

# Constitutional and Legislative Affairs Committee

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Meeting Venue:  
**Committee Room 3 – Senedd**

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Meeting date:  
**15 June 2015**

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Meeting time:  
**14.00**

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Cynulliad  
Cenedlaethol  
Cymru

National  
Assembly for  
Wales



For further information please contact:

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## Agenda

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**1 Introduction, apologies, substitutions and declarations of interest**

**2 Instruments that raise no reporting issues under Standing Order 21.2 or 21.3 (Page 1)**

**CLA(4)-16-15 – Paper 1 – Statutory instruments with clear reports**

### Negative Resolution Instruments

**CLA540 – The Housing (Right to Buy and Right to Acquire) (Limits on Discount) (Amendment) (Wales) Order 2015**

Negative procedure; Date made: 1 June 2015; Date laid: 4 June 2015; Coming into force date: 14 July 2015.

### Affirmative Resolution Instruments

**CLA539 – The Town and Country Planning (Fees for Applications, Deemed Applications and Site Visits) (Wales) Regulations 2015**

Affirmative Procedure; Date made: Not stated; Date laid: 3 June 2015; Coming into force date: Not stated

### **3 Subsidiarity Monitoring Report January to May 2015 (Pages 2 – 7)**

CLA(4)-16-15 – Paper 2 – Subsidiarity Monitoring Report January to May 2015

### **4 Paper(s) to note**

Correspondence from Electoral Commission, EU Referendum Bill (Pages 8 – 10)

CLA(4)-16-15 – Paper 3 – Correspondence from Electoral Commission, EU Referendum Bill

### **5 Motion under Standing Order 17.42 to resolve to exclude the public from the meeting for the following business:**

(vi) the Committee is deliberating on the content, conclusions or recommendations of a report it proposes to publish; or is preparing itself to take evidence from any person;

**Making Laws in the Fourth Assembly (Pages 11 – 109)**

**Expert Panel: Consideration of the Draft Report Paper 4**

# Agenda Item 2

**Constitutional and Legislative Affairs Committee  
Statutory Instruments with Clear Reports  
15 June 2015**

**CLA539 – The Town and Country Planning (Fees for Applications, Deemed Applications and Site Visits) (Wales) Regulations 2015**

**Procedure:** Affirmative

These Regulations consolidate, with changes, the provisions of the Town and Country Planning (Fees for Applications and Deemed Applications) Regulations 1989 (“the 1989 Regulations”) in so far as they apply in Wales and the Town and Country Planning (Fees for Non-Material Changes) (Wales) Regulations 2014 (“the 2014 Regulations”).

**CLA540 – The Housing (Right to Buy and Right to Acquire) (Limits on Discount) (Amendment) (Wales) Order 2015**

**Procedure:** Negative

This Order amends the existing maximum rates of discount available in relation to the exercise of the right to buy under Part 5 of the Housing Act 1985 (“the 1985 Act”) and the right to acquire under section 16 of the Housing Act 1996 (“the 1996 Act”).

# Agenda Item 3

Y Gwasanaeth Ymchwil | Research Service

## Subsidiarity monitoring report January to May 2015

Y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol | Mehefin 15, 2015

Constitutional and Legislative Affairs Committee | 15 June 2015

### Research Briefing

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# 1. Introduction

Under Standing Order 21, a ‘responsible committee’ in the Assembly (currently the Constitutional and Legislative Affairs Committee) is empowered to consider draft EU legislation that relates to matters within the legislative competence of the Assembly or to the functions of the Welsh Ministers and of the Counsel General, to identify whether it complies with the principle of subsidiarity.

The principle of subsidiarity is enshrined in Article 5 of the Treaty on European Union:

1. The limits of Union competences are governed by the principle of conferral. The use of Union competences is governed by the principles of subsidiarity and proportionality.
2. Under the principle of conferral, the Union shall act only within the limits of the competences conferred upon it by the Member States in the Treaties to attain the objectives set out therein. Competences not conferred upon the Union in the Treaties remain with the Member States.
3. Under the principle of subsidiarity, in areas which do not fall within its exclusive competence, the Union shall act only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States, either at central level or at regional and local level, but can rather, by reason of the scale or effects of the proposed action, be better achieved at Union level.

