

The wording of the Referendum

The current wording of Article 29.4 of the Constitution of Ireland is as follows:

1° The executive power of the State in or in connection with its external relations shall in accordance with Article 28 of this Constitution be exercised by or on the authority of the Government.

2° For the purpose of the exercise of any executive function of the State in or in connection with its external relations, the Government may to such extent and subject to such conditions, if any, as may be determined by law, avail of or adopt any organ, instrument, or method of procedure used or adopted for the like purpose by the members of any group or league of nations with which the State is or becomes associated for the purpose of international co-operation in matters of common concern.

3° The State may become a member of the European Coal and Steel Community (established by Treaty signed at Paris on the 18th day of April, 1951), the European Economic Community (established by Treaty signed at Rome on the 25th day of March, 1957) and the European Atomic Energy Community (established by Treaty signed at Rome on the 25th day of March, 1957). The State may ratify the Single European Act (signed on behalf of the Member States of the Communities at Luxembourg on the 17th day of February, 1986, and at the Hague on the 28th day of February, 1986).

4° The State may ratify the Treaty on European Union signed at Maastricht on the 7th day of February, 1992, and may become a member of that Union.

5° The State may ratify the Treaty of Amsterdam amending the Treaty on European Union, the Treaties establishing the European Communities and certain related Acts signed at Amsterdam on the 2nd day of October, 1997.

6° The State may exercise the options or discretions provided by or under Articles 1.11, 2.5 and 2.15 of the Treaty referred to in subsection 5° of this section and the second and fourth Protocols set out in the said Treaty but any such exercise shall be subject to the prior approval of both Houses of the Oireachtas.

7° The State may ratify the Treaty of Nice amending the Treaty on European Union, the Treaties establishing the European Communities and certain related Acts signed at Nice on the 26th day of February, 2001.

8° The State may exercise the options or discretions provided by or under Articles 1.6, 1.9, 1.11, 1.12, 1.13 and 2.1 of the Treaty referred to in subsection 7° of this section but any such exercise shall be subject to the prior approval of both Houses of the Oireachtas.

9° The State shall not adopt a decision taken by the European Council to establish a common defence pursuant to Article 1.2 of the Treaty referred to in subsection 7° of this section where that common defence would include the State.

10° No provision of this Constitution invalidates laws enacted, acts done or measures adopted by the State which are necessitated by the obligations of membership of the European Union or of the Communities, or prevents laws enacted, acts done or measures adopted by the European Union or by the Communities or by institutions thereof, or by bodies competent under the Treaties establishing the Communities, from having the force of law in the State.

11° The State may ratify the Agreement relating to Community Patents drawn up between the Member States of the Communities and done at Luxembourg on the 15th day of December, 1989.

Proposed changes (*Script in bold italics involves explanations of the changes*)

It is proposed to delete the current subsections 9° and 11° (in italics above)

Subsection 9° is re-cast as subsection 15° with the additional reference to the Treaty of Lisbon; Subsection 11° is effectively redundant as the Luxembourg Patents Convention never came into force

It is proposed to renumber the current subsection 10° as subsection 9° and add the following subsections:

10° The State may ratify the Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community, signed at Lisbon on the 13th day of December 2007, and may be a member of the European Union established by virtue of that Treaty.

(This allows for the ratification of the Treaty of Lisbon)

11° No provision of this Constitution invalidates laws enacted, acts done or measures adopted by the State that are necessitated by the obligations of membership of the European Union referred to in subsection 10° of this section, or prevents laws enacted, acts done or measures adopted by the said European Union or by institutions thereof, or by bodies competent under the treaties referred to in this section, from having the force of law in the State.

(This is similar to the existing subsection 10° and allows for the provisions of the Treaty of Lisbon to be put into effect in Ireland)

12° The State may exercise the options or discretions provided by or under Articles 1.22, 2.64, 2.65, 2.66, 2.67, 2.68 and 2.278 of the Treaty referred to in subsection 10° of this section and Articles 1.18 and 1.20 of Protocol No. 1 annexed to that Treaty, but any such exercise shall be subject to the prior approval of both Houses of the Oireachtas.

(This allows Ireland to opt-in or opt-out of various provisions in relation to The Area of Freedom, Security and Justice and enhanced co-operation subject to the prior approval of the Oireachtas – that is the Dail and Seanad).

13° The State may exercise the option to secure that the Protocol on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice annexed to the Treaty on European Union and the Treaty on the Functioning of the European Union (formerly known as the Treaty establishing the European Community) shall, in whole or in part, cease to apply to the State, but any such exercise shall be subject to the prior approval of both Houses of the Oireachtas.

(The Protocol mentioned here is the one which allows Ireland to opt out of the Area of Freedom, Security and Justice. This clause would allow Ireland to withdraw from the opt-out. The government has made a declaration which is attached to the Treaty of Lisbon that it will examine this opt-out within 3 years – declarations are not legally binding)

14° The State may agree to the decisions, regulations or other acts under—
i Article 1.34(b)(iv),

- ii Article 1.56 (in so far as it relates to Article 48.7 of the Treaty referred to in subsection 4° of this section),
- iii Article 2.66 (in so far as it relates to the second subparagraph of Article 65.3 of the Treaty on the Functioning of the European Union),
- iv Article 2.67 (in so far as it relates to subparagraph (d) of Article 69A.2, the third subparagraph of Article 69B.1 and paragraphs 1 and 4 of Article 69E of the Treaty on the Functioning of the European Union),
- v Article 2.144(a),
- vi Article 2.261 (in so far as it relates to the second subparagraph of Article 270a.2 of the Treaty on the Functioning of the European Union), and
- vii Article 2.278 (in so far as it relates to Article 280H of the Treaty on the Functioning of the European Union),

of the Treaty referred to in subsection 10° of this section, and may also agree to the decision under the second sentence of the second subparagraph of Article 137.2 of the Treaty on the Functioning of the European Union (as amended by Article 2.116(a) of the Treaty referred to in the said subsection 10°) but the agreement to any such decision, regulation or act shall be subject to the prior approval of both Houses of the Oireachtas.

(This deals with the provisions in the Treaty of Lisbon which allow the European Council to agree certain changes to the governing Treaties. Some of these changes could come into effect only when ratified by the Member States in accordance with their own requirements – this could mean that a referendum would be required in Ireland. This amendment to the Constitution would allow Ireland to agree at the European Council to allow certain decisions which currently require unanimity to be made by QMV but this could be done only with the prior approval of the Oireachtas.)

15° The State shall not adopt a decision taken by the European Council to establish a common defence pursuant to—

- i Article 1.2 of the Treaty referred to in subsection 7° of this section, or
- ii Article 1.49 of the Treaty referred to in subsection 10° of this section, where that common defence would include the State.