The primary purpose of the House of Lords European Union Select Committee is to scrutinise EU law in draft before the Government take a position on it in the EU Council of Ministers. This scrutiny is frequently carried out through correspondence with Ministers. Such correspondence, including Ministerial replies and other materials, is published where appropriate.

This edition includes correspondence from May to November 2009.

EUROPEAN UNION SELECT COMMITTEE

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CARBON PRICING

Letter from Chris Bryant MP, Minister for Europe, Foreign and Commonwealth Office

to the Chairman

When I gave evidence before your committee on 10 November, I promised to write to follow up on a question that Lord Dykes asked about the price of carbon.

Lord Dykes asked whether the Government, and other member governments in the EU, are worried about the asymmetrical distortions in the financial trading markets that are producing inappropriate values to the trading certificates in carbon.

In general the carbon markets operate in a fair and orderly manner and there have not been significant distortions.

The markets are large and growing and include participants with a carbon compliance requirement, and those without. The diverse and growing support for the markets can be seen as demonstrating confidence in the markets.

Carbon emissions allowances (trading certificates in carbon), and financial derivatives of these allowances, are traded throughout Europe at a number of trading venues. These trading venues assist in facilitating a market in allowances, and allow the appropriate ‘price’ (or value) of carbon in Europe to be discovered.

Information on supply and demand for carbon fundamentally determines the price of carbon in the market. Information about the supply of allowances is made available simultaneously to all market participants, according to scheduled timetables from trading scheme administrators to avoid information asymmetries. Demand for allowances is determined by a very wide range of factors, details of which are publicly available.

Informational asymmetries can arise as some large participants may have an information advantage because of knowledge of their own carbon trading allowance surpluses, or deficits, before these are put on the market. The effect of this asymmetry is largest in the case of market participants who have particularly strict emissions targets (and so have the potential for the largest carbon allowance
deficits). The EU Commission is considering these informational imbalances as part of its review of the Market Abuse and Market in Financial Instruments Directives.

The market for the trading of the actual carbon emissions allowances is currently unregulated, although trading in derivatives of these allowances is the responsibility of financial regulators in Member States.

The EU Commission is currently considering the detail of how the third phase of its emissions trading scheme will operate including appropriate regulation of the markets.

Finally, whilst day to day fluctuations in the price of carbon are determined by trading in carbon markets on the basis of supply and demand of existing allowances, the underlying ‘price level’ of carbon is determined by the number of allowances in the market to start with. The quantity of allowances in the market is directly related to the total emissions ‘cap’ and both are set by the EU.

I hope that this addresses Lord Dykes’ question.

23 November 2009

ENERGY: SECURITY OF GAS SUPPLY

Letter from the Rt Hon Caroline Flint MP, Minister for Europe, Foreign and Commonwealth Office, to the Chairman

I am writing to follow up on some of the points raised by your Committee when I gave evidence on the Spring European Council on 5 May 2009. I apologise for the delay in writing.

The Committee asked about the Security of Gas Supply Directive. The Spring European Council conclusions brought forward the timetable for the revision of the 2004 Security of Gas Supply Directive to the summer of this year. The revision is expected to focus on emergency response mechanisms and emergency preparedness. In the context of the supply disruptions seen at the beginning of this year, further consideration is being given by the Commission as to what action should be taken at EU level and what decisions are best left to Member States, given their very different markets and circumstances.

The 2004 directive gives Member States a great deal of flexibility and does not mandate any gas storage obligations. The Strategic Energy Review published in November concluded that there was insufficient evidence to decide upon compulsory strategic (government held) gas storage obligations and noted that strategic gas stocks would cost at least five times more than equivalent oil stocks.

The UK will give serious consideration to any storage options proposed as part of the revision of the Gas Security of Supply Directive.

At their Council meeting in February, Energy Ministers, in further efforts to improve the EU internal market, and increase security of supply, underlined the need to promote investment in, and transparency about, national gas storage capacity. Such transparency would enable the market to operate more effectively in a situation where storage is a Member State competence. In this light it is important to note the significant number of commercial storage projects currently being planned and built in the UK, which will greatly improve our storage capacity.

The Committee also raised at the evidence session the issue of Limité documents, and the possibility of coming to an arrangement by which these documents can be deposited with the Committee. My officials are exploring options, in consultation with your Clerks, and will await the conclusion of your ongoing enquiry of scrutiny and the co-decision process, so that your views can be taken in to account.

