

Subsidiarity monitoring report September 2015 to February 2016

Y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol | Mawrth 7, 2016
Constitutional and Legislative Affairs Committee | 7 March 2016

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 September 2015 and 29 February 2016, 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 (September 2015 to February 2016)

A total of 371 UK Government EMs relating to EU proposals were received by the Assembly's Research Service from the UK Government between 1 September 2015 and 29 February 2016.

Of these, 71 EMs were of policy interest to the Assembly and were shared with the Research Service and 11 were 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, none of the proposals were identified as raising subsidiarity concerns although details of other concerns are included for information. Those proposals which relate, wholly or in part, to devolved areas but which do not raise subsidiarity concerns are listed in table 3.1.

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.

This is reflected in the European Commission Work Programme for 2016 which contains only 23 new initiatives of which 18 are legislative. This is a major departure from the previous Commission which would, on average table over 100 legislative proposals each year, and it is indicative of the overall approach of this Commission which is to streamline the process of policy and law-making by the EU. The 2016 Work Programme also includes a significant number of proposals for the withdrawal or modification of legislation and identifies 27 acts to be reviewed, recast, merged, replaced or shortened as part of the Commission's Regulatory Fitness (REFIT) programme.

3.1 EU legislative proposals that did not raise any subsidiarity concerns

Date emailed	Title and description
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16/9/15	<i>Proposal for a Council Regulation amending Regulation (EC) No 850/2004 of the European Parliament and of the Council on persistent organic pollutants as regards annex 1.</i> (COM(2015) 409)
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The Commission Proposal is for a Council Regulation amending Regulation (EC) No 850/2004 of the European Parliament and of the Council on Persistent Organic Pollutants as regards Annex I of that Regulation. The proposal is to list the flame retarding substance hexabromocyclododecane (HBCDD) with a specific exemption on immediate use or other specifications in Annex I. This would be implemented in the European Union to prohibit production, use, import and export of that substance required under the Stockholm Convention on Persistent Organic Pollutants (“the Convention”). Environmental protection and public health are devolved matters and the environment is an area of shared competence under Article 4(2) of the Treaty on the Functioning of the European Union. No subsidiarity issues have been identified.

12/10/15	<i>Proposal for a Council Recommendation on the integration of the long-term unemployed into the labour market.</i> (COM(2015) 462/2)
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This Commission recommendation aims to provide guidance on service delivery to increase the rate of transition of people from long-term unemployment to employment in those Member States that have little or no support in place, and to build on measures already available in other Member States. The UK Government considers the UK to be a Member State which already has such arrangements in place and states that the proposals closely reflect UK policy in this area.

Employment policy is not devolved to Wales although education and training policy are devolved and the issues covered by the EM are likely to be of interest to Welsh Ministers.

The proposal is non-binding and the UK Government has not identified any subsidiarity issues.

26/10/15	<i>Proposal for a Council Directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation.</i> (SOC 246 JAI 368 MI 411)
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This draft equal treatment directive was first proposed in 2008, since when it has undergone a number of modifications following negotiations between Member States. The directive would prohibit discrimination on grounds of religion or belief, age, disability and sexual orientation in the provision of services and the exercise of public functions. It also proposes to ban

harassment in relation to these protected characteristics and provide protection from victimisation. If adopted, the directive would complete the EU's protection coverage of the recognised protected characteristics in the field of services and public functions, the Council having prohibited discrimination on grounds of gender and race in these fields some years ago, together with prohibitions in all protected grounds in employment and vocational training.

Some aspects of equal opportunities are devolved to Wales, although equal opportunities legislation as a whole is a reserved matter. The directive impacts on some areas of devolved policy e.g. education.

During negotiations on the draft directive the UK Government sought to ensure the principle of subsidiarity was satisfied, in particular regarding its application only to access to a particular service and not to issues of eligibility, and it now considers the draft directive to satisfy subsidiarity criteria.

**Not received
-accessed
via Scottish
Parliament
14/1/16**

This Explanatory Memorandum relates to four documents on a **Commission waste proposal** which is part of a larger Circular Economy package and which aim, in part, to review recycling and other waste-related targets.

