

The response of the Welsh Government to the call for evidence on Subsidiarity and Proportionality as part of the review of the balance of competences between the UK and the European Union

Subsidiarity

One of the most significant aspects of the Treaty of Lisbon was the inclusion of new, strengthened provisions on the principle of subsidiarity. The Welsh Government was instrumental in this development. In February 2003, the then Secretary of State for Wales (Peter Hain MP) 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 additional subsidiarity provisions that are included in the present Treaty, with an explicit reference to the regional and local dimension of the principle of subsidiarity and, in a revised Protocol, a new role for national (Member State) parliaments, and regional parliaments and assemblies within Member States, in ensuring compliance with the principle of subsidiarity.

The Welsh Government has a strong interest in subsidiarity and proportionality. Indeed the establishment and operations of the Welsh Government and National Assembly for Wales are in keeping with the principle of subsidiarity. We fully recognise the important role that the implementation of subsidiarity plays in enabling Member State parliaments and, where appropriate, regional parliaments and assemblies, to scrutinise EU legislative proposals and to participate in the EU legislative process.

The Welsh Government works closely with both the UK Government and the National Assembly for Wales to ensure that, in areas of devolved competence, Welsh views are taken into account in the preparation of UK Government Explanatory Memoranda (EMs) relating to specific proposals for EU legislation. This process is underpinned by the Concordat on Co-ordination of EU Policy Issues that forms part of the Memorandum of Understanding between the UK Government and the Devolved Administrations.

The Welsh Government participates in the Joint Ministerial Committee on Europe JMC(E), which draws together UK Government Departments and the Devolved Administrations to consider the broad, strategic approach towards EU policy. The JMC(E) has a pivotal role in enabling the Devolved Administrations and UK Government to exchange views on EU matters and to maintain a co-ordinated approach, as appropriate.

Other meetings at Ministerial and official level further strengthen co-operation between the respective administrations. In Brussels, the Welsh Government's EU Office works closely with the UK's Permanent Representation to the EU and colleagues from the other UK Devolved Administrations.

Internal Process

Under Section 80 of the Government of Wales Act 2006, the Welsh Ministers have an obligation to implement EU legislation if it can be implemented (or enabled to be implemented) or complied with by the exercise of any of their functions. Similarly, the Welsh Ministers have no power to legislate or act if, in so doing, that would be incompatible with EU law.

The National Assembly for Wales ensures compliance with EU law by scrutinising the decisions and actions of the Welsh Ministers through its business and committee structures.

The Assembly, via its 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.

Assembly officials monitor all draft EU legislative proposals that apply to Wales on a systematic basis to check whether they raise any 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 of the Westminster Houses of Parliament to issue a 'reasoned opinion' on the proposal.

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 Assembly Research Service, which is considered as a paper to note by the Constitutional and Legislative Affairs Committee during each term in an Assembly year.

The number of EMs received by the Welsh 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 the Devolved Administrations are not consulted) and of these, between 200 and 300 are typically of direct relevance to Wales. There is a section within each EM to record "the interests of the Devolved Administrations", though the time available for comment can often be very short.

The standard wording in the section is set out below:

- For reserved functions, the EM will note 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; or
- 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 in the issues highlighted and that they have been consulted in the preparation of the EM; or

- 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 Welsh Government department or departments are consulted, and are in a position to communicate their views to the lead Whitehall department, if appropriate.

Subsidiarity in Practice – The Welsh Government's engagement with the EU

The overarching aims of the Welsh Government's EU policy are to promote and protect the interests of Wales and to deliver the best outcomes for our people.

The European Union has a major impact on the lives of people in Wales and plays an important role in building our nation's prosperity. It makes decisions and passes laws that affect Welsh policy interests, such as business and trade, agriculture and rural development, regional development, energy, skills, employment, transport and the environment. Our membership of the EU, and our active participation in the development and implementation of its policies and programmes, contribute significantly to the achievement of the goals we set out in our Programme for Government.

It has always been the Welsh Government's view that membership of the EU is essential to the future success of both Wales and the wider UK. Throughout these challenging economic times the Welsh Government has been, and remains, strongly committed to the creation of sustainable jobs, enhancing skills and boosting growth.

Since devolution, Wales has made major progress in its ability to influence the development of the relevant EU policies. The Welsh Government is a committed partner within the European Union and our aim is to engage actively and visibly. We have worked continuously to raise awareness of Wales within the EU through promoting the best of what we have to offer – in social, environmental, educational, economic, tourism and cultural terms – and through building relationships with other Member States and regions through partnerships, networks and involvement with local organisations.

Welsh Ministers participate in the Council of the European Union, as part of the UK delegation, on matters of interest to Wales and aim to influence the outcomes of negotiations in the interests of Wales. Under the terms of the devolution settlement, competence for EU Council negotiation rests with the UK Government as it represents the Member State.

However, the Welsh Government's formal involvement in the UK's EU policy-making process is implemented in a number of ways. As outlined above, the Welsh Government participates in the Joint Ministerial Committee on Europe, there are other meetings at Ministerial and official level between the UK administrations and

there is a close working relationship between the Welsh Government's EU Office, the UK's Permanent Representation to the EU and colleagues from the other Devolved Administrations.

We will continue to work constructively with the UK Government and the other Devolved Administrations to influence the development of EU policies. The Welsh Government places a high priority on its involvement in the preparation of the UK speaking note for Council meetings.

The achievement of an effective relationship with Whitehall departments is a fundamental issue for the Welsh Government and is pursued constantly both at the level of Welsh Ministers and officials.

There is a strong interrelationship between the Welsh Government and the UK Government on European matters. The success of that relationship can depend on the experience of working within the framework of the devolved settlements. For example, for the UK Government's Department for Environment, Food and Rural Affairs, where many of its responsibilities are for England only and its officials are used to talking to Welsh Government and other officials about a possible wider UK position, the relationship is generally good. However, this is not consistently the case across Whitehall in areas where there is not necessarily the same degree of experience of the relationship and interaction between the UK Government and the Devolved Administrations, though the general picture shows continuous improvement and growing awareness of devolution.

The Welsh Government's EU Strategy, "Wales and the European Union" (2012) shows how the EU's goals for growth and jobs, described in its own Europe 2020 Strategy, complement our Programme for Government and it identifies a series of objectives for the Welsh Government on relations with the EU, on policy areas and promoting engagement. It also outlines how we seek to influence EU policy-making.

The Welsh Government produces an Annual Report and Work Programme on EU matters, under the EU Strategy. While these issues may reflect the European Commission's own annual Work Programme they are not limited by it. The First Minister and other Welsh Ministers, as appropriate, appear before the Assembly on EU matters and gave evidence to the recent inquiry by the Constitutional and Legislative Affairs Committee into Wales' role in the EU decision-making process.

As stated above, the Welsh Government is supportive of the Assembly's work in reviewing UK Government Explanatory Memoranda to ensure that the implications for Wales regarding subsidiarity are taken into account. The Assembly will be providing a separate response to this call for evidence.

Future Developments

The second report of the Silk Commission on Devolution in Wales (March 2014) makes a recommendation for the establishment of a Welsh Intergovernmental Committee comprising Welsh and UK Government Ministers. The Committee would be responsible for addressing issues around the devolution settlement, including disputes and proposals for reform, and for monitoring and influencing EU impacts on

Wales. Issues connected with EU policy and law-making, as well as subsidiarity and proportionality questions, would be included within the terms of reference of this body.