3 June 2009

LISBON TREATY: “OPT OUT” FROM THE EU CHARTER OF FUNDAMENTAL RIGHTS

Letter from the Chairman to the Rt Hon David Miliband MP, Foreign Secretary, Foreign and Commonwealth Office

The President of the Czech Republic apparently seeks an "opt out" from the EU Charter of Fundamental Rights, along the lines of the UK & Polish Protocol to the Treaty of Lisbon.
In 2008 the EU Committee of the House of Lords, which I chair, produced a report, *The Treaty of Lisbon: an impact assessment*, containing an impartial analysis of the significance of the Treaty's provisions. The report has circulated widely, including, we believe, in Czech circles. Chapter 5, *Fundamental Rights*, is relevant to the Czech President's position, and may be helpful.

First, it argues that the UK & Polish Protocol does not amount to an opt-out. It says, “The Protocol is not an opt-out from the Charter. The Charter will apply in the UK, even if its interpretation may be affected by the terms of the Protocol” (para 5.87).

Secondly, it argues that what the Protocol says applies equally to all Member States, not just the UK and Poland. This would of course include the Czech Republic. It says, “The Protocol should not lead to a different application of the Charter in the United Kingdom and Poland when compared with the rest of the Member States. But to the extent that the Explanations leave some ambiguity as to the scope and interpretation of the Charter rights, and as to the justiciability of the Title IV rights ["Solidarity", i.e. social and economic rights such as the right of collective bargaining and action] especially, the Protocol provides helpful clarification. We would not be surprised if, in considering the scope of the Charter in future, EU and domestic courts had regard to the terms of this Protocol in order to assist interpretation of the Charter's horizontal articles [general provisions on the Charter's scope], even in cases where the United Kingdom and Poland were not involved. Indeed, given that, despite media reports, it is an interpretative Protocol rather than an opt-out, it is perhaps a matter of regret, and even a source of potential confusion, that it was not expressed to apply to all Member States” (para 5.103(d)).

It is possible that the potential confusion which we predicted has arisen, even before the Treaty is in force. I write in the hope that our report might help to clear this confusion up.

The full report can be found online here:


21 October 2009

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**APPENDIX 1**

**STATEMENT ON JHA OPT-INS BY BARONESS ASHTON OF UPHOLLAND ON 9 JUNE 2008**

The Government believes that it is important for the EU Scrutiny Committees, and Parliament as a whole to have a clear idea of the Government's approach to JHA; individual JHA measures should be
seen in this context. The Government is keen to ensure that the views of the Scrutiny Committees, benefiting from expertise in the area and having a strategic overview of the UK policy on the EU and our engagement on Justice and Home Affairs business, inform the Government’s decision making process. As such, the Government therefore commits:

1. To table a report in Parliament each year and make it available for debate, both looking ahead to the Government’s approach to EU Justice and Home Affairs policy and forthcoming dossiers, including in relation to the opt-in and providing a retrospective annual report on the UK’s application of the opt-in Protocol;

2. To place an Explanatory Memorandum (EM) before Parliament as swiftly as possible following publication of the proposal and no later than ten working days after publication of the proposal. That EM would set out the main features of the proposal, as now, and, in particular, to the extent possible, an indication of the Government’s views as to whether or not it would opt-in. Where the Government is in a position to provide them at that stage, the EM will also cover the factors affecting the decision. The European Scrutiny Committees of the two Houses will then be able to fully review the proposal and, where it has been possible to give a view, the Government’s approach to the opt-in;

3. Provided that any such views are forthcoming within 8 weeks of publication, to take into account any opinions of the Committees with regard to whether or not the UK should opt-in;

4. The Committees, as with all proposals, can call a Minister to give evidence and can make a report to the House, if they wish with a recommendation for debate, on a motion that would be amendable (other debates in the Lords to take note of Committee reports are not usually amended).

5. For the Commons, such a debate would usually be in Committee. In the Lords, where a Committee determines that a decision on whether or not to opt-in to a measure should be debated, the Government will undertake to seek to arrange a debate through the usual channels.

6. As a general rule, except where an earlier opt-in decision is necessary, not to override the scrutiny process, by making any formal notification to the Council of a decision to opt-in within the first 8 weeks following publication of a proposal. Where the Government considers an early opt-in to be essential, it will explain its reasons to the Committee as soon as is possible. The Government will continue to keep the Committees fully informed as negotiations develop;

7. To ensure that a Minister is regularly available to appear before the Scrutiny Committees in advance of every Justice and Home Affairs Council.

