

UCL POLICY BRIEFING

AUTHOR

M E F

UCL Laws  
eleni.frantziou

EDIT

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

- the
- the complexity of EU law, meaning
- the potential
- the

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.



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