



## **RURAL AFFAIRS, CLIMATE CHANGE AND ENVIRONMENT COMMITTEE**

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Dear Stewart

### **Standards, Procedures and Public Appointments Committee – Review of EU Rules**

The Rural Affairs, Climate Change and Environment Committee considered your letter of 1 October, requesting views on the operation of the changes to the EU rules, at its meeting on 11 December 2013. Our response to you is set out below.

The information provided is based on the experience of the Committee from 2012 onwards.

#### **Rule 10A.2 – Referral to lead Committee**

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

In the period 2012 to 2013 the Committee considered two EU legislative proposals that had been flagged by the Scottish Government as potentially raising concerns with regard to subsidiarity.

In January 2013 the Committee considered EU Proposal 15627/12 for a Directive amending Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment (The EIA Directive). This Directive sought to streamline legislation on environmental impact assessment and was one of the RACCE Committee's agreed priorities for EU scrutiny based on its review of the Commission's Work Programme 2012.

The Committee considered the proposal and the UK Government's Explanatory Memorandum (EM) at its meeting of 9 January 2013. The

Committee had a number of concerns in relation to the proposal (which it considered raised questions of proportionality rather than of subsidiarity) and the time available to it for consideration. The concerns of the Committee were communicated to the respective European Committees of the House of Commons and House of Lords by the Presiding Officer and the Committee also wrote to the Cabinet Secretary for Rural Affairs and the Environment outlining its concerns.

In relation to the timescales available for consideration, there was some delay in submission of the EM on the EIA Directive to the UK and Scottish Parliaments. This EM, due on 14 November 2012, was not brought to the attention of the Scottish Parliament until 13 December 2012. The deadline for issuing a Reasoned Opinion on the Directive was 24 December 2012 and the Scottish Parliament was in recess from 21 December. The Committee was unable to consider the proposal within the timescale for issuing a Reasoned Opinion but agreed to convey any concerns to the Westminster committees, following consideration of the proposal, in January 2013.

At its meeting on 24 April 2013, the Committee considered Draft Instrument 2013/0074 concerning the proposal for a directive establishing a framework for maritime spatial planning and integrated coastal management across the EU. This proposal was also one of the RACCE Committee's agreed priorities for EU scrutiny, based on its review of the Commission's Work Programme 2012.

So far as the objective of the proposed draft Directive was to ensure consistent actions across the EU including on trans-border matters and, to require a framework for co-operation, the Committee considered the Commission had substantiated a *prima facie* case for the added value of the proposals at EU level. The Committee agreed, therefore, not to raise concerns based on the principle of subsidiarity.

The Committee considered that, on the evidence presented by the UK and Scottish Governments, it was not clear that the appropriate criteria had been correctly applied as regards subsidiarity, or that the Governments' respective reservations concerning this proposal were based on issues of subsidiarity. The Committee considered they may be more properly related to the proportionality of the detail of the proposal, or whether in policy terms the correct balance had been struck between the aims of promoting sustainable growth and use of coastal and marine resources across the EU waters, and the need to avoid imposing excessive regulatory and administrative burdens by putting in place minimum requirements for the plans and strategies.

The Committee agreed to ask the Presiding Officer to write to the respective European Committees of the House of Commons and the House of Lords and also wrote to the UK and Scottish Governments outlining its concerns with regard to the proportionality of measures included in the proposed directive.

With respect to both of these proposals, it is difficult to assess the outcomes of intervention by the RACCE Committee. In each case the view of the Committee with regards to subsidiarity was shared by the respective Westminster Committees.

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

The committees of the Scottish Parliament often receive information on EU proposals and potential subsidiarity concerns towards the latter end of the 8 week process. There are considerable time constraints related to the timescale for issuing a reasoned opinion and, in practice, if the committees of the Scottish Parliament wish to influence the position of the EU Committees at Westminster the views of the Scottish Parliament need to be with those respective committees in advance of the date scheduled for their consideration of each proposal.

As receipt of the EU proposal and accompanying EM initiates the Scottish Parliament's scrutiny procedures, delays in receiving these severely impact on the ability of the RACCE Committee and Parliament to consider the proposal and contribute timeously to the Westminster committee's consideration.

The Committee is acutely aware that by the time an EU proposal is flagged as raising concerns in relation to subsidiarity and a view on the issue of subsidiarity is received from the Scottish Government the EU committees at Westminster may already have considered and reported on the relevant EU proposal.

The experience of the Committee has highlighted that the time available for the Committee to scrutinise an EU proposal and report within a timescale to enable the views of the Committee to be taken into account by the relevant Westminster Committees can be extremely limited. In some cases the Committee has had a few days, rather than weeks, to consider and respond. This has impacted on other Committee business which, where possible, has been re-scheduled. Behind the scenes, the work involved for parliamentary staff (clerks, researchers and the Solicitor to the Scottish Parliament) has been considerable.

In terms of wider benefits, ensuring the process works as effectively as possible has required considerable liaison with the staff of the Westminster committees and the relevant committees of the devolved assemblies. This has been of benefit in developing positive and constructive working relationships with our sister committees.