The institutions of the Union shall apply the principle of subsidiarity as laid down in the Protocol on the application of the principles of subsidiarity and proportionality. National Parliaments ensure compliance with the principle of subsidiarity in accordance with the procedure set out in that Protocol.

4. Under the principle of proportionality, the content and form of Union action shall not exceed what is necessary to achieve the objectives of the Treaties.

The institutions of the Union shall apply the principle of proportionality as laid down in the Protocol on the application of the principles of subsidiarity and proportionality.

In addition, the application of the principle is governed by the Protocol on the Application of the Principles of Subsidiarity and Proportionality. The relevant part in relation to the work of the Assembly is included in the first paragraph of Article 6:

Any national Parliament or any chamber of a national Parliament may, within eight weeks from the date of transmission of a draft legislative act, in the official languages of the Union, send to the Presidents of the European Parliament, the Council and the Commission a reasoned opinion stating why it considers that the draft in question does not comply with the principle of subsidiarity. It will be for each national Parliament or

each chamber of a national Parliament to consult, where appropriate, regional parliaments with legislative powers.

## 2. The monitoring process

In order to ensure that the Constitutional and Legislative Affairs Committee fulfils its subsidiarity monitoring function effectively as set out in Standing Orders, Assembly officials monitor all draft EU legislative proposals that apply to Wales on a systematic basis to check whether they raise any subsidiarity concerns. The way in which Assembly officials monitor these proposals is outlined below for information:

- The Assembly in the first instance is notified of all proposals published by the European Commission for consideration through a list (known as the “batch list”) which is sent by the Foreign and Commonwealth Office on behalf of the UK Government to the Assembly’s Research Service for information.
- The relevant UK Government department will then prepare an Explanatory Memorandum (EM) based on the proposals included on the batch list usually within 4 to 6 weeks of the initial notification by the Foreign and Commonwealth Office. Each EM includes an assessment of the policy impact of the proposals (including whether the UK Government department believes the proposal raises any subsidiarity concerns). Copies of each EM are sent to the Assembly via the Research Service.
- The Research Service filters the EMs received to check whether the proposal they relate to are ‘legislative’ or ‘non-legislative’ and whether they encompass issues which may be of interest to the Assembly (i.e. relating to devolved matters).
- Those EMs that relate to proposals that are both ‘legislative’ and deal with issues of interest to the Assembly are then checked further by officials from the Assembly’s Legal Services, Brussels Office and the Research Service to see whether they raise any potential subsidiarity concerns.
- If a proposal raises subsidiarity concerns, Assembly officials will alert the Constitutional and Legislative Affairs Committee immediately whereupon Members will be asked to consider whether the Committee should ask either or both Houses at Westminster to issue a ‘reasoned opinion’ on the proposal or not.
- Those proposals which are ‘legislative’ and relate to devolved matters but raise no subsidiarity concerns are then collated in a monitoring report produced by the Research Service which is considered as a paper to note by the Constitutional and Legislative Affairs Committee usually during each term in an Assembly year (Autumn [September–December], Spring [January–April] and Summer [May – August]).

This report therefore includes a general overview of those draft EU legislative proposals received by the Assembly's Research Service between 1 January 2015 and 31 May 2015, and provides further information about those proposals that were identified by Assembly officials as being both 'legislative' in nature and relating to devolved matters.

Please note however that this report primarily monitors 'legislative' proposals, in the main it does not contain details of 'non-legislative proposals' that may be relevant to the work of the Assembly. These are monitored on a separate basis by the Research Service.

### **3. Overview of draft EU proposals received (January 2015 to May 2015)**

A total of 184 UK Government EMs relating to EU proposals were received by the Assembly's Research Service from the UK Government between 1 January 2015 and 31 May 2015.

Of these, 23 EMs were of policy interest to the Assembly and were shared with the Research Service and one was identified by Assembly officials as being both 'legislative' in nature and of interest to the Assembly.

