

Constitutional and Legislative Affairs Committee

Meeting Venue:
Committee Room 2 – Senedd

Meeting date:
3 June 2013

Meeting time:
14:30

Cynulliad
Cenedlaethol
Cymru

National
Assembly for
Wales



For further information please contact:

Gareth Williams
Committee Clerk
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Agenda

- 1 Introduction, apologies, substitutions and declarations of interest**
- 2 Instruments that raise no reporting issues under Standing Order 21.2 or 21.3**

Negative Resolution Instruments

CLA266 – The School Admissions (Infant Class Sizes) (Wales) Regulations 2013
Negative Procedure. Date made 14 May 2013. Date laid 17 May 2013. Coming in to force date 8 July 2013

CLA267 – The School Admissions (Variation of Admission Arrangements) (Wales) Regulations 2013
Negative Procedure. Date made 14 May 2013. Date laid 17 May 2013. Coming in to force date 8 July 2013

CLA268 – The School Admissions (Common Offer Date) (Wales) Regulations 2013
Negative Procedure. Date made 14 May 2013. Date laid 17 May 2013. Coming in to force date 8 July 2013

CLA269 – The Apprenticeships (Issue of Apprenticeship Certificates) (Wales) Regulations 2013

Negative Procedure. Date made 14 May 2013. Date laid 17 May 2013. Coming in to force date 8 July 2013

CLA270 – The Apprenticeships (Designation of Welsh Certifying Authority) Order 2013

Negative Procedure. Date made 20 May 2013. Date laid 23 May 2013. Coming in to force date 23 June 2013

CLA271 – The Apprenticeships (Specification of Apprenticeship Standards for Wales) Order 2013

Negative Procedure. Date made 20 May 2013. Date laid 23 May 2013. Coming in to force date 23 June 2013

CLA272 – The Apprenticeships (Transitional Provision for Existing Vocational Specifications) (Wales) Order 2013

Negative Procedure. Date made 22 May 2013. Date laid 24 May 2013. Coming in to force date 23 June 2013

Affirmative Resolution Instruments

CLA264 – The Apprenticeships (Alternative Welsh Completion Conditions) Regulations 2013

Negative Procedure. Date made Not stated. Date laid Not stated. Coming in to force date 23 June 2013

3 Other Legislation

Negative Resolution

CLA265 – The School Admissions Code

Negative procedure: Date laid: 15 May 2013: Issue date: 8 July 2013

<http://www.assemblywales.org/bus-home/bus-legislation/fourth-assembly-sub-leg-reports.htm>

4 Papers to note (Pages 1 – 8)

CLA(4) 15-13(p1) – Letter from Lord Boswell in relation to the EU proposal for a Regulation on measures to reduce the cost of deploying high-speed electronic communications networks

CLA(4) 15-13(p2) – Letter from William Cash in relation to the EU proposal for a Regulation on measures to reduce the cost of deploying high-speed electronic communications networks

CLA(4) 15-13(p3) – Letter from the Chair to the President of the European Commission in relation to the EU proposal for a Regulation on measures to reduce the cost of deploying high-speed electronic communications networks

CLA(4) 15-13(p4) – Committee Report on the EU proposal for a Regulation on measures to reduce the cost of deploying high-speed electronic communications networks

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

Consideration of Correspondence in relation to the Social Services (Wales) Bill (Pages 9 – 15)

CLA(4)-15-13(p5) – Letter from the Deputy Minister for Social Services

Consideration of Correspondence in relation to Further and Higher Education (Wales) Bill (Pages 16 – 20)

CLA(4)-15-14(p6) – Letter from the Minister for Education and Skills

Update of EU Inquiry (Pages 21 – 24)

CLA(4)-15-13(p7) – Programme for Brussels Visit

Agenda Item 4



HOUSE OF LORDS
European Union Committee

House of Lords
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The President
European Commission
rue de la Loi 200
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20 May 2013

Dear President,

7999/13 – Proposal for a Regulation of the European Parliament and of the Council on measures to reduce the cost of deploying high-speed electronic communications networks

Thank you for the above Communication, which was considered by EU Sub-Committee B on the Internal Market, Infrastructure and Employment at its meeting of 13 May 2013. The Committee was pleased to see that the Digital Agenda initiative is progressing, and on the whole, welcomed the measures within the proposal.

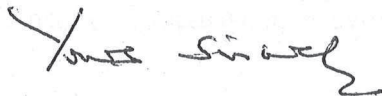
As drafted, the proposal appears to address the aims of reducing the cost and enhancing the efficiency of deploying high-speed electronic communications infrastructure. Through encouraging infrastructure sharing and co-deployment, as well as instituting a central information/permit allocation point, the Commission appears to address the aim of lowering the barriers to entry for new network operators. Similarly, the provision for high-speed broadband facilities to be built-in to new or newly renovated buildings seems to fulfil the objective of making the rollout easier and less costly in the future – since you state that making such provisions retroactively is more expensive.