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

The proposals considered by the Committee, although flagged as potentially raising concerns in relation to subsidiarity, appeared, in the view of the Committee, to be more related to questions of the proportionality of the proposed measures rather than questions relating to whether the measures were being imposed at the right level of regulation. In both cases the Committee was of a similar view to the EU committees of the House of Lords and House of Commons. The views of this Committee were endorsed by the Westminster committees and Committee understands that no Reasoned Opinion was offered in relation to either proposal.

As the views of the respective parliamentary committees were in accord, the additional benefit of the engagement of this Committee in these instances came in adding weight to UK wide views on the proposals concerned.

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

The Committee has not experienced the situation referred to in Rule 10A.2.2. However, given the constraints on the time available for committee consideration and reporting, as has previously been mentioned, having a requirement for the Parliamentary Bureau to designate a lead committee may further restrict the time available for committee consideration and could potentially make meaningful consideration unfeasible. From a practical point of view, there may be scope for consideration to be given to an alternative means of designation of the lead committee e.g. the determination of the lead committee arising from the designation of the lead Minister on each proposal.

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

**5. *Under Rule 10.A.3.1 committees are obliged to consider an EU legislative proposal where it has been referred to the Committee in terms of Rule 10.A.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?***

Rule 10.A.3.1 as currently drafted is inflexible. It requires the lead committee to consider all proposals that have been brought to the attention of the Parliament as having a subsidiarity concern, however tentative or unsupported that concern may be. There is no discretion for the Committee to decide whether or not to consider a proposal, even if, on the basis of further briefing and legal advice, the view is that it is a matter of proportionality rather than one of subsidiarity. This concern could be addressed by substituting the word “may” in place of “shall” be considered.

**6. *Under Rule 10.A.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 a 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?***

Over the period 2012-2013 the Committee has not required to apply Rule 10.A.3.2 as it has not considered that either proposal was non-compliant with the principle of subsidiarity. Notwithstanding this, the Committee has sought to make its views on those proposals known to the relevant Westminster

committees. The Committee is of the view that there are considerable practical issues in reporting to the Westminster committees in sufficient time to enable them to take the views of the Committee into account in their formal consideration of the EU proposals. Each Westminster committee has its own timescale for consideration of EU legislative proposals. The experience of this committee is that the Westminster committees welcome the views of the Scottish Parliament and, where they have been aware that the Committee intends to submit a view, the Westminster committees have endeavoured to schedule their consideration at the latest possible time to facilitate this. However, in practice, as mentioned earlier, there may be delays in the Committee receiving information on the EU proposal, there may be delays in receiving a view on the proposal from the Scottish Government and there is a time lag in ensuring relevant parliamentary staff can consider that information, and subsequently provide briefing and advice to the Committee. The timing of circulation of committee papers (the week before a committee meeting) also has to be factored into the overall time available. In practice it is difficult to envisage a situation where there is sufficient time, or necessity, for Rule 10.A.3.2 to be effectively invoked.

***7. 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 is this process?***

On each occasion the Committee has considered an EU proposal that was referred as potentially raising subsidiarity concerns the Committee was of the view that the concerns related to proportionality rather than to subsidiarity. Should the Committee have wished to report concerns in relation to subsidiarity there would have been insufficient time available to report and debate this in Plenary session. In some cases, the additional stage of requiring a letter from the Presiding Officer may make it difficult for the Parliament to respond within the tight time constraints. In the case of the proposals considered by the Committee, whilst the Committee did not have concerns in relation to subsidiarity, the Committee agreed that a letter should be sent from the Presiding Officer. It is possible that the relevant Westminster committees would be equally content to receive a view from the Parliament in the form of a letter from the convener of the committee which had scrutinised the proposal. There may be scope for the SPPA Committee to consider whether a letter from a convener of a committee would be a sufficient means to raise any concerns. This would have the benefit of expediting the process.

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

Rule 10.A.3.4 was not used by the Committee in the period 2012-2013.

## **Rule 12.6.2 – EU Reporters**

**9. 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?**

Much of the work programme of the RACCE Committee is underpinned by EU policy and legislation. On an annual basis the clerks and SPICe scrutinise the Commission's Work Programme (CWP) and the Scottish Government's EU priorities and plans for EU engagement in consultation with the EU Reporter, and prepare a paper for consideration by the Committee which recommends EU priorities for engagement and scrutiny over the course of the forthcoming year.

The existing priorities for the Committee's direct engagement are instruments of the Common Agricultural Policy (CAP), Common Fisheries Policy (CFP) and those which relate to climate change commitments. In addition to this, on the recommendation of the EU Reporter, the Committee identified a number of additional proposals on which it agreed to keep a watching brief, primarily via updates from the Brussels Bulletin.

The clerks brought the two EU proposals and related EM's raising potential concerns in relation to subsidiarity to the attention of the EU Reporter and, in consultation with the EU Reporter, drafted a paper for consideration by the Committee. This paper was presented to the Committee by the EU Reporter.

The EU Reporter took part in a visit of EU Reporters to Brussels and met with Pierre Bascou - Head of EC Agri DG, Paolo De Castro - Chair of the European Parliament Agri Committee and George Lyon MEP. The EU Reporter subsequently reported the outcome of these discussions directly to the Committee, which informed the Committee's consideration of the reform of the Common Agricultural Policy.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Rob Gibson', with a horizontal line underneath.

Rob Gibson MSP  
Convener