Following further analysis by officials from the Assembly's Legal Service, Brussels Office and Research Service, the proposal was not identified as raising subsidiarity concerns.

#### **Legislative proposals under the new European Commission**

In general the number of EU legislative proposals has declined under the new European Commission following the European elections in May 2014. There has been a quite radical shift in approach by the European Commission to its forward planning; one of a number of changes introduced by the new Juncker Commission which took office in November 2014. President Juncker's deputy, First Vice President Frans Timmermans (ex-Dutch Foreign Minister), has control of the Work Programming process and he is a strong advocate of a more streamlined approach to policy and law-making by the EU.

New European Commission President Jean-Claude Juncker, in his Political Guidelines has called for a much clearer focus for EU level interventions, and respect for principles of subsidiarity and proportionality, stating:

...I want a European Union that is bigger and more ambitious on big things, and smaller and more modest on small things...

This translates into 10 key priorities for EU level action over the coming five years, which will be the focus of the European Commission's Work Programmes and planned activities, with the emphasis on leaving Member States (and sub-State authorities) to deal with issues outside of these areas.

This new approach is very much reflected in the first Work Programme of the new Juncker Commission which was published in December 2014. It proposed 23 new legislative

initiatives, which is a major departure from previous years where the European Commission would on average table over 100 legislative proposals. The other innovation of the 2015 Work Programme was an Annex proposing a list of ongoing proposals that the European Commission intended to withdraw due to lack of progress in the decision-making process, with stalemate in Council or between Council and Parliament on particular dossiers.

The fact that only 23 new legislative initiatives have been proposed will have (and has had) a direct impact on the number of proposals that the Constitutional and Legislative Affairs Committee will need to reflect on with regard to subsidiarity concerns.



### 3.1 EU legislative proposals that did not raise any subsidiarity concerns

Date emailed	Title and description
28/01/2015	<p data-bbox="357 423 1449 555"><i>Proposal for a Regulation of the European Parliament and of the Council on the <b>European Fund for Strategic Investments</b> and Amending Regulations (EU) no 1291/2013 and (EU) no 1316/2013</i></p> <p data-bbox="357 580 1449 712"><i>Annex to the Proposal for a Regulation of the European Parliament and of the Council on the <b>European Fund for Strategic Investments</b> and Amending Regulations (EU) no 1291/2013 and (EU) no 1316/2013</i></p> <p data-bbox="357 736 1449 913">On 26 November 2014, the European Commission published in its communication ‘<b>An Investment Plan for Europe</b>’ (‘the <b>Investment plan</b>’) a <b>proposed EU-level initiative to address an investment gap</b> ‘as a consequence of the economic and financial crisis.’</p> <p data-bbox="357 938 1374 972">The Investment plan is based on three mutually reinforcing strands:</p> <ol data-bbox="357 996 1449 1308" style="list-style-type: none"><li data-bbox="357 996 1417 1030">i. the creation of a European Fund for Strategic Investments (EFSI);</li><li data-bbox="357 1055 1449 1187">ii. a transparent pipeline of investment projects at the European level and the creation of an advisory hub (European Investment Advisory Hub (EIAH)); and,</li><li data-bbox="357 1211 1449 1308">iii. measures to remove obstacles to investment and complete the Single Market.</li></ol> <p data-bbox="357 1332 1449 1509">This proposal creates the necessary legal framework for the first two strands of the Investment plan enabling the Commission to implement and deliver the Investment plan jointly with the European Investment Bank (EIB).</p> <p data-bbox="357 1534 1449 1619">With regard to the third strand, the Commission has set out actions in its Work Programme, adopted on 16 December 2014 (COM(2014) 910).</p>

# Agenda Item 4.1

## Correspondence from the Electoral Commission

### European Union Referendum Bill – referendum question assessment

I am writing following the introduction of the European Union Referendum Bill in the House of Commons on Thursday 28 May to invite comments on the proposed wording of the referendum question included in the Bill. Under the Political Parties, Elections and Referendums Act (PPERA), the Electoral Commission is required to assess and comment on the intelligibility of any question included in a Bill for a UK-wide referendum.

