

## **WRITTEN RESPONSE TO THE EUROPEAN AND EXTERNAL AFFAIRS COMMITTEE'S REPORT OF INQUIRY INTO SUBSIDIARITY**

There is a considerable body of opinion amongst national and regional parliaments across the EU that one of the most significant aspects of the Treaty of Lisbon is the inclusion of new strengthened provisions on the principle of subsidiarity. These provisions, if the Treaty comes into force, provide national parliaments and where appropriate regional parliaments with a stronger role in the EU legislative process. The Treaty provides national parliaments with an opportunity to directly influence the European legislative process on matters of subsidiarity and to consult where appropriate those regional parliaments that have legislative power. The issue of subsidiarity has been viewed as a fundamental way in which regional influence can be exerted on the EU and the inclusion of the protocol on subsidiarity within the Treaty is seen as a major advance in the role of the regions in the EU.

The Assembly Government was instrumental in this development. In February 2003, Peter Hain submitted a paper, "Europe and the Regions" to the European Convention on behalf of the UK Government and the devolved administrations of Scotland and Wales. This laid the foundations for the subsidiarity provisions that are included in the present Treaty.

We, therefore welcome this report and the opportunity presented by the Treaty to enhance the subsidiarity concept.

The report acknowledges that while the inquiry has examined the subsidiarity issue in some detail, it also provided evidence about the way the Committee should be working more broadly in monitoring and prioritising its consideration of European policy and legislative proposals. The three recommendations directed at the Assembly Government broadly fall into this category. Before the recommendations are addressed, it may be useful to outline the procedures for the scrutiny of EU documents.

### **PARLIAMENTARY SCRUTINY OF EU DOCUMENTS**

The UK Parliament is given the opportunity to examine and express views on proposals for EU legislation. The deposit of a document in Parliament activates the scrutiny process.

Once a document has been deposited the Government is required to brief Parliament on its content and implications. This is done by means of an Explanatory Memorandum (EM) which must be made available to Parliament within 10 working days of the documents deposit. The EM summarises the document, its legal, policy and financial implications and the likely timetable of its consideration by the Council of Ministers. An EM constitutes a formal communication to Parliament and a separate EM is required for each document deposited.

Explanatory Memoranda are the property of the UK Government. They are drafted by the Government Department nominated as the lead department for the subject of the memorandum.

The Concordat on Co-ordination of EU Policy Issues that forms part of the Memorandum of Understanding between the UK Government and Welsh Ministers states that the lead Whitehall Department will liaise as necessary with the devolved administrations in the preparation of Explanatory Memoranda on EU issues relating to devolved matters. Copies of the final EM should be copied to devolved administrations at the same time it is submitted to the UK Parliament.

Since June 2004 EMs produced to accompany any Statutory Instrument or draft Statutory Instrument laid before Parliament have been published on [www.opsi.gov.uk](http://www.opsi.gov.uk). The aim is to publish the documents simultaneously with their publication in printed form.

EMs are also produced as evidence to Parliament to summarise the content of a Proposal for EU legislation or other important EU documents. EU documents are defined by the terms of reference of the House of Commons European Scrutiny Committee and the House of Lords Select Committee on the EU. Documents included in these terms of reference are all proposals for legislation by the Council of Ministers across all three pillars of activity. These include proposals for Council Regulations, Directives, Decisions, Joint Actions, Common Positions, Framework Decisions; Commission documents published for submission to the Council including Communications, Reports and Green papers; as well as documents from other institutions to the Council such as from the European Court of Auditors or the European Court of Justice. An EM is produced for each document deposited in Parliament. There are approximately 1,100 EU documents produced per year. All EMs submitted to Parliament are held on the Cabinet Office European Secretariat on-line database accessible on <http://europeanmemorandum.cabinetoffice.gov.uk/>.

