EU SCRUTINY PROCESS - EVALUATION OF PILOT

Purpose of the Pilot

1. The pilot was established to test the process for consideration of EU legislative proposals in subject committees including issues in relation to potential breaches of subsidiarity, if those arose within the timescale of the pilot. Specifically, the pilot considered whether:

- the format and detail of the information received from the Scottish Government is consistent and complete
- the format, detail and timing of the information sent to the European Reporters is sufficient to enable them to identify proposals and issues of potential interest to their subject committees
- where issues of subsidiarity arise, the process enabling committees to come to a view and report to Parliament and to Westminster is clear and workable and committees can report within any time constraints as dictated by the Treaty of Lisbon
- the guidance provided in terms of the process for consideration of legislative proposals and for consideration of proposals raising issues of subsidiarity is adequate or requires refinement
- a flexible approach allowing committees to determine necessary action in relation to individual legislative proposals (including the requirement for further briefing or additional evidence) is appropriate
- the support to Committees in considering EU proposals and EMs is sufficient

Timing of the Pilot and Evaluation

2. The pilot commenced at the end of January 2011 with subject committees appointing EU Reporters in January and the first report on EU legislative proposals being issued to the EU Reporters (copied to Clerks/Conveners) on 28th January. The pilot ran to dissolution (23 March).

3. As Parliamentary agreement to undertake the pilot was secured in December 2010, the pilot had a limited period of operation to dissolution. It was recognised that this was not ideal but necessary to pursue if a new scrutiny system was to be introduced at the start of the next Parliamentary session.

4. Parliament agreed that an evaluation report would be prepared and the EU Strategy and associated procedures and guidance would be finalised and in place for the next Parliamentary session.

5. The pilot was evaluated by SPICe and the Clerk to the EERC in consultation with the Solicitor to the Scottish Parliament and the Scottish Government. This was undertaken by email correspondence and individual interviews with the EU Reporters in March and meetings with the clerks to the subject committees, the Solicitor to the Scottish Parliament and Scottish Government officials following dissolution.
Evaluation findings

Information Received from the Scottish Government

6. At the outset of the pilot, the information received from the Scottish Government was incomplete i.e. often proposals were received without the accompanying Explanatory Memoranda (EM) or visa-versa. There was duplication in documentation and unnecessary additional documentation received. We understand that the information received by the Scottish Government from Whitehall was not always complete. Over the period of the pilot the Scottish Government responded to concerns and has developed its internal system for centrally managing and monitoring the receipt and submission of EU proposals and EMs. For instance, the Scottish Government now retains proposals until the accompanying EM has been received before forwarding both documents to the Parliament.

7. On a weekly basis the Parliament now receives each EU proposal and accompanying EM as one file with no additional unnecessary documentation. A tabular summary of all proposals flagged as devolved (red), partially devolved (amber) or reserved (green) is also received. This table identifies the policy area the proposal relates to and the lead policy officer in the Scottish Government. On occasion the tabular summary identifies documents which are not received by the Parliament.

8. Conclusions and Recommendations for Further Action: The system for receipt of information from the Scottish Government has been refined prior to and throughout the pilot. It is recommended that Parliament continues to receive EU documents on a weekly basis to the EULeg inbox. Information is now being received from the Scottish Government generally in a complete and consistent format and the summary of proposals is clear and easy to use with one exception. There was some confusion over the Scottish Government system of coding documents red, amber and green. It is recommended that the Scottish Government re-consider the colour coding of documents and code those devolved as green and code the reserved documents as red.

9. It is recommended that in 12-18 months the Parliament reviews the handling process between Whitehall and the Scottish Government to ensure that all EU proposals and EMs are being sent to the Scottish Government in sufficient time to allow for a considered response and a ‘best practice’ approach is being adopted by Whitehall departments. It is also recommended that Parliament reviews the Scottish Government’s internal processes for the management of EU proposals and contributing to EMs at this time.

Information sent to EU Reporters and assessment of proposals

10. Each subject Committee nominated an EU Reporter to cover the period of the pilot. A standard Committee paper template for the appointment of EU Reporters was circulated to Committees and a standard text was issued for the appointment of EU Reporters for inclusion on Committee agendas.
11. The role of the EU Reporter in the pilot was to undertake the initial review of EU legislative proposals and accompanying EMs with the Convener. It was anticipated that the subject committee Clerks would work with the EU Reporters in this assessment. The review was intended to identify proposals which may be of interest to or should be subject to further scrutiny by each Committee and to identify those on which no further action should be taken. Support from SPICe and the Brussels Office was available, if required, to help make that decision.

