

## EUROPEAN UNION BILL

### CLAUSE 6 FACTSHEET

There are four ways in which a veto could be given up under the Treaties:

1. Through the Ordinary Revision Procedure, as part of a package;
2. In some cases, through the Simplified Revision Procedure using Article 48(6) TEU;
3. In most cases, through the other part of the Simplified Revision Procedure, using Article 48(7) TEU, effectively a third type of treaty change;
4. In six specific cases, through the use of a passerelle without having to go through treaty change.

The first two of these four ways are addressed by clauses 2-4 of the Bill. The third and fourth ways are catered for by clause 6 of the Bill.

In addition, there is another type of decision covered in clause 6: Decisions allowing a transfer of competence from the UK to the EU ('The Big Five').

#### The Big Five

If used, these Articles would result in transfers of competence or power from the UK to the EU, but without the need for formal treaty change.

The Big Five decisions are as follows:

- Sub-section (2): **UK agreement for the EU to move to a common EU defence**
- Sub-section (5)(c): **UK participation in a European Public Prosecutor**
- Sub-section (5)(d): **extending the powers of the European Public Prosecutor, but only if the UK is already part of it**
- Sub-section (5)(e): **UK joining the Euro**
- Sub-section (5)(k): **abolishing UK border controls under Schengen**

#### Passerelles giving up vetoes

Passerelles giving up vetoes are a compromise, just as other passerelles are – they are there because some Member States or past Conventions proposed moving a treaty article to QMV, but not all Member States agreed at the time. So over the course of several Treaty changes, passerelles have been tacked on to a number of individual Treaty Articles.

These passerelles allow for Member States to agree unanimously, at some unspecified point in the future, to move to QMV on specific treaty articles (and only those specified).

None have been used – even though one dates back to 1987. Again, it is highly unlikely that any of these would ever be proposed unless there is a blockage i.e. unless some Member State is holding up a decision by unanimity to protect their own interests. But just as no turkey would volunteer itself to be cooked at Christmas, no Member State in that situation is likely to volunteer to give up their veto in order to then be outvoted on a sensitive issue if they are the ones blocking the issue in the first place.

There are six such passerelles covered by the referendum lock in clause 6. They have been included because they are all already included in Schedule 1, and if they were included in a treaty change would all require a referendum. It is therefore logical to ensure that any way of trying to give up these vetoes should have the same level of control i.e. a referendum.

There would be no point putting a referendum lock on moving to QMV on these Articles using the Ordinary Revision Procedure (ORP) or the Simplified Revision Procedure (SRP) but not putting a lock on moving to QMV via a passerelle. That would be like locking the front door (ORP), back door (SRP Article 48(6)), patio door (SRP Article 48(7)) but leaving the kitchen window open.

The six passerelles giving up vetoes are:

**Sub-section (5)(a):** Article 31(3) TEU, on Common Foreign and Security Policy (this passerelle was introduced at the time of the Lisbon Treaty)

**Sub-section (5)(f):** Article 153(2) TFEU, on social policy (introduced by the Nice Treaty)

**Sub-section (5)(g):** Article 192(2) TFEU, on environment (introduced by the Single European Act)

**Sub-section (5)(h):** Article 312(2) TFEU, on the EU multi-annual financial frameworks (introduced by the Lisbon Treaty)

**Sub-section (5)(i):** Article 333(1) TFEU, on removing vetoes in enhanced cooperation in areas of the treaty other than the field of exclusive competence or the common foreign and security policy where the UK is already involved (introduced by the Lisbon Treaty)

**Sub-section (5)(j):** Article 333(2) TFEU, on removing vetoes in other enhanced cooperation in progress where the UK is already involved (introduced by the Lisbon Treaty)