



The Scottish Parliament
Pàrlamaid na h-Alba

Local Government and Regeneration Committee
Kevin Stewart MSP
Convener

Stewart Stevenson MSP
Convener
Standards, Procedures and Public
Appointments Committee

Room T3.40
The Scottish Parliament
EDINBURGH
EH99 1SP

Christina McKelvie MSP
Convener
European and External Relations
Committee

Direct Tel: (0131) 348 5217
(RNID Typetalk calls welcome)
Fax: (0131) 348 5600
(Central) Textphone: (0131) 348 5415
lgr.committee@scottish.parliament.uk

12 December 2013

Dear Stewart and Christina,

**Re: SPPA Committee Review of EU Rules and EER Committee Correspondence
on EU Strategy and EU Engagement**

On 1 October this year our late colleague, Helen Eadie, wrote to us in her then capacity as Deputy Convener of the Standards, Procedures and Public Appointments Committee ("SPPA Committee"). This letter sought the Committee's views to a number of questions relating to the operations of Standing Order Rules 10A.2; 10A.3 and 12.6.2 in relation to the consideration of EU legislation.

On 3 December the Committee received a letter from the European and External Relations Committee ("EER Committee") seeking information on the work the Committee has undertaken on our EU priorities as part of our 2013/14 work programme.

As both pieces of correspondence seek a response from the Committee by 10 January 2014, the Committee has decided to combine its response into a single reply.

Annexe A to the letter responds to the questions raised by the SPPA Committee.

Annexe B responds to the questions raised by the EER Committee.

I hope you find this combined response useful in terms of gaining an overall appreciation of the level of EU scrutiny the Local Government and Regeneration Committee has undertaken as part of its work programme for 2013/14. Central to this effort has been the work of our EU Reporter, Stuart McMillan MSP. I wish to take this opportunity to thank Stuart for his efforts in this regard.

Yours sincerely



Kevin Stewart MSP
Convener
Local Government and Regeneration Committee

CC: Stuart McMillan MSP – EU Reporter to the Local Government and Regeneration Committee

Response to questions from the SPPA Committee on its Review of EU Rules

Rule 10A.2 – Referral to lead committee

Q1. How often has your committee considered an EU legislative proposal under this rule and what have the outcomes been?

A1. Between August 2012 and December 2013, the Local Government and Regeneration Committee has only considered one formal Memorandum on proposed EU Regulations. This was the *Explanatory Memorandum on Proposed European Union Regulation on measures to reduce the cost of deploying high-speed electronic communications networks*. This was published 27 March 2013 and was considered by the Committee on 15 May 2013.

The proposed regulation was also considered by the Infrastructure and Capital Investment Committee (“ICI Committee”), and the clerks of both committees coordinated our joint efforts to scrutinise this proposal.

In the case of this proposed regulation, the subsidiarity question for the Committee to consider was whether this as a matter which would be more appropriately taken forward at member State level (in this case at UK level).

The major obstacle facing the Committee in terms of scrutinising this proposal was insufficient time. The total period for consideration is eight weeks from the publication of the draft regulations. Within that period both Houses of the UK Parliament require to consider whether they are content that the matters covered do not raise issues of subsidiarity. On this occasion both the House of Commons and the House of Lords had already considered their position and their opinions were due to be issued before the end of the week on which we considered this memorandum.

As that memorandum had only just been brought to the Scottish Parliament’s attention, there was insufficient time for us to involve others, or take evidence, so as to fully participate in the scrutiny process. We, along with the ICI Committee, agreed to follow the legal advice we received and asked the Presiding Officer to write to both Houses of the UK Parliament outlining our views that the proposed regulation invokes a subsidiarity issue and to notify the UK Parliament of our concerns.

In June 2013 the Committee was informed of a possible memorandum on a European Union Document on the *Proposed Regeneration of Industrial and Military Brownfield Sites*. However, the Committee was not required to consider this proposed memorandum in terms of its remit.

Q2. What have been the implications of the requirement to consider EU legislative proposals for your committee?

A2. There have been few implications for the Committee under Rule 10A.2 as we have only had one such proposed regulation referred to us during the period. That said, the Committee has included work in its programme where we felt the potential of EU legislation would have major implications for the local government sector in

Scotland. One example of this has been our consideration of the Procurement Reform (Scotland) Bill, which is referred to in Annexe B.

Q3. How has your committee influenced outcomes at a UK and EU level as a result of this rule?

A3. Given the single experience we have had with the proposed regulation referred to in Answer 1, and the very limited time we had to consider it, it is virtually impossible to judge what outcome, if any, our scrutiny has had at either a UK or EU level.