12. In the guidance for the pilot it was suggested that over the period of the pilot subject committees might wish to consider focusing on those areas / proposals which have already been identified as being of interest or prioritised for action through the Committees’ earlier review of the Commission’s Work Programme (CWP).

13. Each week a list of EU proposals, the detailed documents and accompanying EMs was received by the Parliament from the Scottish Government and those that were devolved or partially devolved were sent to the appropriate Committee EU Reporter, copied to the Convener and the clerk.

14. EU Reporters, in discussion with their Convener / Committee, were able to decide the appropriate frequency of reporting to their Committee over the period of the pilot.

15. **Conclusions and Recommendations for Further Action:** Format, detail and timing of the information sent to the EU Reporters: Both the EU Reporters and Clerks were content with the Parliament receiving a weekly update of EU documents. The preference was to receive all documents relating to each proposal in the one file. EU Reporters and Clerks considered that the information received was sufficient to enable them to identify proposals and issues of potential interest to their subject committees. The summary report for each committee was welcomed but as mentioned in paragraph 8, there was some confusion over the Scottish Government system of coding documents red, amber and green.

16. **Process for receipt of information:** Concerns about the process for receipt of information and the role of the EU Reporter and Clerk were expressed consistently by the EU Reporters and Clerks. Both the EU Reporters and Clerks considered that sending the EU documents to EU Reporters, Convener and Clerks at the same time was unnecessary, confusing and inconsistent with the standard approach for receipt of documents in committees where those would come via the Clerk in the first instance. In practice, EU Reporters requested that Clerks review the information and advise them if the documents received were likely to be of interest to the committee. If any interest was identified, the EU Reporters then engaged in consideration of the documents. It is recommended that the process for sending on documents to committees is changed. Once received in Parliament, a summary list of the documents and the detailed documents within the committee's remit would be sent to the Clerk of each committee and to the Europe SPICe researcher in the first instance. Only those documents on which the committee had expressed an interest via its engagement with the
CWP process (except where a pressing issue had emerged) would be sent to the EU Reporters by the subject committee Clerk for consideration.

17. **Screening of documents**: In the pilot committees did not take a decision to ‘pre-select' proposals of interest based on their agreed EU priorities following their review of the Commission’s Work Programme. This may have been due to the duration and timing of the pilot (a six week pilot in the run-up to dissolution). It may also have reflected their expectation of the number of documents they would be likely to receive within the timeframe of the pilot. As a result, all EU Reporters and Clerks received all EU documents and EMs within their policy area. Both EU Reporters and Clerks considered that many of the documents received were of little relevance or interest to their committee and considered that the EU documents should be screened against the identified EU priorities of each committee and only those that had been identified as of interest should then be sent to the EU Reporter via the Clerk.

18. Both EU Reporters and Clerks proposed that officials (SPICe and Clerks) should undertake the initial screening of documents on the basis of each committee’s agreed priorities. It is recommended that the SPICe EU researcher would undertake the review of the documents based on each Committee’s agreed priorities, in consultation with the Clerk and the Brussels Officer. Where a document is an identified priority (or during the review it is clear that it may be of interest to the Committee as it may be particularly relevant to the Committee’s work programme) the appropriate SPICe researcher will prepare a briefing note outlining the key elements of the proposal, significance in the Scottish context and options for engagement. The Clerk will discuss this with the EU Reporter, set out the options for engagement and agree the basis of a paper for consideration by the committee. The paper would then go to the Committee in the name of the EU Reporter who would also present the paper. Where a subject committee has an interest in pursuing an issue but due to workload pressures does not have sufficient time to do so, it may refer the document to the EERC for further action.

19. It is recommended that when Parliament is in recess or dissolved, SPICe and the Clerk to each committee will prepare an update report confirming whether any documents of interest have been received. This would be sent to the EU Reporter for information, copied to the Convener.

20. It is recommended that all EU documents and EMs would be retained in SPICe for one year from the date of receipt by the Parliament.

