STANDARDS, PROCEDURES AND PUBLIC APPOINTMENTS COMMITTEE

INQUIRY INTO EU RULES

SUBMISSION RECEIVED FROM JUSTICE COMMITTEE

Thank you for inviting the Justice Committee to respond to the Standards, Procedures and Public Appointments Committee’s current review of EU Rules. Our response, which was agreed by the Committee on 10 December, is set out below under the questions posed in your letter.

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?

The Justice Committee has considered two EU legislative proposals identified as raising subsidiarity concerns: (a) a proposal on the establishment of a European Public Prosecutor’s Office (EPPO); and (b) a proposal on reform of Eurojust. Both were considered by the Committee in September 2013. The UK Government had by that time already announced its intention not to opt in to the EPPO proposal, but had still to take a position on the Eurojust proposal.

The Justice Committee took evidence from the Cabinet Secretary for Justice on both proposals on 3 September and concluded that the EPPO proposal did not comply with the subsidiarity principle. This decision led to a Committee motion on the subsidiarity breach being debated and agreed to by the Parliament for the first time. The Committee’s report was submitted to the relevant committees in both Westminster Houses. Both Houses agreed that the proposal did not comply with the subsidiarity principle and therefore submitted Reasoned Opinions to the European Commission. A total of 19 chambers of EU national parliaments voted in the same way on the EPPO proposal, triggering a ‘yellow-card’ procedure, which requires the Commission to review the proposal and to decide whether to maintain, amend or withdraw it.1 It is understood that this procedure has only been triggered once before, on workers’ rights.2

As regards the Eurojust proposal, the Justice Committee agreed to write to the relevant Westminster committees highlighting concerns that it may breach the subsidiarity principle. Again, both Westminster committees shared the Committee’s view.

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

The main implications for the Committee of having to consider all EU legislative proposals raising subsidiarity concerns have been the need to digest often complex

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1 14 of the 56 votes are required to trigger this procedure.
2 http://euobserver.com/justice/121959
information in very tight timescales. The two legislative proposals referred to in our response to question 1 were published in summer recess 2013 and therefore the Committee only had one meeting in which to consider and make a judgment on compliance with the subsidiarity principle. Given this timescale, the Convener and EU Reporter agreed to invite the Cabinet Secretary for Justice to give evidence on the proposals at that meeting to inform this consideration as there was no time in which to seek any further information or clarification after the meeting. The Committee also had to agree its report by correspondence and the Convener and EU Reporter spoke in the debate which was held in the Chamber two days later.

In addition, the current rules do not allow any flexibility for a Committee to decide not to look at a particular proposal. For example, the UK Government does not intend to opt into the EPPO proposal referred to above and so there would be no direct impact on Scotland, however, under Standing Orders, the Committee was required to examine the proposal.

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

As referred to in question 1, the Committee’s report on the EPPO proposal was included within the reports of the two relevant Westminster committees. Both Houses agreed with the Committee’s view that it did not comply with the subsidiarity principle and therefore submitted Reasoned Opinions to the European Commission, along with 18 other chambers of national Parliaments. This triggered a ‘yellow-card’ procedure requiring the Commission to review the proposal and to decide whether to maintain, amend or withdraw it.

4. 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?

This situation has not arisen for the Justice Committee. However, it would be reasonable to assume that there would be insufficient time for the Parliamentary Bureau to designate a lead committee and then for that committee to consider and report on the proposal in time to be taken into consideration by the Westminster committees.

**Rule 10A.3 Consideration of 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 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?

Currently, there appears to be no flexibility within Standing Orders for committees to decide which proposals to examine. As referred to in our answer to question 2, the Justice Committee was required to consider a proposal even where the UK
Government had no intention to opt into it and therefore it would have no material effect on Scotland. It could therefore be more appropriate for committees to concentrate on those proposals that have a particular impact in Scotland.

The difficulty with this may be that it is often unclear just by looking at an explanatory memorandum whether or not a proposal raises significant subsidiarity concerns in Scotland. Therefore, it is our view that introducing any flexibility for committees in deciding which proposals to examine would need to coincide with an increase in the level of detail provided in explanatory memorandums on the Scottish Government’s position.

6. 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?

The Committee has applied this rule on one occasion in relation to the EPPO proposal. The timescales were very short, with the Committee considering the proposal, taking evidence and agreeing its position at one Tuesday meeting, agreeing its report the following day, and holding a debate in the Chamber on the Thursday of the same week. The Committee sought from the Parliamentary Bureau sufficient time in which to allow the Convener to move and speak to the motion and for the EU Reporter to speak in the debate. No other Member spoke in the debate and so it could be concluded within 10 minutes. While the business programme that week was flexible enough for this extra debate to be accommodated, there could be difficulties in making time for such debates in busier weeks.

The resolution passed in the Chamber was conveyed to the relevant Westminster committees in time for them to consider the report the following week.

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?

The Justice Committee has no experience of this rule.

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

The Justice Committee has no experience of this rule.
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?

The EU Reporter puts a paper to the Committee on developments with its EU priorities on a quarterly basis. In addition to this, he includes papers on all proposals with subsidiarity concerns and more regular updates where required, for example, in relation to the UK Government’s 2014 decision to opt out of all police and criminal justice measures adopted prior to the Lisbon Treaty, which the Committee has been monitoring since October 2012.

I hope this information is useful in informing the SPPA Committee’s inquiry.

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CONVENER
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SCOTTISH PARLIAMENT
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