The number of EMs received by the Assembly Government as part of the consultation process fluctuates year on year but as an indication, is usually between 800 and 1,000 (the balance received by Parliament are for reserved functions and devolved administrations are not consulted) and of these, between 200 and 300 are likely to be of direct relevance to Wales. As indicated within the Committee's report there is a section within the EM to record "the interests of the Devolved Administrations". The standard responses are set out below:

- For reserved functions the EM will be noted that the particular policy is a reserved matter under the UK's devolution settlements and no devolved administration interests arise and that the devolved administrations have not been consulted in the preparation of the EM.
- For reserved functions with a particular impact on devolved functions the EM will record that a particular policy is a reserved matter under the UK's devolution settlements but the devolved administrations either

collectively or singly have an interest, the issues highlighted and that they have been consulted in the preparation of the EM.

- For devolved functions, the EM will record that the policy is a devolved matter under the UK's devolution settlements and that the devolved administrations have been consulted in the preparation of the EM, either collectively or singly and the issues highlighted.”

With the latter two options, the appropriate Assembly Government department or departments are consulted and the views communicated to the lead Whitehall department. The time available for comment can often be very short.

Below are the responses to the Report's individual recommendations for the Assembly Government.

### **Detailed Responses to the report's recommendations:**

**Recommendation 3: The Committee recommends the Assembly Government should provide regular updates to the European and External Affairs Committee on its short-term, medium-term and long-term European priorities in the context of the annual work and legislative programmes of the Commission.**

#### **RESPONSE:** Accept in Principle

The First Minister, as a matter of course, annually sets out the Government's European priorities and reports these to the Committee. At the request of the Committee he last did so on 20<sup>th</sup> January 2009. While these priorities broadly encapsulate the Commission's Annual and Legislative Work Programme they are not limited by it.

The First Minister, on behalf of the Assembly Government, regularly makes himself available to scrutiny by the Committee and since September 2007, he has appeared on six occasions and has provided updates on a whole spectrum of the Assembly Government's European activities.

It is the practice that prior to the First Minister's appearance, the Committee request a written report. The Committee, therefore, already have the opportunity to request information and updates on any specific issue.

The First Minister will continue to make himself available to the Committee.

**Financial implications:** None. There are no additional costs to this as it is part of the current process.

**Recommendation 4: The Committee recommends the Assembly Government should make available in a timely manner all UK Government Explanatory Memoranda on European legislative and policy proposals of relevance to Wales.**

**RESPONSE:** Reject

The Assembly Government accept the importance of the Committee reviewing the UK Government's Explanatory Memoranda so that the Committee can effectively monitor European proposals and scrutinise their implications for Wales. The Committee should therefore receive the EMs (which are the property of the UK Government) and policy proposals as recommended but that information should be provided by the Assembly Commission (or Members Research Service) who can request them from Parliament rather than the Assembly Government. This would satisfy the Committee's scrutiny role and ensure comprehensive access to the material.

We understand that the Committee has held preliminary discussions with Parliament about the possible operation of the subsidiarity monitoring system if and when the relevant Treaty provisions come into force; perhaps there is an opportunity to raise this point during the ongoing discussions.

The First Minister would be happy to assist in the facilitation of any future negotiations between the Assembly and the UK Government and/or Parliament to ensure that the Assembly receives copies of the relevant EMs.

**FINANCIAL IMPLICATIONS:** There may be resource implications for the Assembly Commission.

**Recommendation 5: The Committee recommends the Assembly Government should produce for the Committee a Welsh Assembly Government version of each Explanatory Memorandum, explaining its views on all new proposals that have devolved consequences and the implications they will have for Wales.**

**RESPONSE:** Reject

We have carefully considered the implications of this proposal and the Assembly Government cannot accept this recommendation.

There are significant time and, therefore, resource implications in accepting this recommendation that would not be able to be met within existing budgets.

The Assembly Government receive between 800-1000 EMs on an annual basis, of which approximately a quarter are of potential interest and/ or relevance to Wales. The impact would be considerable on those departments whose work is closely aligned to the EU. The additional time required to prepare an Assembly Government version of each EM would, therefore, have

significant resource implications and add little value because the existing EMs, on which we have been consulted, already identify the interests of the Assembly Government.

Further information that may be required by the Committee on any specific EM can be requested from the appropriate Minister.

**FINANCIAL IMPLICATIONS:** Due to the number of EMs produced by the UK Government and received by the Assembly Government there would be considerable financial implications if this recommendation was accepted.