On 5 June 2013 the Presiding Officer received a letter from William Cash MP, Chairman of the European Scrutiny Committee of the House of Commons. Mr Cash noted the views of the Committee, along with the views we expressed on the insufficient timescale for scrutiny. The European Scrutiny Committee debated the reasoned opinion on 20 May 2013, and on 21 May the House of Commons forwarded the reasoned opinion on the proposed Directive to the Presidents of the European Institutions.

Q4. How practicable is Rule 10A.2.2 (designation of lead committee where the subject matter of an EU legislative proposal falls within the remit of more than one committee) given time constraints?

A4. Answer 1 refers to this situation. Rule 10A.2.2 required us to coordinate our scrutiny with the ICI Committee in the case of the proposed regulation on high-speed electronic communications networks. However, this coordination was conducted mainly through clerk-to-clerk communications and did not prove any more complex than other examples of where committees have to liaise on a common piece of work (e.g. for example taking Stage 1 evidence on a Bill).

The practicability of Rule 10A.2.2 is dependent on the period of time the Scottish Parliament has to consider a proposed regulation and make its response to the UK Parliament in sufficient time for those views to be considered and reflected. If two or more committees have, in reality, a week or less to consider such a proposal then issues of coordination in terms of scrutiny are rather redundant as neither committee is in a position to undertake any meaningful scrutiny. So in effect, committees are merely coordinating a very superficial scrutiny of a proposal.

Rule 10A.3 – Consideration of proposal for European Union legislation

Q5. Under Rule 10A.3.1 committees are obliged to consider an EU legislative proposal where it has been referred to the Committee in terms of Rule 10A.2. Is this rule sufficiently flexible to allow a committee to decide which proposals it wishes to consider? Specifically, is it necessary for a lead committee to consider all proposals where the UK Government, UK Parliament or Scottish Government has brought to the attention of the Parliament a subsidiarity concern?

A5. Again, as the Committee has only had one occasion on which it has considered such a proposal, we do not feel we are in a position to offer any detailed comment on the flexibility of Rule 10A.3.1.

Q6. Under Rule 10A.3.2, where the lead committee considers that an EU legislative proposal does not comply with the principle of subsidiarity, the Convener shall by motion propose that the Parliament agrees that the proposal does not comply with the principle of subsidiarity, and the Parliamentary Bureau shall allocate time for debate. How often has your committee applied this rule? Are there any issues around timing, given the constraints of the 8-week period and competing demands on parliamentary time?

A6. The Committee has never had cause to apply Rule 10A.3.2. However, in light of our experience to date, it is hard to see how the Parliament could reasonably be expected to debate a motion on subsidiarity given it would take a minimum of one week between a formal decision in a Committee to seek such a debate; informing the Parliamentary Bureau of this; the Bureau's subsequent agreement and lodging of a motion and a debate taking place. It is hard to see how the business of the Parliament could reasonably be expected to change at such short notice. This timescale may be exacerbated if more than one committee were considering a proposed regulation and wished to coordinate its efforts on a Chamber debate with another committee. Put simply, we consider the current timescale to be insufficient.

Q7. Under Rule 10A.3.3 where an EU legislative proposal is referred to a lead committee and the lead committee decides that there is an insufficient period remaining for report and debate, the Presiding Officer shall notify the UK Parliament of any concerns that the lead committee has that the proposal does not comply with the principle of subsidiarity. How often has this rule been invoked in the context of your committee's consideration of an EU legislative proposal? How effective this process is?

A7. As outlined in Answer 1 this Rule has been invoked once by the Committee. As outlined in Answer 3, we are unaware of how effective this process has been.

Q8. How often has Rule 10A.3.4 (making special arrangements for recess periods) been used?

A8. To date the Committee has not had cause to invoke this rule.

Rule 12.6.2 – EU Reporters

Q9. On how many occasions has your EU Reporter brought to the committee's attention any EU issue, proposal for EU legislation, or implementation of European Communities or EU legislation, as provided for in this rule?

A9. Our EU Reporter, Stuart McMillan MSP has brought EU issues to the attention of the Committee on four occasions since August 2012. Some of this has been in the context of the ongoing inquiry work of the Committee, as outlined in Annexe B. Other occasions, such as the one referred to in Answer 1, have been brought directly to the Committee by the EU Reporter. This has impacted on subsequent Committee work, such as our examination of various provisions of the Procurement Reform (Scotland) Bill at Stage 1. These instances are referred to in Annexe B to this letter.

Response to the EER Committee on EU Strategy and EU Engagement 2013-14

Overview

1. The scrutiny of EU issues is central to the remit of the Local Government and Regeneration Committee. This includes the consideration of proposed EU legislation specific to our remit (see Annexe A), the EU priorities we identified for 2013 (see below), as well as the wider mainstreaming of the scrutiny of proposed EU issues arising as part of our Committee work programme.

