Introduction

This paper sets out the Scottish Government’s position on involvement in the EU. At present Scottish Ministers can only attend Council of Ministers’ meetings with the agreement of the lead UK Minister. The Scottish Government believes that there is now a need to put Scottish Ministers’ attendance at Council of Ministers’ meetings on a statutory footing. The change being proposed will strengthen Scotland’s voice in Europe and add value to the UK position as Scottish Ministers’ participation in the UK delegation attending relevant proceedings of an EU Institution will be based on a statutory right to do so. We believe what is proposed here forms a reasonable proposal for establishing such powers.

Policy Rationale

The Scottish Government is proposing an amendment to the Scotland Bill to provide Scottish Ministers with a statutory right to be included in the UK delegation attending relevant proceedings of an EU Institution. This would cover attendance at Council of Ministers’ meetings (both formal and informal), and attendance of officials at Commission and Council Working Groups, where any non-reserved matter is to be considered. It also covers areas where Scottish Ministers have functions conferred on them directly by Westminster legislation and executively devolved functions under section 63 of the Scotland Act.

Such an amendment would reflect the stage we have reached in devolution where the Scottish Parliament and Government now has over 12 years experience of dealing with the EU. It would recognise and respect the role that Scottish Ministers have played in supporting the UK position in EU discussions relating to matters directly within our responsibility. We have engaged and supported constructively in all areas and none more so than in Justice where the UK is the only Member State with more than one legal system and Scottish Ministers and Law Officers have played a key role in supporting the UK position. It is regrettable that the Justice and Home Affairs Council is indeed the only Council where Scottish Ministers have been refused the right to be part of the UK delegation by UK Ministers. This proposal would avoid that happening in the future. It would also ensure that Scotland was directly represented at Council when dealing with issues such as fisheries, where 70% of UK landings are by Scottish fishing vessels.

Scotland has also played an important role in wider policy areas, such as energy, for example in the EU Marine Renewables Interest Group. In respect of attendance at Council of Ministers’ meetings considering wholly reserved matters, but which touch on devolved responsibilities (including parts of key areas such as energy) the situation would remain as at present. That is, Scottish Ministers would be able to attend under the existing provision of “assisting Ministers of the Crown”, supported by the Memorandum of Understanding and concordats. We would, as at present, work towards preparing and supporting the agreed UK line, particularly in areas such as climate change and energy where we have been able to bring our expertise to the fore.

In relation to less formal proceedings, such as trilateral meetings and working Presidency lunches, the expectation is that UK and Scottish Ministers would agree the extent of participation in the proceedings.

Concordat Commitments

There is already a commitment under the concordat: devolved ministers at Council will “support and advance the single UK line which they will have played a part in developing”. That is a balanced proposition. The UK Government cannot expect devolved administrations to hold to a single UK line without having been given adequate opportunity to contribute, or where compelling national/regional circumstances are ignored.

At JMC(E) in June 2010, William Hague undertook to write to his Cabinet colleagues to ask that they respond positively to approaches from devolved administrations to attend and speak at Council
meetings. However it was disappointing in the area of fisheries where Scotland has the dominant interest across the UK that Richard Lochhead, Cabinet Secretary for Rural Affairs and the Environment has since then only been able to speak at one Agri-Fish Council (in September 2010), and then only after an intervention from the highest offices of the UK Government. This proposed amendment would reduce the need to raise matters to this level.

**Other Devolved Administrations**

This proposal will also have a read across to other devolved administrations. Further work therefore needs to be taken forward to explore options which would support the proposed amendments and find appropriate ways to strengthen current Memoranda of Understanding and Concordats agreed between the Devolved Administrations and the UK Government.

**Conclusion**

These proposed changes will be vital to ensure that the UK position is conveyed by a delegation with the relevant expertise. They will also ensure that policy development takes full account of the impact on the devolved areas of the UK. They have the potential to strengthen the UK position through attendance by Scottish Ministers at Council of Ministers’ meetings where they are the elected representatives with responsibility for implementing decisions in Scotland that are taken at the EU level.

Within Scotland there is cross-party recognition of the need for improvements to the Scotland Bill. We believe that now is the time to have a statutory right to enhance our involvement in EU policy making. This relates particularly to devolved areas, but also those reserved areas which impact on responsibilities of Scottish Ministers. We believe that these proposals offer a measured and practical solution to a situation requiring change to reflect not only the responsibilities of Scottish Ministers, but the experience that has been gained since Devolution in 1999.
Participation of Scottish Ministers in proceedings of EU institutions

After Clause 27

Insert the following new Clause—

“Participation of Scottish Ministers in proceedings of EU institutions

(1) The 1998 Act is amended as follows.

(2) After section 58 insert—

“58A Participation of Scottish Ministers in proceedings of EU institutions

(1) A Minister of the Crown must—

(a) ensure that the delegation representing the United Kingdom at relevant proceedings of an EU institution includes—

(i) a member of the Scottish Government, or

(ii) another person nominated by the Scottish Ministers, and

(b) consult the Scottish Ministers about, and agree with them, the extent to which the member of the Scottish Government or other person is to participate in the proceedings.

(2) “Relevant” proceedings are proceedings at which there is to be considered—

(a) any matter other than a reserved matter, or

(b) any matter relating to a function which is exercisable by the Scottish Ministers.

(3) Subsection (1) does not apply in any case where the Scottish Ministers agree that it should not.

(4) In complying with subsection (1), the Minister of the Crown and the Scottish Ministers must have regard to any guidance agreed by them.”

(3) In Part 1 of Schedule 5, in sub-paragraph (2) of paragraph 7 (general reservations: foreign affairs, etc.), at the end insert—

“(c) without prejudice to paragraph (b), participating in the proceedings of any EU institution, other than proceedings relating to reserved matters”.

Scottish Government

August 2011