As well as looking at the wording of the question ourselves, we will gather evidence to help us with our assessment. This will include:

- Carrying out research with voters from different backgrounds and across different areas, through focus groups and one to one interviews.
- Asking for advice from experts on accessibility and plain language.
- Talking to potential campaign groups, other interested groups and individuals, including political parties.

In order to inform our assessment, we are seeking your views on the wording of the referendum question which has been included in the Bill, which is as follows:

**“Should the United Kingdom remain a member of the European Union?”**

In Wales the following Welsh language version of the question wording would also appear on the ballot paper:

**“A ddylai'r Deyrnas Unedig ddal i fod yn aelod o'r Undeb Ewropeaidd?”**

We have produced referendum question guidelines that we use to assess whether a proposed question is clear, simple and neutral. These guidelines can be found on our website [here](#) and it would be helpful if you consider the question in the context of these guidelines when giving us your views.

The Commission has previously assessed the wording of a question for a referendum on the United Kingdom's membership of the European Union, which was included in a Private Members' Bill introduced in 2013. We recommended in October 2013 that the proposed question wording should be amended to reduce the risk of misunderstanding or ambiguity about the current membership status of the UK within the EU. We provided two alternative question wordings for Parliament to consider:

- In English **“Should the United Kingdom remain a member of the European Union?”** and in Welsh: **“A ddylai'r Deyrnas Unedig ddal i fod yn aelod o'r Undeb Ewropeaidd?”**

The responses in English would be **“Yes”** and **“No”**, and in Welsh **“Dylai”** and **“Na ddylai”**

- In English “**Should the United Kingdom remain a member of the European Union or leave the European Union?**” and in Welsh “**A ddylai'r Deyrnas Unedig bara i fod yn aelod o'r Undeb Ewropeaidd neu adael yr Undeb Ewropeaidd?**”

The responses in English would be “**Remain a member of the European Union**”a “**Leave the European Union**” and in Welsh “**para yn aelod o'r Undeb Ewropeaidd**” and “**Gadael yr Undeb Ewropeaidd**”

However, we also highlighted in October 2013 that we had not been able to fully test the second of these two alternative question wordings in the time available to us before we reported. We therefore made clear that, if the UK Parliament amended the question in the Bill to include this wording, the Commission would undertake further work to check whether this wording raised any new issues of intelligibility.

Following further research which we carried out in early 2014, after the question wording included in the Bill had been amended to “Should the United Kingdom remain a member of the European Union or leave the European Union?”, we were satisfied that this question wording was clear and straightforward for voters and was also the most neutral wording from the range of options we had considered and tested.

A link to information about our previous question assessments and recommendations can be found on our website [here](#).

We are undertaking further research and consultation now because of the time which has passed since our previous research and assessment, and in order to ensure we have a clear understanding from campaigners about the impact of the question wording on their ability to campaign in support of or against either outcome. We would particularly welcome any comments and views on the implications for campaigners of using alternatives to “Yes” and “No” as response options in the English language version of any question wording. We would also welcome views on the implications for campaigners of using "Dylai" and "Na ddylai" or any alternatives as response options in the Welsh language version of any question wording.

If you would like to give us your views on the intelligibility of the proposed referendum question, you can email us at [ReferendumQuestion@electoralcommission.org.uk](mailto:ReferendumQuestion@electoralcommission.org.uk). In order that we can consider your views as part of our assessment process, please reply not later than **Friday 19 June 2015**.

If you would like to put your views to us in a meeting, please contact us by **Friday 5 June 2015**. We will aim to hold any meeting not later than 19 June 2015. **Please note that the Commission may use extracts from named responses in its report on the question unless you let us know that you wish your comments to be considered confidential.**

We will report our views on the question to the UK Parliament and will make our findings public at the same time.

Sincerely,

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

Andrew Scallan  
**Cyfarwyddwr Gweinyddiaeth Etholiadol**  
**Director Electoral Administration**

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