However, we were concerned that the proposal does not comply with the principle of proportionality - the notion that the measure used must be suitable to address the aim, in the sense that there should not be a less onerous way of doing it. We do not believe that the case has sufficiently been made, for the use of a Regulation as opposed to a Directive which would constitute a less rigid legal instrument. In your explanatory notes, you observe that one of the aims of the proposal is to allow some leeway for Member States. In the light of this observation, we suggest that a Directive would be a better legislative option, enabling Member States to implement the measures through national legislation, rather than being directly bound by EU legislation. This would still achieve the stated aim of setting minimum rules and standards across the EU.

We note that the measures supported by the draft Regulation (infrastructure sharing, information provision, street works coordination and in-built infrastructure sharing) would all be implemented at a local level. Although we acknowledge that nonetheless, there are benefits to legislation being implemented at EU level, we maintain that it is important that the detail of legislation in this area fits in to the national legislative framework. An example of this is the specific framework in UK, which exists in relation to wayleaves, where compensation is given to an individual who enters into a wayleave contract in contrast to other EU Member States. The use of a Directive rather than a Regulation would allow Member States to take into account their very different national legislative frameworks in implementing the proposed measures.

We look forward to a response in due course.

I am copying this to Ed Vaizey MP, Minister for Culture, Communications and Creative Industries, Department for Culture Media and Sport, William Cash MP, Chair of the Commons European Scrutiny Committee, Sarah Davies, Clerk to the Commons European Scrutiny Committee, Paul Hardy, Legal Adviser to the Commons European Scrutiny Committee, Les Saunders (Cabinet Office), Simon Rushbrook, Departmental Scrutiny Co-ordinator, Department for Culture Media and Sport, Alyn Hicks, Assembly Clerk, Committee for the Office of the First Minister and the deputy First Minister, Northern Ireland Assembly, Steve Farrell, Clerk, Infrastructure and Capital Investment Committee, Scottish Parliament, Ruth Hatton, Deputy Clerk, Legislation Office, National Assembly for Wales and to Jenny Goldsmith, Assistant Clerk, European and External Relations Committee RACE (Real Action on Carbon Emissions) Co-ordinator, Scottish Parliament.



Lord Boswell
Chairman of the European Union Committee



European Scrutiny Committee

House of Commons 7 Millbank London SW1P 3JA

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From: William Cash MP

21 May 2013

David Melding AM
Chair, Constitutional and Legislative Affairs Committee
National Assembly for Wales
Cardiff Bay
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Regulation on reducing costs of deployment of high-speed electronic communications networks — Document (34806) 7999/13

The Committee has asked me to thank you for your letter of 15 May 2013, enclosing the Report from your Committee on the proposed Regulation on reducing the costs of deployment of high-speed electronic communications networks.

We note the representations of the Constitutional and Legislative Affairs Committee on subsidiarity issues arising from the proposed Regulation and welcome their alignment with this Committee's views.

We will, as you requested, take those views into account in our on-going scrutiny of the proposed Regulation and undertake to keep your Committee informed of any future developments. So far, I can report that since our first Report on this proposal dated 8 May, the Reasoned Opinion we recommended was debated in European Committee on Monday 20 May.

I am copying this letter to Baroness O'Cathain and Nicole Mason in the House of Lords, Ruth Hatton, Deputy Clerk, Legislation Office, and Owain Roberts, Research Service in the National Assembly for Wales.

CHAIRMAN

**Y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol
Constitutional and Legislative Affairs Committee**

Cynulliad
Cenedlaethol
Cymru

National
Assembly for
Wales



Mr Maroš Šefčovič
Vice-President of the European Commission responsible for
Inter-Institutional Relations and Administration
Rue de la Loi 200
1049 Brussels
Belgium
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15 May 2013

Dear Vice President Šefčovič

**Proposal for a Regulation of the European Parliament and of the Council
on measures to reduce the cost of deploying high-speed electronic
communications networks (COM(2013)147)**

I wanted to draw to your attention recent correspondence on subsidiarity concerns raised by the National Assembly for Wales' Constitutional and Legislative Affairs Committee (which I Chair) at its meeting last week.

I have written to William Cash MP and to Baroness O'Cathain, the Chairs respectively of the House of Commons' European Scrutiny Committee and the House of Lords' EU Sub-Committee B, about the above proposal. I attach a copy of my letters and the associated report from my Committee.

