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Gareth Williams
Constitutional and Legislative Affairs Committee
T Hywel
National Assembly for Wales
Cardiff Bay
Cardiff
CF99 1NA



13 November 2013

Dear Mr Williams

Inquiry into Wales' role in the EU decision-making process

I enclose a written submission on behalf of the Scottish Government in response to your invitation to submit written evidence for the Committee's inquiry into Wales' role in the EU decision-making process.

I am very much looking forward to giving oral evidence to the Committee and hope that this evidence on Scotland's role in the EU decision-making process will prove helpful to the Committee's inquiry.

*Kind regards
Fiona Hyslop*

FIONA HYSLOP

Cabinet Secretary for Culture and External Affairs
Fiona Hyslop MSP

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Yours sincerely

FIONA HYSLOP

1. The Scottish Government is grateful for the opportunity to make a contribution to the Constitutional and Legislative Affairs Committee of the Welsh National Assembly's inquiry into Wales' role in the EU decision-making process. While the Scottish Government is not in a position to comment on Wales' role in this process, we hope that evidence on Scotland's role will provide the Committee with a useful comparator.

The Scottish Government's position on membership of the EU

2. In the context of the referendum on an independent Scotland, the Scottish Government will set out its full position on Scotland's role in the EU in a White Paper to be published on 26 November 2013. The Committee may wish to refer to the White Paper once it is published to ascertain how an independent Scotland would engage with the EU. This response focuses, however, on Scotland's role in the EU decision-making process under the current constitutional arrangements.

3. The Scottish Government sees clear and tangible benefits to membership of the EU and is committed to Scotland remaining a part of the EU. Scotland experiences clear benefits from the freedom of movement of persons, goods, services and capital and access to a single market comprising of in excess of 500 million European citizens and 22 million businesses.

Scotland's role in the EU decision-making process

4. Although, in terms of the current devolution settlement for Scotland, relations with the European Union and its institutions is a matter which is reserved to the UK Government, the Scottish Government has responsibility for implementing and ensuring that EU law is observed in Scotland in areas within the devolved legislative competence of the Scottish Parliament. The Scottish Government, therefore, has a wide interest in the formulation of EU law and the EU decision-making processes and seeks to engage as much as possible with both the UK Government and the EU institutions to ensure that Scotland's interests are promoted and defended. The Scottish Government is committed to strengthen Scotland's voice in Europe, aiming to ensure that Scottish interests are fully represented at the European level, while making clear to the rest of Europe the wealth of experience and resources Scotland has to offer as a nation. Already, Scotland, like so many of the EU's smaller states, plays a highly active role in engaging with EU matters. This is done in a variety of ways which are outlined below.

Representation of Scotland's interests in devolved matters in the EU decision-making process

Joint Ministerial Committee (Europe)

5. As has been highlighted, under the current constitutional settlement for Scotland, the UK Government is responsible for relations with the EU and its institutions. One of the key priorities of the Scottish Government is, therefore, to ensure that the UK Government is made aware of the Scottish interest on EU matters. Relations between the Scottish and UK Governments on EU matters are governed by the Memorandum of Understanding and Supplementary Agreements between the UK Government, the Scottish Ministers, the Welsh Ministers and the Northern Ireland Executive Committee as well as the Concordat on the Coordination of EU Policy issues.

6. While the Scottish Government seeks to work constructively with the UK Government, the Scottish interest will not always coincide with that of the UK Government and this can create difficulties in arriving at a position which is satisfactory to the UK Government as well

as all of the devolved administrations. The Committee will be aware that the Memorandum of Understanding relating to attending and speaking at meetings of the Council of the European Union was revised this year so as to enable increased attendance from representatives of the devolved administrations. These revisions should ensure better representation of the Scottish interests at meetings of the Council but it will still be a challenge in ensuring that the Scottish position can be communicated effectively.

7. When attending the Joint Ministerial Committee (Europe), the Cabinet Secretary for Culture and External Affairs seeks to arrange pre-meetings with her counterparts in the other devolved administrations to discuss how the interests of the devolved administrations can best be put over at the Committee. When speaking together, the voice of the devolved administrations is that much stronger.

Explanatory Memoranda

8. Explanatory memoranda are prepared by the UK Government to inform the UK Parliament of EU legislative proposals and other activity that might lead to EU legislation, such as European Commission consultation papers. They provide an explanation of the issue and an outline impact assessment, looking at financial, legal, policy and political implications. The Scottish Government is consulted when an Explanatory Memorandum is being prepared so that they can advise on whether the proposal would have any impact in an area of devolved competence, and where appropriate, provide suitable text for inclusion in the Memorandum.

9. The Explanatory Memorandum process serves two main purposes. Firstly, it is vital in keeping the Scottish Government apprised of key EU developments and engaged with counterparts in Brussels and London to ensure that the Scottish interests are represented. Secondly, the process allows officials to raise concerns about the subsidiarity or proportionality of EU legislative proposals at an early stage and influence the process of negotiating them. The Scottish Government and the Scottish Parliament work together to ensure that the subsidiarity, proportionality and competence aspects of all EU legislative proposals are closely monitored.

