



**AN BILLE UM AN SÉÚ LEASÚ IS FICHE AR AN
mBUNREACTH, 2002
TWENTY-SIXTH AMENDMENT OF THE CONSTITUTION
BILL, 2002**

EXPLANATORY MEMORANDUM

Purpose of Bill

The Twenty-sixth Amendment of the Constitution Bill, 2002, is necessary in order to enable the State to ratify the Treaty of Nice, which is intended to complete the process started by the Treaty of Amsterdam of preparing the institutions of the European Union to function in an enlarged Union.

Text of Bill

The Bill provides for—

- (a) the addition of a new subsection 7° to Article 29.4 of the Constitution allowing the State to ratify the Treaty of Nice;
- (b) the addition of a new subsection 8° to Article 29.4 of the Constitution allowing the State to exercise the options or discretions provided by the Treaty of Nice;
- (c) the addition of a new subsection 9° to Article 29.4 of the Constitution preventing the State from adopting a decision of the European Council to enter into a common defence pursuant to Article 1.2 of the Treaty of Nice where that common defence would include the State;
- (d) the consequential renumbering of subsections 7° and 8° of Article 29.4 of the Constitution as subsections 10° and 11°.

Content of Bill

In the new subsection 7°, the wording of the licence given to the State to ratify the Treaty of Nice follows the present wording of the references in the Constitution to ratifying the Treaty on European Union and the Treaty of Amsterdam.

The Treaty of Nice contains provisions relating to enhanced co-operation pursuant to which obligations may be entered into by a number of Member States of the European Union. The new subsection 8° is necessary, in addition to the new subsection 7°, in order to confer on the State sufficient powers for it to exercise the options or discretions provided by the Treaty of Nice should it so decide. It follows the pattern established in respect of Article 29.4.6 by specifically identifying the options and discretions which may be exercised. It is provided that the exercise of any such options or discretions shall be subject to the prior approval of both Houses of the Oireachtas.

Article 17.1 of the Treaty on European Union, as amended by Article 1.2 of the Treaty of Nice, provides that “The common foreign and security policy shall include all questions relating to the security of the Union, including the progressive framing of a common defence policy, which might lead to a common defence, should the European Council so decide. It shall in that case recommend to the Member States the adoption of such a decision in accordance with their respective constitutional requirements”. The new subsection 9° prevents the State from adopting a decision to establish a common defence pursuant to the above Article where that common defence would include Ireland. To adopt such a decision would require a referendum to delete this subsection. This subsection therefore reflects the commitment given in the National Declaration made at Seville on 21 June 2002.

*An Roinn Gnóthaí Eachtracha,
Meitheamh, 2002.*