As you will be aware, the Treaty of Lisbon introduced an 'early warning mechanism' on subsidiarity (set out in Protocol No.2 to the treaty) which gives national parliaments (in consultation with their regional parliaments where appropriate) the opportunity to submit 'Reasoned Opinions' to the European Commission on any subsidiarity aspects of draft legislative proposals published by the EU Institutions.

You will see from the correspondence that the Constitutional and Legislative Affairs Committee shares the concerns raised by both the UK Government and the House of Commons European Scrutiny Committee. In particular, the Committee believes that the proposed Regulation's aim would be best achieved by action at Member State level, and that the measures supported by the proposed Regulation – such as infrastructure sharing, information

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provision, street works coordination and in-built broadband equipment in buildings – would all be best implemented at a local level.

I would be grateful if you could take the Committee's representations into account, on behalf of the National Assembly for Wales. As a sub-state legislature we aim to engage positively with EU matters, particularly in relation to our consideration of issues relating to subsidiarity. We very much look forward therefore to hearing your thoughts on how our concerns could be effectively addressed.

Yours sincerely

A handwritten signature in black ink that reads "David Melding". The signature is written in a cursive style with a long, sweeping tail that extends to the right.

David Melding AM
Chair



Constitutional and Legislative Affairs Committee Subsidiarity Report

Proposal for a Regulation of the European Parliament and of the Council on measures to reduce the cost of deploying high-speed electronic communications networks (COM(2013)147)

This report is laid following consideration by the Constitutional and Legislative Affairs Committee under Standing Order 21.8 of aspects of the proposed Regulation drawn to its attention by Assembly officials. The report forms the basis of representations to be made by the National Assembly for Wales to the relevant committees of the House of Commons and House of Lords under Standing Order 21.9.

Legal Context

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

“Article 5

(ex Article 5 TEC)

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.

EN C 83/18 Official Journal of the European Union.”

Its application is governed by the Protocol on the Application of the Principles of Subsidiarity and Proportionality, the relevant part of which for our purpose is 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 [Our emphasis].”

Commission Proposals

The proposal for a Regulation of the European Parliament and of the Council on measures to reduce the cost of deploying high-speed electronic communications networks (‘the proposed Regulation’) was published by the European Commission on 26 March 2013. The Assembly subsequently received a copy of the Department for Culture, Media and Sport’s Explanatory Memorandum, which set out the UK Government’s views of the proposal, on 24 April 2013. In its consideration of subsidiarity, the Memorandum states as follows:

“The UK Government has concerns that the Regulation is not justified in accordance with the subsidiarity principle. The measures supported by the Regulation – infrastructure sharing, information provision, street works coordination and in-built broadband equipment in buildings – would all be implemented at a local level. There is little prospect of these measures having a cross-border market effect, as the issues the Regulation seeks to address are not applicable to the core network that crosses Member State borders. The Government believes that the

Regulation's intended aim – to support superfast broadband rollout by lowering the cost of civil engineering works – would be best achieved by action at Member State level [Our emphasis].”

The Memorandum states that the UK Government's key concern “is the use of a Regulation as the vehicle to implement these measures” that would “enforce a prescriptive approach, no matter what the current policies, regulations and structures are in a particular location”. The Memorandum adds that:

“Many of the policy objectives behind the Regulation could, in theory, be supported at the EU level if they were proposed in a different way using a different legal instrument.”

On 13 May 2013, the House of Commons' European Scrutiny Committee published a draft Reasoned Opinion on the proposed Regulation which reiterated a number of the points raised in the UK Government's Memorandum. In particular, the draft Reasoned Opinion states that:

“the Regulation's intended aim – to support superfast broadband rollout by lowering the cost of civil engineering works – would be best achieved by action at Member State level.”

The draft Reasoned Opinion adds that:

“the House of Commons believes that the measures proposed should be taken at national level but that if the Commission persists in EU-level action, the measures should be modified and contained in a Directive rather than a Regulation [Our emphasis].”

We agree with the the House of Commons' European Scrutiny Committee and the UK Government that the proposed Regulation's aim would be best achieved by action at Member State level, and that the measures supported by the proposed Regulation – such as infrastructure sharing, information provision, street works coordination and in-built broadband equipment in buildings – would all be best implemented at a local level.

This would, in particular, facilitate effective action in countries such as the UK that have devolved systems of government. We note that similar arguments have been made by the German state parliaments of Baden-Württemberg and Thüringen.

We also agree that the proposed legislation should be modified and contained in a Directive rather than a Regulation, if the Commission continues with EU-Level action.

By virtue of paragraph(s) vi of Standing Order 17.42

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