21. In order to support parliamentary monitoring of the EU scrutiny process it is recommended that subject committees submit a brief bi-annual update to the EERC on EU documents considered, agreed action and outcomes.
22. Throughout the period of the pilot only one EU proposal was received with an identified concern in relation to subsidiarity. This was received in week one of the pilot. The issue was raised in the EM and was already under active consideration by both the European Scrutiny Committee in the House of Commons and the EU Select Committee in the House of Lords. At the time the proposal was referred to the Scottish Parliament, the Commons Committee had already disposed of it and there was no opportunity to engage with that committee on the issue. The Lords Committee had the proposal under active consideration and, when contacted by the Clerk to the EERC, expressed an interest in seeking a view from the Scottish Parliament.

23. As this proposal was received in the first week of the pilot there was no early warning of the concern flagged by the Scottish Government and the timeframe for consideration, set by the Commission, was already underway. The Clerk to the subject committee liaised directly with officials in the Scottish Government and in Westminster and with SPiCe and the Solicitor to the Scottish Parliament. The subject committee received a briefing from the Clerk incorporating information from the Scottish Government and advice from the Solicitor to the Parliament was received within a very tight timescale. The Committee considered this and came to a view that it had concerns about the proposal it wished to raise. Timing did not enable the committee to report to Parliament in advance of translating a view to the Lords Committee and in this case, the Convener wrote directly to the Chair of the Lords Committee expressing the concerns of the Scottish Parliament subject committee. The Lords Committee considered the views and reflected those in its report to the UK Government and the European Commission.

24. In taking advice in relation to the issue of a potential breach of subsidiarity, the question of the briefing being available as a public paper as a matter of course, was raised by clerks. The view of the Solicitor to the Parliament is that in keeping with the Parliament’s standard practice the legal advice provided to a committee should not be published as a matter of course. The decision as to whether the advice should be placed in the public domain should be a matter for each committee on a case by case basis, having regard to the guidance on the disclosure of legal advice issued by the Office of the Solicitor to the Scottish Parliament.

25. Conclusions and Recommendations for Further Action: Given the importance of early warning where concerns in relation to subsidiarity emerge, it is important to ensure that clear guidance is issued to Scottish Government officials on the process for flagging concerns and providing briefing to the Parliament in relation to subsidiarity at the earliest time. Whilst the overall time to respond to the Commission from the date of publication of the document is eight weeks, the actual time for the Scottish Parliament to respond to Westminster committees will be considerably shorter and will vary depending on the respective timetable for consideration of and reporting on proposals in the Commons and Lords committees. The time available to a committee of the Scottish Parliament to take evidence on a proposal and put down a motion to be debated in plenary may be a matter of days rather than weeks. This will
undoubtedly cause difficulties for committees in terms of securing timely briefing and scheduling time for consideration of proposals. There may be times where it will be impossible for a committee to report to the Scottish Parliament within the deadline for submission to the Westminster committees for their consideration.

26. In order to streamline the process for consideration and reporting on subsidiarity concerns and to ensure that the position of the Scottish Parliament and its committees can be translated to Westminster in time to be considered, it is recommended that:

- Once the Clerk to the EERC has made the initial contact with the European committees in the Lords and Commons and with the Scottish Government and the Solicitor to the Scottish Parliament, the Clerk to the relevant subject committee is directly responsible for liaison and briefing on the proposal.
- Where timescales inhibit consideration of a motion in plenary session the Convener, with agreement of the committee, will submit the Committee’s report directly to the Westminster committees. This will need to be reflected in Standing Orders. When in recess, the Clerk to the committee will seek briefing from the Scottish Government and the Solicitor to the Scottish Parliament, in consultation with the EU Reporter, and the Convener will have authority to write to the Westminster Committees to raise concerns, in his / her capacity as Convener (advising that he / she is doing so on behalf of the committee who has had no opportunity to consider the issues).
- When in dissolution the Clerk to the Committee will seek briefing from the Scottish Government and the Solicitor to the Scottish Parliament. The Clerk will brief the incoming Parliamentary Committee on the issues at the earliest opportunity.
- As a matter of course, all reports on issues of subsidiarity will be sent directly to the Commission by the Clerk to the EERC.
- The legal advice provided to a committee should not be published as a matter of course. The decision as to whether the advice should be placed in the public domain should be a matter for each committee on a case by case basis. (Guidance on this will be included in the final guidance note on the scrutiny process).

