



The Scottish Parliament
Pàrlamaid na h-Alba

Official Report

EUROPEAN AND EXTERNAL RELATIONS COMMITTEE

Thursday 20 June 2013

Session 4

© Parliamentary copyright. Scottish Parliamentary Corporate Body

Information on the Scottish Parliament's copyright policy can be found on the website -
www.scottish.parliament.uk or by contacting Public Information on 0131 348 5000

Thursday 20 June 2013

CONTENTS

FREEDOM OF MOVEMENT FOR WORKERS (SUBSIDIARITY)	Col. 1247
---	------------------

EUROPEAN AND EXTERNAL RELATIONS COMMITTEE

12th Meeting 2013, Session 4

CONVENER

*Christina McKelvie (Hamilton, Larkhall and Stonehouse) (SNP)

DEPUTY CONVENER

*Hanzala Malik (Glasgow) (Lab)

COMMITTEE MEMBERS

*Clare Adamson (Central Scotland) (SNP)

Roderick Campbell (North East Fife) (SNP)

*Willie Coffey (Kilmarnock and Irvine Valley) (SNP)

Helen Eadie (Cowdenbeath) (Lab)

*Jamie McGigor (Highlands and Islands) (Con)

*attended

CLERK TO THE COMMITTEE

Katy Orr

LOCATION

Committee Room 3

Scottish Parliament

European and External Relations Committee

Thursday 20 June 2013

[The Convener opened the meeting at 11:00]

Freedom of Movement for Workers (Subsidiarity)

The Convener (Christina McKelvie): Good morning and welcome to the 12th meeting in 2013 of the European and External Relations Committee. This is an extra meeting that has been added to our usual round of meetings.

I make the usual request for mobile phones and electronic devices to be switched off. We have received apologies from Roderick Campbell. Helen Eadie is in another committee meeting, but she hopes to join us.

We have only one agenda item for consideration, which is a European Union legislative proposal that may raise some concerns in relation to subsidiarity. Members have a comprehensive paper on the proposal for a directive of the European Parliament and the Council of Ministers on measures facilitating the exercise of rights conferred on workers in the context of freedom of movement for workers across Europe.

I will ask for members' comments in a second, but I have a few things to say first. I draw the committee's attention to the four annexes that are attached to the paper, which deal with different aspects of the proposed directive. Annex D is a detailed and comprehensive response from the Scottish Parliament's solicitor, and there is a response from the Scottish Government, too.

One of the concerns that I would like to raise is about the timing. The United Kingdom Government is given about eight weeks in which to respond to the Commission on any proposal, but the Scottish Government and this committee received notification of this proposal on the same day, six weeks and four days into that process, which has left us very limited time in which to deal with it.

I believe that the Scottish Government had only half a day in which to respond to the draft, and when the draft was produced no subsidiarity concerns were raised. Now, suddenly, at the very end of the process, a subsidiarity concern has been raised by the UK Government. However, for me, the explanatory memorandum from the UK

Government does not clarify where the subsidiarity concern is.

I have real concerns about the way that the process has taken place, about the fact that the concern was raised not at the draft stage but at a very late stage, and about the fact that the concern has been raised with us only when we have less than two weeks in which to respond.

Our colleagues on the House of Lords EU Sub-Committee C—External Affairs and those on the House of Commons European Scrutiny Committee are also unhappy about the process, so I think that we should communicate with them on it. For me, the explanatory memorandum does not clarify the situation or give me any understanding of where the UK Government thinks that there is a subsidiarity concern.

Taking those points into consideration, I seek comments, questions or clarifications from committee members.

Jamie McGigor (Highlands and Islands) (Con): Paragraph 14 of the clerk's paper states:

"The Scottish Government states in its comments on the EM that it is 'not clear as to the precise nature of the subsidiarity concerns' and that it is in contact with the UK Government in order to seek greater information on these concerns."

Has there been any answer on that?

The Convener: A lot of work has been done in the background on the issue because it has been such a speedy process. I believe that the feedback from the Scottish Government is that the UK Government did not produce any additional clarification in response to the questions that the Scottish Government asked.

Jamie McGigor: Right. So, we still do not know what the issue is. I cannot see any issue.

Hanzala Malik (Glasgow) (Lab): I think that that is the point. First, I do not see any subsidiarity issue anywhere. Secondly, and even more damaging to both Governments, the matter has been handled in a lackadaisical way and they have not given themselves—or us—the time to respond fully.

The fact that we have had to hold this special meeting today reflects our concern—particularly my concern—that we have been put in a difficult and awkward position simply because somebody has not done their job. I would be interested in finding out why the delay has occurred, and I want to be assured that this will not happen in the future.

Willie Coffey (Kilmarnock and Irvine Valley) (SNP): I share the convener's concerns on how this Parliament and this committee have been treated in this instance. From what the convener

said, the information has been available for a number of weeks, but it was only given to the Scottish Parliament last week. That is unacceptable and I ask the convener to seek an explanation and an apology.

On the subsidiarity issue, the solicitor's advice to us is that—from the information that we have in front of us—it is not clear at all that there is a subsidiarity issue. We are duty bound to pursue and press that point in order to try to get that clarification.

Clare Adamson (Central Scotland) (SNP): I concur with the other committee members' comments. I agree as well that, given the information that we have, we cannot raise any subsidiarity issues at this stage, because of the limited understanding and knowledge that we have on that point. However, should further information come to light, we might have to revisit it further down the line.