The EM covers proposed amendments to six Directives on the handling of waste:

- Directive 2000/53/EC on end-of-life vehicles;
- Directive 2006/66/EC on batteries and accumulators and waste batteries and accumulators;
- Directive 2012/19/EC on waste electrical and electronic equipment;
- Directive 1999/31/EC on the landfill of waste;
- Directive 2008/98/EC on waste; and
- Directive 94/62/EC on packaging and packaging waste.

The UK Government has identified subsidiarity concerns regarding both the proposal to insert a new article 8a into the Waste Framework Directive which it believes will diminish local discretion, and the proposed requirement that Member States put in place financial incentives to achieve waste prevention and recycling objectives.

Although some of the proposals concern devolved matters, there are no specifically Welsh concerns about subsidiarity.

22/2/16

Proposal for a Regulation of the European Parliament and of the Council on

mercury, and repealing Regulation (EC) No 1102/2008 (COM(2016) 39)

The proposed Regulation would fill in a limited number of regulatory gaps between the requirements of the Minamata Convention on Mercury (which the Council is proposing to ratify) and current EU legislation. To do so efficiently, repeal of Regulation (EC) No 1102/2008 on the banning of exports of metallic mercury and certain mercury compounds and mixtures and the safe storage of metallic mercury is proposed, although many of that Regulation's requirements would be retained.

The proposal relates to environmental protection which is a devolved matter. The UK Government does not identify any subsidiarity issues with the proposals.

3.2 Other EU legislative proposal that may be of interest

Date emailed Title and description

4/1/16

European Parliament Resolution of 11 November 2015 on the reform of the electoral law of the European Union

Proposal for a Council Decision adopting the provisions amending the Act concerning the election of the members of the European Parliament by direct universal suffrage

This is a European Parliament proposal (and is therefore relatively unusual since most legislative proposals originate in the European Commission). The proposed reforms are wide-ranging and most are concerned with amending EU law in relation to the conduct of elections to the European Parliament (EP).

In its explanatory memorandum the UK Government expresses subsidiarity concerns about the proposals since Member states have competence in the administration of elections which includes the procedures around European parliamentary elections within their own territories, providing they comply with the 1976 Act and do not affect the essentially proportional nature of the voting system.

Such competence, the UK Government argues, allows for consistency with other elections, such as those to national or regional parliaments of assemblies and the proposals which seek to promote uniform practice across states concern matters which the UK Government considers should be decided at national level. It is sceptical about the likely effectiveness of the proposals and is seeking further clarity as to what is intended.

The EM sets out the current system for elections to the European Parliament which in the UK comprises 12 electoral regions, of which Wales is one, the 73 UK MEP seats being distributed amongst the regions in proportion to their electorates and subject to a minimum of 3 seats in each region. The region with the largest number of seats is the south east with 10 seats. Therefore no region in the UK would be affected by the proposal to introduce mandatory thresholds to win seats in the EP in constituencies that have more than 26 seats. Nevertheless the UK Government is opposed to the introduction of mandatory thresholds and states that it will wish to carefully consider the proposal for the adoption of such a principle.

The proposal to set a common deadline of at least 12 weeks from the start of polling across Member States for the establishment of the lists of

candidates standing for election would be inconsistent with the later deadline under the current UK electoral arrangements and would therefore make it difficult to align EP elections with other elections.

The EP proposal that a common deadline of 8 weeks before polling can begin should be set across Member States for the establishment of the lists of eligible electors is also at variance with the UK deadline of 12 working days before the election (with some flexibility for late adjustments). The UK Government is opposed to such a move which it believes would restrict participation and reduce the flexibility of the current arrangements.

The UK Government also does not support the proposed use of legal quotas to secure gender equality amongst election candidates.

The UK Government has reservations about the proposed adoption of electronic and internet voting at European elections on the grounds of security, transparency and cost, and what it sees as a lack of clear public support in the UK.

The EM states that the proposal to prevent the holding of both MEP and regional parliament or assembly office (where these have legislative powers) requires further consideration and, the UK government concludes, may be better decided at Member state level.

A number of other issues are also highlighted in the UK Government's EM.

On 3 February 2016 the House of Commons European Scrutiny issued a *Reasoned Opinion of the House of Commons concerning a Proposed Council Decision adopting the provisions amending the Act concerning the election of the members of the European Parliament by direct universal suffrage ("the proposal")*.