**Approach to determining necessary action on proposals**

27. EU Reporters and Clerks considered that a flexible approach allowing committees to determine the necessary action in relation to individual legislative proposals (including the requirement for further briefing or additional evidence) was appropriate.

28. In considering the EU proposal there will be a range of options for action as there would be with any item of committee business. Committees may wish to seek further information from: (i) SPICE; (ii) the Brussels Officer; (iii) the Scottish Government; (iv) the European Commission or, (v) from other interested bodies. Committees may, for example, wish to respond to a Commission consultation and in preparing for this, may wish to consult with
the Scottish Government and stakeholders. Committees may wish to present their views on the proposal directly to the Commission, the Scottish Government or Westminster. Further guidance on engagement options will be available to support committee in their engagement.

**Guidance on the Process**

29. EU Reporters and Clerks considered that the guidance provided in terms of the process for consideration of legislative proposals and for consideration of proposals raising issues of subsidiarity met the needs of members and Clerks in implementing the pilot.

30. **Conclusions and Recommendations for Further Action:** The guidance will require to be refined to reflect the recommendations of the evaluation report and the scrutiny process set out in the Annex has been to take account of the recommendations of the evaluation report. In finalising the guidance it is recommended that committees and EU Reporters are provided with briefing on their role and responsibilities for EU scrutiny and engagement, both in terms of their engagement with the CWP process and in the scrutiny of proposals. The detailed guidance on the scrutiny process should be set out within the context of the Parliament’s EU Strategy. Within subject committees, their EU scrutiny process should be based on their review of the Commission’s Work Programme and on their review of the Scottish Government’s response to this and the Scottish Government EU Strategy and Action Plan.

31. Guidance to Committees, EU Reporters and Conveners on their role will be prepared and issued in the new parliamentary session. Training and induction for EU Reporters will take place from September onwards. Guidance for Clerks will be set out in the Clerking manual. An EU issues update paper will be prepared and available for new committees on key EU matters and policy developments in their areas.

**Support to Committees in considering EU documents**

32. The support to Committees in considering EU documents and EMs was only tested to a limited extent as over the period of the pilot, only one EU Reporter referred a document to a committee for consideration. In this case the EU Reporter confirmed that the support received externally from the Scottish Government and internally, from Clerks, SPICe and the Solicitor to the Scottish Parliament was timely focused and thorough.

33. **Conclusions and Recommendations for Further Actions:** It is recommended that support to committees is provided in line with the recommendations of the evaluation report and is kept under review and assessed in 12 – 18 months.
Other issues arising

General Response to the Process

34. Whilst committees recognised that Parliament had committed to implement and evaluate the scrutiny pilot, in terms of their level of interest and that of the EU Reporters, there appeared to be a reluctance to actively engage. This may have been due to timing and workload issues and perhaps reflects the interest and priority EU matters have been accorded within committees. All committees appointed EU Reporters, many agreeing to participate on the agreement that there would be little time commitment. In practice committees had a limited active involvement in the pilot. In responding to the pilot EU Reporters were supportive of the scrutiny process and considered there to be value in it but considered it needed more time to develop within the subject committees. The Parliament’s EU Strategy recommended that the process be monitored and evaluated in September 2012.

The Role of the EU Reporter

35. The need for and role of the EU Reporter was questioned by some Clerks who considered that if proposals were screened on the basis of committees’ agreed priorities, the number of documents submitted to committees would be significantly reduced and there would be little need for an individual member to take responsibility for this as the scrutiny process would then be effectively mainstreamed within the committee. There were also concerns that there may be duplication of activity and potential delay where both the EU Reporter and Convener would need to be engaged in endorsing papers on EU matters. On that basis, some Clerks considered that there was little ‘added value’ in having an EU Reporter and proposed the Convener could be given responsibility for EU matters including scrutiny of EU documents. Concerns were also expressed in relation to the possible politicisation of the role.

36. The concerns expressed about the role of the EU Reporter were balanced by the views of other clerks who considered that a ‘champion’ for EU matters within the subject committees would be beneficial in embedding the new responsibilities of committees for EU scrutiny and engagement and for raising the profile of EU matters within committees. Many clerks considered that the role of the EU Reporter in the overall scrutiny process would be valuable in leading the committee’s review of the CWP and in taking the lead on EU early engagement on behalf of the Committee.