2. In February 2013 the Committee's EU Reporter, Stuart McMillan MSP, set out the Committee's key EU priorities for the coming year in the EER Committee parliamentary debate on the EU Strategy. They were—

- the EU Multi-Annual Financial Framework and the Scottish Partnership Agreement for 2014-2020, and potential changes in European Structural Funds;
- Changes to EU public procurement rules.

3. Paragraphs 8 to 17 set out how the Committee is scrutinising its two EU priorities for 2013.

4. Alongside these priorities, over the period from August 2012 to December 2013, the Committee has consider the implications of EU legislation and/or rules in eight other major pieces of work, namely—

- Scrutiny of the Draft Budget 2014-15;
- Inquiry on the implications of procurement reform for public services and community regeneration from the Procurement Reform (Scotland) Bill;
- Inquiry on the Delivery of Regeneration in Scotland;
- Public Services Reform inquiry: Strand 3 - Developing New Ways of Delivering Services;
- Consideration of the *Explanatory Memorandum on Proposed European Union Regulation on measures to reduce the cost of deploying high-speed electronic communications networks*.
- Inquiry on Scottish Local Government Elections 2012;
- Scrutiny of *Low Carbon Scotland: Meeting our Emissions Reduction Targets 2013-2027: The Draft Second Report on Proposals and Policies (RPP2)*, and
- Scrutiny of the Draft Budget 2013-14.

5. Paragraphs 18 to 25 set out the EU issues the Committee has considered in terms of this work.

6. Paragraphs 26 to 34 highlight the work of the EU Reporter on behalf of the Committee.

Consideration of EU Priorities

7. As stated above, the principle EU issues for consideration by the Committee have been the potential changes to EU Structural Funds as a result of the EU Multi-Annual Financial Framework, and the EU's Directive on public sector procurement.

EU Structural Funds

8. In January 2013 the Committee launched a detailed inquiry into the delivery of the Scottish Government's regeneration strategy. This inquiry seeks to examine the effectiveness of the strategy in developing community-led regeneration across Scotland.

9. One of the central issues the Committee has considered is the impact of potential changes to EU Structural Funds and the subsequent implications for regeneration in Scotland. EU Structural Funding is a key aspect of the regeneration sector in Scotland, both in terms of Scottish Government funding, and in regeneration activity by local government and the third/voluntary sector.

10. As part of its ongoing inquiry the Committee has taken specific evidence on the role EU Structural Funds play in supporting regeneration activity in Scotland and enabling the delivery of various initiatives. This has included oral evidence from Scottish Government officials and ministers on EU funding.

11. The Committee has also undertaken five fact-finding visits around Scotland during the inquiry. During these visits the Committee has undertaken community engagement events which, to date, have resulted in engagement with approximately 300 members of community groups and members of the public. At all of these sessions, the Committee explored the importance of EU funding (whether delivered directly or via an intermediary such as a local authority) to the successful regeneration efforts of community groups.

12. The Committee has also examined the implication of EU State Aid rules in terms of community regeneration. This issue was highlighted as a result of our Public Services Reform inquiry: Strand 3 - Developing New Ways of Delivering Services.

13. The Committee expects to report on its regeneration inquiry in late January 2014. As a consequence of its findings, the Committee will look to see whether it should carry out further examination of changes to EU Structural Funds in its 2014 work programme.

EU Procurement Directive

14. The Committee's second EU priority for 2013 was the EU's directive on public procurement. Local government procurement accounts for nearly 40% of all public procurement in Scotland, which is valued at approximately £9 billion per annum. In

tandem with this directive, the Scottish Government introduced the Procurement Reform (Scotland) Bill.

15. The Committee took written and oral evidence on the implications of the Directive, and the Procurement Reform (Scotland) Bill, in October and November 2013. As part of this, the Committee examined three aspects of policy relevant to its remit, namely—

- Sustainable procurement;
- Community benefit requirements, and
- The transposition of the EU Directive into Scots law.

16. The Committee submitted its findings and recommendations to the Infrastructure and Capital Investment Committee (the lead committee for scrutiny of the Bill) on 5 December 2013.¹

17. The findings of the Committee will also inform our 2014 work programme as we prepare for consideration of the forthcoming Community Empowerment (Scotland) Bill.

Mainstreaming of EU issues in the work programme

18. Apart for the main EU priorities for 2013, the Committee has also sought to mainstream consideration of EU issues, as appropriate, in the rest of its work programme. The following is a brief summary of this work.

Scrutiny of the Draft Budget 2013/14

19. In October 2012 the Committee examined the Scottish Government's draft budget proposals for 2013/14. As part of this work, we focussed on those aspects of the budget which support community regeneration. The Committee examined the role of EU Social Funds and EU Regional Development Funding (such as JESSICA² and SPRUCE³ funds) and their importance in delivering regeneration in Scotland.

