draining resources through the potential repeated use of the referendum mechanism.

## Further discussion

Discussion in the seminar raised a number of other issues

- whether the UK Supreme Court could have the power to intervene to invalidate the Act: as the EUA was passed by both Houses of Parliament and received Royal Assent, any arguments regarding procedural invalidity are weak. The only clear way to undo the effects of the Act would be for Parliament to amend or repeal it.
- whether Parliament is still free to repeal certain kinds of