37. Conclusions and Recommendations for Further Action: There remain different views as to whether there is benefit in retaining the EU Reporter role as presently defined. On balance, it is considered that there is merit in retaining the role of EU Reporter, clearly defining the role and responsibilities, which are far greater than the weekly scrutiny of EU documents. The role of the EU Reporter is to act as ‘champion’ for EU matters within the committee. This will involve promoting the European dimension in the work of the committee, taking the lead on EU early engagement and in developing relationships with the European Commission and European Parliament, leading the committee’s EU scrutiny work, promoting and speaking to
European issues, highlighting the European dimension within policy debates and acting as a conduit between the committee and the European Committee of the Scottish Parliament. It is recommended that the role should be reviewed after an agreed period (e.g. 12 months).

38. The issue of the EU Reporter being the depute convener was raised but on balance the view was that it should be a matter for each committee to determine who should take on the role of the EU Reporter, particularly as individual committees’ members may have specific interests.

39. There was some discussion of the merits of the EU Reporters forming the EERC. It is recommended that this proposal is considered by the incoming Parliamentary Bureau.

Committee Remits

40. The issue of Committee remits was raised by some Clerks who considered that in order to effectively embed mainstreaming of EU matters within committees the remits of committees should be changed to reflect their responsibilities for EU scrutiny and engagement and ensure that committees and conveners have regard to EU matters. Currently Standing Order Rule 6.2.2 (c) states that:

“In particular, each committee shall conduct such inquiries into such competent matters as it may consider appropriate or as the Parliament or another committee may require and may….consider any European Communities legislation or any international conventions or agreements or any drafts which relate to or affect any competent matter…”

41. Conclusions and Recommendations for Further Action: It is recommended that the remits of committees should reflect their responsibilities for EU scrutiny and engagement and ensure that committees and conveners have regard to EU matters. Following consideration, the view is that Standing Order 6.2.2 (c) sufficiently reflects the responsibility of subject committees for EU scrutiny.

CAS / Agenda headings reflecting documents accurately – standardised approach

42. A standardised approach for referring to EU documents was considered appropriate. Clerks queried the use of the terms EU legislation and EU proposal as the nature of documents received varied from communications and reports to legislative proposals.

43. Conclusions and Recommendations for Further Action: It is proposed that a standardised term is used when referring to EU documents and this should be broad enough to encompass all documents. It is proposed that the term ‘EU Document’ is used. This will be the subject of separate guidance.
<table>
<thead>
<tr>
<th>Committee</th>
<th>Number of EU documents and accompanying explanatory memoranda received by Committee</th>
<th>Number considered by Committee</th>
<th>Outcome of Committee deliberations</th>
<th>Number raising subsidiarity concerns</th>
</tr>
</thead>
<tbody>
<tr>
<td>Economy, Energy and Tourism</td>
<td>9</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Education, Lifelong Learning and Culture</td>
<td>1</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Equal Opportunities</td>
<td>3</td>
<td>1 considered by EU reporter / Convener</td>
<td>Decided not to forward to committee due to timing / dissolution</td>
<td></td>
</tr>
<tr>
<td>European and External Relations Committee</td>
<td>4*</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Health and Sport</td>
<td>1</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Justice</td>
<td>7</td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>Local Government and Communities</td>
<td>0</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Rural Affairs and Environment</td>
<td>24</td>
<td>1</td>
<td>Text to be added</td>
<td>Text to be added</td>
</tr>
<tr>
<td>Transport, Infrastructure and Climate Change</td>
<td>5</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

*3 further docs / EMs listed but not forwarded to EERC as docs not received from the Scottish Government.
Process for Consideration of EU Documents and Explanatory Memoranda (incl. subsidiarity issues)

UK and Scottish Government handling of EU Documents and Explanatory Memoranda

1. The UK Government, in consultation with the Scottish Government, prepares an Explanatory Memoranda (EM) to accompany each EU document.

2. The UK Government deposits the draft EU document with the UK Parliament and sends a copy of this to the Scottish Government and the Scottish Parliament (SPICE). Within 10 days of depositing the document, the UK Government sends a copy of the final accompanying EM to the UK Parliament and to the Scottish Government.