EU Obligations

10. The Scottish Government is responsible for implementing EU legislation where it relates to a matter within the devolved legislative competence of the Scottish Parliament. The Scottish Government, therefore, has responsibility for transposing a number of EU Directives into Scots law. Scottish Government officials work closely with their counterparts in the UK Government in order to keep abreast of EU legislation which requires transposed and also feedback details of the transposition measures so that these can be notified to the European Commission.

11. The Scottish Government will also liaise with the UK Government when infringement proceedings for a failure to implement or enforce EU law are commenced by the European Commission which also concern a matter which is within the devolved competence of the Scottish Parliament.

Other means of engaging on EU matters

12. There are a wide number of ways in which Scotland directly engages with the EU institutions as well as the other Member States.

Action Plan for European Engagement

13. The Scottish Government has an Action Plan on European Engagement which takes a pragmatic approach to ensure that our activities are properly focused to maximise our impact. The appendices to the Action Plan are updated on a biannual basis in line with the rotation of the EU Presidency. These provide information on Scottish Government activity over the previous six months and look ahead at issues of importance to Scotland during the forthcoming Presidency period.

14. Our engagement is currently focussed on four key areas where Scotland can achieve real benefits in the long run and also where we can demonstrate to the European Union that Scotland is a constructive partner that can play a leading role and contribute for the wider benefit of EU citizens. Although we have identified these four areas of priority, we strive to engage directly with the EU institutions, UK counterparts and stakeholders, in all areas of EU competence.

15. Our key areas are:

- Energy and Climate Change
- Marine Environment including Fisheries
- Research and Creativity
- Freedom, Security and Justice (formerly Justice and Home Affairs)

16. The Scottish Government also has a role in driving forward a genuinely collaborative approach, open to all of Scotland's stakeholders to be most successful. When we approach Europe in a co-ordinated manner, focusing on Scotland's main interests, the impact of strong, consistent and targeted messages help to strengthening Scotland's voice and promote Scotland as a credible, influential player across Europe.

The Scottish Government EU Office

17. The Scottish Government EU Office based in Brussels provides support for the work of the Scottish Government on EU policy by helping Ministers and officials to strengthen their relationships with the EU institutions and the UK Permanent Representation to the EU as well as other Member States and other sub-Member State representations. The Office provides the Scottish Government with its own distinct representation in Brussels, but as part of the UK, it is also part of the UK Representation. The office reports on events and developments in Brussels to Ministers and officials, identifying key issues for Scotland and communicating the Scottish position. Arranging cultural and policy related events to promote Scotland in Europe is a key part of this.

Role of the Scottish Parliament

18. The Scottish Parliament is an important partner in achieving Scottish objectives in Europe. The European and External Relations Committee takes the lead in focusing the Parliament on the EU issues of greatest interest, while subject committees also consider EU policies falling within their remits. The Scottish Government regularly updates the committees and give evidence on the Scottish Government's European affairs in order that the Scottish Parliament may play an active role.

Members of the European Parliament

19. Of the 73 UK Members of the European Parliament, six are from constituencies in Scotland and have responsibility for representing the interests of their constituencies. MEPs have a direct role in the formulation of EU law and policy and play a key role in ensuring Scotland's interests are represented in the European Parliament.

Committee of the Regions

20. Although the UK Government is responsible for the appointment of the UK members of the Committee of the Regions, the First Minister of Scotland is responsible for coordinating the appointment of the Scottish nominees. The Scottish Executive and Parliament each make two nominations and the Convention of Scottish Local Authorities (CoSLA) makes four nominations. The Scottish Parliament then approves all Scottish nominees. Scotland, therefore has a direct voice on regional and local affairs at the EU level.

Review of the Balance of Competences between the UK and the European Union

21. The UK Foreign Secretary launched a review of the EU Balance of Competences in Westminster on 12 July 2012. The aim of the review is to analyse the UK's membership of the EU and deepen the public and parliamentary understanding of it.

22. The review is broken down into a series of reports on specific areas of EU competence, spread over four semesters between autumn 2012 and autumn 2014. The review has now reached the third semester and calls for evidence are currently live in relation to ten areas, including the EU budget, free movement of services in the single market, financial services and the free movement of capital in the single market, competition and consumer protection, fisheries, agriculture and energy.

23. The Scottish Government is engaging with the review and responding to provide evidence highlighting the areas of EU competence which work well and benefit in Scotland as well as those which may be reformed and better regulated.

24. To date the responses issued by the Scottish Government in the first two semesters highlight the importance of Scotland remaining within the EU. While we have provided some evidence of where the balance of competences could be improved, the evidence we have submitted overwhelmingly highlights that the benefits of EU membership significantly outweigh the costs. The Scottish Government considers that many issues with the balance of competences can be addressed by better regulation by the EU institutions and are supportive of the European Commission's REFIT programme.

25. The evidence submitted by the Scottish Government also highlights the importance under the current constitutional settlement of constructive engagement between the UK Government and devolved administrations on European issues as well as direct engagement between the Scottish Government and the EU institutions.