Low Carbon Scotland: The Draft Second Report on Proposals and Policies (RPP2)

20. The Committee considered the implications of RPP2 in terms of local government's contribution to meeting Scotland's 2030 carbon reduction targets. As part of this scrutiny the Committee considered the implications of the EU directive on procurement, and its potential impact on local government procurement's use as an effective tool to achieve carbon reduction targets.

¹ Local Government and Regeneration Committee Memorandum on the Implications of the Procurement Reform (Scotland) Bill for Public Services and Community Regeneration: [http://www.scottish.parliament.uk/S4_LocalGovernmentandRegenerationCommittee/General%20Documents/LGR_Committee_Memorandum_on_Procurement_Reform_\(S\)_Bill_20121127.pdf](http://www.scottish.parliament.uk/S4_LocalGovernmentandRegenerationCommittee/General%20Documents/LGR_Committee_Memorandum_on_Procurement_Reform_(S)_Bill_20121127.pdf) [Retrieved 12 December 2013].

² JESSICA (Joint European Support for Sustainable Investment in City Areas) Fund,

³ SPRUCE (Scottish Partnership for Regeneration in Urban Centres) Fund.

Inquiry on Scottish Local Government Elections 2012

21. As part of our inquiry on the conduct to local government elections in 2012, the Committee examined the timing of European Parliament elections in Scotland and the level of voter turnout/engagement in these vis-a-vis local elections.

Public Services Reform inquiry: Strand 3 - Developing New Ways of Delivering Services

22. As part of the final strand of our inquiry into Public Services Reform and Local Government, the Committee examined both the implications of EU procurement changes to local government, as well as the general implications for local government (as the main delivery agent for the majority of EU legislation and regulation in Scotland).

23. The Committee undertook some initial consideration of the potential impact of reforms in the area of EU State Aid Rules and public procurement policy as part of this inquiry. This assisted in informing the Committee's work programme in terms of the focus on relevant EU issues.

24. The Committee also took the opportunity of this inquiry to carry out an examination of the EU priorities set by COSLA's on behalf of Scottish local government.

Proposed EU Regulation on measures to reduce the cost of deploying high-speed electronic communications networks

25. As previously stated we considered a single piece of EU legislation referred to the Committee under Standing Order Rule 10A.2. Please see Annexe A for information on the Committee's scrutiny of this proposal.

Delivery of Regeneration in Scotland

26. Apart from the consideration of EU Structural Funds, as previously referred to, the Committee has also considered the issue of EU State Aid Rules as part of this inquiry. Specifically, the Committee has considered proposed reform of State Aid rules and guidelines and the implication for effective community-led regeneration. The Committee expects to report its findings on this issue in early 2014.

Scrutiny of the Draft Budget 2014-15

27. The Committee has recently submitted its report to the Finance Committee on the Scottish Government's 2014-15 draft budget.

28. While the scrutiny of this draft budget did not pose any major questions in term of EU issues for the Committee, we did receive evidence on the role various EU funding mechanisms play in the revenue-generating capacity for Scottish local authorities. Gaining a clearer picture of the role of EU funding across Scottish local government is an issue the Committee may wish to return to in terms of its future work programme.

Role of the Committee's EU Reporter

29. Stuart McMillan MSP was appointed EU Reporter by the Local Government and Regeneration Committee on 26 September 2012.

30. In the last 12 months the EU Reporter has undertaken two visits to the EU institutions in Brussels, along with other EU Reporter colleagues. On 2 and 3 December 2012 the EU Reporter visited Brussels in order to build relationships with the Commission and European Parliament, thereby allowing him to investigate the European dimension to forthcoming areas of interest which come within the Committee's remit.

31. In April 2013 the EU Reporter brought the Committee's agreed EU priorities to the attention of COSLA, as a key local government stakeholder.

32. On 4 September 2013 Mr McMillan, along with Member of the Local Government and Regeneration Committee, and other MSPs, met with EU Commissioner for Regional Policy, Johannes Hahn.

33. During a question and answer session MSPs raised a variety of issues with the Commissioner, including the implications of changes to State Aid Rules; changes to EU Structural Funds, as well as the forthcoming EU Procurement Directive. The discussion at this meeting informed the work programme of the Local Government and Regeneration Committee in terms of its inquiry on regeneration, as well as its scrutiny of various provisions of the Procurement Reform (Scotland) Bill.

34. On 21 and 22 September 2013, the EU Reporter visited Brussels with counterparts from the Economy, Energy and Tourism Committee, the European and External Relations Committee and the Infrastructure and Capital Investment Committee. This visit specifically focussed on examining proposed changes to EU procurement regulations in advance of the introduction of the Scottish Government's Procurement Reform (Scotland) Bill. The information gained from the visit informed the Committee's decision to examine the provisions of the Bill and its subsequent inquiry.