3. The Scottish Government categorises each document and EM according to their nature:

<table>
<thead>
<tr>
<th>Covers devolved matters</th>
<th>Green</th>
</tr>
</thead>
<tbody>
<tr>
<td>Covers devolved and reserved matters</td>
<td>Amber</td>
</tr>
<tr>
<td>Covers reserved matters</td>
<td>Red</td>
</tr>
</tbody>
</table>

4. The Scottish Government then sends its list of the documents on a weekly basis – categorised as green, amber and red and by lead UK Government Department and Scottish Government policy area along with a copy of each document and accompanying EM to the Scottish Parliament (EULeg@scottish.parliament.uk) for consideration.

Scottish Parliament Handling Process

5. The Clerks to the European Committee prepare a list of EU documents and along with the accompanying detailed EU documents and EMs that are tagged as green (devolved) and amber (devolved and reserved), distribute these each Friday to the EU SPICe Researcher copied to the Clerk of the committee in whose remit the proposal falls. The EU documents and EMs tagged as red (reserved) proposals are also sent to SPICe for retention.

6. The volume of documents and EMs received by the Parliament, based on recent experience, is likely to be as follows:

<table>
<thead>
<tr>
<th>Category</th>
<th>No. per month</th>
<th>No. per committee**</th>
</tr>
</thead>
<tbody>
<tr>
<td>Green</td>
<td>12*</td>
<td>2</td>
</tr>
<tr>
<td>Amber</td>
<td>15</td>
<td>3</td>
</tr>
<tr>
<td>Red</td>
<td>20</td>
<td>0</td>
</tr>
</tbody>
</table>

*Of which 1 flagged for subsidiarity concerns
** Assuming even spread

7. The EU Researcher in SPICe considers the documents and identifies those that may be of interest to the committee based on the committee's review of the Commission’s Work Programme (CWP) and their identified EU priorities (in
discussion with the Clerk and Brussels Officer). Where a document is of interest to the committee SPICe will prepare a briefing note for discussion with the EU Reporter and the Clerk. This note will outline the key elements of the document, its significance in the Scottish context and options for engagement.

8. The Convener decides, in consultation with the EU Reporter, when a document should go on the committee agenda. If a legislative proposal has been flagged with subsidiarity concerns by the UK Government, Scottish Government or by the House of Lords and Commons European committees, it will (automatically) go on the next committee agenda.

9. The committee will then consider the document. During its consideration, the committee may call on the resources of Parliamentary staff and seek wider evidence from the Scottish Government or any other body. For those that have not been flagged with subsidiarity concerns, the committee may take any action it wishes. It will be for each EU Reporter/Convener to determine what information should go to the committee for noting or consideration. A flowchart setting out the process is included on the following pages.

**Where proposals raise concerns in relation to subsidiarity**

10. A subsidiarity concern may be raised in a number of ways:

- By alert from the Scottish Government
- By alert from the House of Lords and House of Commons European committees
- By alert from a devolved body or another national parliament (informally or formally through IPEX), by the Committee of the Regions or some other external body
- In advance through examination of the Commission’s Work Programme or raised by the European Officer
- At the sift of EMs
- In the course of scrutiny

11. The early warning system via parliamentary scrutiny of the Commission’s Work Programme and ongoing discussion with the Scottish Government Europe Division will enable the Parliament to identify particular Scottish subsidiarity concerns in any EU document at the earliest stage and begin consideration before the EM trigger. The Scottish Government will alert the Scottish Parliament immediately if it has subsidiarity concerns.

12. Where a Westminster European committee ‘flags’ a document that raises subsidiarity concerns it transmits this information to the Scottish Parliament (European Committee Clerks) who alert the relevant EU Reporter (and committee clerk). The European Committee clerk also alerts the Scottish Parliament Solicitor and Scottish Government. Once the clerk to the Scottish Parliament's European Committee has made the initial contact with the European Committees in the Lords and Commons and with the Scottish Government and the Solicitor to the Scottish Parliament the clerk to the relevant subject committee is then directly responsible for liaison and briefing on the proposal. Where a subsidiarity concern is raised, depending on the
stage reached, the document can be fast tracked (if necessary) in advance of receipt and consideration of the EM.