I am content to go with the recommendation that we do not raise that subsidiarity issue today, but I would very much welcome the convener writing to her counterparts in the relevant House of Commons and House of Lords committees regarding our concerns—in particular, our concerns about how the issue has been handled and about what seems to be a lack of focus from the UK Government through the whole process.

The Convener: Thank you for raising those concerns. The committee seems pretty content that there are not any subsidiarity issues—based on the very limited information that we have—but I take Clare Adamson's point. If additional information came to light, we would obviously need to consider that.

Hanzala Malik: Sorry to intervene, convener. The idea that there may or may not be a subsidiarity issue is not the main issue for me. The main issue for me is the lack of timeliness as regards when the information was presented to us, which is totally unacceptable. That level of shoddy workmanship is just not acceptable.

We need to ensure that information is exchanged more speedily than has been demonstrated on this occasion. That is the most important issue for me right now. The other issues are secondary, although they are nevertheless important. The subsidiarity issue is important, but if we do not receive documentation timeously it puts us at a disadvantage in trying to respond to it in the fullest possible way.

The confusion that has been created around the subsidiarity issue is one element, but the more important element is that we should have received the information in plenty of time. I am not clear who is responsible, but we need to ensure that it does not happen again.

The Convener: I totally agree. For the committee process to function properly, we have to agree that there is no subsidiarity issue to raise. Once we agree that, we can then talk about the actions that we can take to deal with the other issues that committee members feel are more important.

Does the committee agree that the proposal does not raise subsidiarity concerns?

Members indicated agreement.

The Convener: As regards the actions that we can take, in paper 1, there is a recommendation to raise any concerns that we have by writing to the relevant House of Commons and House of Lords committees. I think that we should definitely do that.

Colleagues will remember that, when the UK Minister of State for Europe was here last year, he gave an undertaking to have much more functional, proactive and positive communications with the Scottish Government and with this committee. We have him in front of the committee next week, so I suggest to members that we should raise this particular issue very clearly with him, highlighting the vagueness—the lack of clarity—as well as the timing and the subsequent lack of opportunity to consider the matter properly. We should certainly raise that with him next week.

I also recommend writing a letter to the Presiding Officer about the process of the Parliament and our European engagement and how that should work with the member state at the UK Government level. We should send that letter to the Presiding Officer on the basis of how the Parliament has been treated.

Another recommendation that I hope that members will consider is to raise the communication issues and all the issues that we have spoken about today with the Scottish Parliament's Standards, Procedures and Public Appointments Committee, which is considering parliamentary processes. That committee could perhaps look at how to tighten up this area and organise it a bit better. The UK Government promised was that it would deal with EMs and any directives within 10 days, but we received this proposal six weeks and four days into the eight-week process. That falls well outwith that 10-day rule, so we could raise that with the SPPA Committee.

Jamie McGregor: Just for clarification, in annex A of paper 1, it says that although

"The principle of subsidiarity is not a new concept in EU law ... the formal legal procedure for monitoring by national parliaments of the application of the principle by the EU institutions is new."

If this is a new process, is the UK Government just saying that it cannot find anything, handing it over to us and asking us, "Do you have any qualms about it?" Is that what this is about?

The Convener: No, the UK Government is not saying that at all. It is saying that it has subsidiarity concerns—it has definitely said that—but it cannot tell us what those concerns are. It is not saying, "We are not sure, can you have a look at it?" That would have been fine—we would have done that in good faith.

Jamie McGrigor: That is what I would agree with.

The Convener: The UK Government said that it had subsidiarity concerns, but when we wrote back and asked, "What are the concerns, where do they fall within the directive, and which part of the directive is affected?", it could not tell us.

Jamie McGrigor: All right. That is not good.

The Convener: Okay. I have made a few proposals—I will run through them again. I propose that we send letters to the relevant committees in the House of Commons and the House of Lords, to the Presiding Officer and to the Standards, Procedures and Public Appointments Committee, and that we raise the issue face to face with David Lidington, the Europe minister, next week.

Is the committee content to take forward those actions?

Members indicated agreement.

Clare Adamson: I know that it was difficult to pin down who the lead official was, but should we not be writing to the minister or whoever is in charge of the area to express our concerns as well? Or will that happen through the committees?

The Convener: I think the process would be to write to the Scottish Government and ask it to take the matter forward with its counterparts at the joint ministerial committee. That may be the place for that, but we can certainly write to the Cabinet Secretary for Culture and External Affairs. That is a lot of letters for the clerk to send.

Is the committee content with that or does anyone have any final comments?

Willie Coffey: Given the proposed actions, should we reconvene again before the deadline on 27 June?

The Convener: I do not anticipate reconvening—but some information may be flying back and forth, so keep your eyes on your emails.

Thank you all very much for coming along to the meeting. I know that there has been a bit of trouble in getting everybody together because it is

not a normal sitting day, so thank you very much for your participation and for your helpful comments.

Meeting closed at 11:12.

Members who would like a printed copy of the *Official Report* to be forwarded to them should give notice to SPICE.

Available in e-format only. Printed Scottish Parliament documentation is published in Edinburgh by APS Group Scotland.

All documents are available on
the Scottish Parliament website at:

www.scottish.parliament.uk

For details of documents available to
order in hard copy format, please contact:
APS Scottish Parliament Publications on 0131 629 9941.

For information on the Scottish Parliament contact
Public Information on:

Telephone: 0131 348 5000
Textphone: 0800 092 7100
Email: sp.info@scottish.parliament.uk

e-format first available
ISBN 978-1-78351-456-4

Revised e-format available
ISBN 978-1-78351-472-4