13. For those proposals that have been flagged with subsidiarity concerns the relevant committee will need to come to a view as to whether it agrees with the subsidiarity concern. In doing so, the committee will seek a view from the Scottish Government and the Solicitor to the Scottish Parliament. In coming to a view on a potential breach of subsidiarity the committee may wish to invite the relevant Minister or an official to give evidence. The legal advice provided to a committee should not be published as a matter of course. The decision as to whether the advice should be placed in the public domain should be a matter for each committee on a case by case basis.

14. Where the committee wishes to raise concerns about the EU document/EM the committee will be required to report to Parliament. The report is likely to be very short (1 page) and will form the basis of a motion to the Parliament. Parliament will debate and agree (or otherwise) on a motion to transmit its views to Westminster (both the House of Lords European Scrutiny Committee and the House of Commons European Union Select Committee).

15. The requirement for National Parliaments to report within a defined timescale (8 weeks) only relates to draft legislative acts that are subject to the EU reasoned opinion procedure as set out within the Treaty of Lisbon. Guidance on this is included in the Clerking Manual. Where this arises the Scottish Parliament will receive an alert from the Westminster committees (via the EERC) and an indication of the time of the required response. The timescale will vary on a case by case basis but is likely to be very short.

16. There may be occasions when the relevant committee’s view needs to be communicated to Westminster in advance of the motion being considered. There may also be occasions when the Scottish Parliament is not sitting. Where that is the case, the clerk of the relevant committee will seek advice from the Scottish Government and the Solicitor to the Scottish Parliament and on the basis of that advice will prepare a report, in consultation with the EU Reporter, which will be approved by the Convener and sent directly to the House of Lords European Union Select Committee and the House of Commons European Scrutiny Committee.

17. When in dissolution the clerk to the committee will seek briefing from the Scottish Government and the Solicitor to the Scottish Parliament. The clerk will brief the incoming Parliamentary committee on the issues at the earliest opportunity.

18. As a matter of course, all reports on issues of subsidiarity will be sent directly to the Commission by the clerk to the Scottish Parliament’s European Committee.

19. A flowchart setting out the process for consideration of proposals raising issues of subsidiarity is included on the following pages.
UK Government/UK Parliament | Scottish Government | European Committee | Subject committees and Equal Opportunities Committee
--- | --- | --- | ---
UK Gov prepares EM, consulting SG | SG feeds in views on draft EM | UK Gov deposits EM in UK Parliament | SG receives EM from UK Gov
SG prepares weekly list of EU Docs and EMs (sent to EERC’s EULeg mailbox) | EERC receives list of EU Docs, EMs and sends them to the EU SPICe Researcher and relevant committee clerk | Subsidiarity flagged? | No
EU SPICe Researcher screens list & prepares briefing in discussion with committee clerk. EU Reporter / Convener puts EU doc/EM on the agenda if relevant | Committee considers EU doc/EM and decides any action | Yes
Committee seeks input from SG and Solicitor to SP and arrives at view on subsidiarity issue | Committee reports to SP | SP debates motion and transmits view to HofC/HofL
UK Parliament debates motion | UK view transmitted to European Commission (copied to SP) | Convener seeks input from SG and Solicitor to SP and transmits view to HofC/HofL | Alternative process (e.g. in recess)
**UK Parliament**

- Westminster Committees sift to identify possibly non-compliant proposals and alert Scottish Parliament if EM is flagged and is investigating subsidiarity compliance further.

**Scottish Parliament**

- Early subsidiarity alert received, e.g. via Scottish Government, CWP review, external body or in the course of scrutiny/EU legislative proposals.

  - EERC alerts EU Reporter and clerk of relevant lead committee, Solicitor to the Scottish Parliament and Scottish Government via Europe Minister and informs EU co-ordinator of Westminster Committees.

  - Committee Clerk seeks advice from Scottish Government and puts EM on the lead committee agenda.

  - Scottish Government policy lead prepares advice and submits to Committee via Europe Minister.

  - Solicitor to the Scottish Parliament reviews Scottish Government evidence and prepares advice.

  - Lead committee considers view from Solicitor to the Scottish Parliament, Scottish Government, and other relevant evidence and agrees a view/report.

  - Lead committee reports to the Scottish Parliament.

- Motion put on Future Business Section C by Committee.

- Motion added to order paper, agreed, and transmitted to European Commission (copied to devolved legs).

- Scottish Parliament debates motion and transmits view to HofL/HofC Committees.

- Scottish Parliament receives copy of UK communication to European Commission.