This package of measures will be reflected in a Code of Practice, to be agreed with the Scrutiny Committees, setting out the Government’s commitment to effective scrutiny. The Government believes that the Scrutiny Reserve Resolution should also be amended, or a new resolution brought forward, to incorporate these commitments.

This will be reviewed three years after the entry into force of the Treaty to ensure that the enhanced scrutiny measures are working effectively.

We believe that this package, in addition to the strengthened role for national parliaments in the Treaty, strikes the right balance between ensuring that the Government can exercise the opt-in effectively within the Treaty deadline, whilst ensuring that Parliament’s views are fully considered.

APPENDIX 2

DRAFT RESOLUTION ON OPT-IN SCRUTINY

1. This Resolution applies in relation to notification to the President of the Council of the European Union of the wish of the United Kingdom to take part in the adoption and application of a measure following from a proposal or initiative presented to the Council pursuant to Title V of Part Three of the Treaty on the Functioning of the European Union.

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1 An example of where an early opt-in may be necessary is on the opt-in to the final text of a readmission agreement. These are often concluded very close to meetings with the third states concerned, to be signed at the meeting. In order to allow signature at the meeting, the Government undertakes to EU partners to complete the domestic opt-in process quickly.
2. No Minister of the Crown may authorise such notification until 8 weeks have elapsed since the proposal or initiative was published, nor, if the Select Committee on the European Union has made a report to the House for debate, until the debate has taken place.

3. A Minister may however authorise such notification sooner than provided by paragraph (2) if he decides that for special reasons this is essential; but he should explain his reasons—
   — in every such case, to the European Union Committee at the first opportunity after giving that authorisation; and
   — in the case of a proposal awaiting debate in the House, to the House at the opening of the debate on the Committee's report.

4. Where the European Union Committee is scrutinising the question of notification independently of the substance of the measure to which it relates—
   — “report” in paragraphs (2) and (3) means a report dealing with the question of notification; and
   — scrutiny of the substance of the measure will continue to be governed by the Resolution of the House of 6 December 1999, as amended.

**Letter from the Chairman to Baroness Royall of Blaisdon, Leader of the House of Lords**

If the Lisbon Treaty comes into force, the Terms of Reference of the European Union Committee, and the Scrutiny Reserve Resolution of 6 December 1999, will require revision.

The Committee has considered this issue, and offers proposed revised texts for consideration. I enclose them, with notes of explanation.

16 July 2009

**APPENDIX I**

**TERMS OF REFERENCE: ADAPTATION TO THE TREATY OF LISBON**

(References are to the Treaties as amended by the Treaty of Lisbon)

1. This paper considers the changes that would be necessary to adapt the Terms of Reference of the Select Committee (ToR) to take account of the Treaty of Lisbon, if it comes into force. It also suggests aspects of the ToR which could helpfully be clarified. No changes are proposed to the powers of the Committee as set out in the current text, a copy of which is at annex 1. A proposed new draft is at annex 3.

**Depositable documents**

2. Scrutiny of EU action at Westminster is document-based. The ToR currently define the Committee’s remit by describing types of document which they may consider. This paper assumes that documents should continue to be the focus of the remit.

3. Under the “Barroso initiative”, Commission documents are currently supplied directly to national parliaments by the Commission in the absence of any Treaty obligation to do so. The Lisbon Treaty will introduce obligations on the Commission and other EU bodies to provide many categories of documents directly. This paper assumes, nevertheless, that the obligation on the Government formally to deposit EU documents will continue. This would reflect the constitutional position that the House and the Committee hold to account the Government, not the Commission.

**The obligation to deposit**

4. The present arrangements under which the Government deposit documents in Parliament derive from a ministerial undertaking given on 11 June 1974, shortly after the setting up of the Select Committee (in May 1974). The descriptions in the ToR are used as the basis on which the Government deposit documents (and provide Explanatory Memoranda) as set out in the Guidance for Departments issued by the Cabinet Office (latest edition: April 2009). Strictly, there is no need to specify particular documents; and including the descriptions in the ToR can only be for illustrative purposes since the ToR cannot themselves impose obligations on the Government. But it is helpful to provide at least an indication of the more significant documents which are subject to scrutiny.

**Waiver of requirement to deposit**
5. The Cabinet Office Guidance records that, by agreement with the Committee, certain kinds of document are not deposited. It is proposed that the ToR should make this possibility plain, by conferring an express power to waive deposit of particular documents or classes of document with the agreement of the House of Commons scrutiny committee.

The Lisbon Treaty: provision of documents to national parliaments

6. The Government’s practice of deposit should include all the kinds of document which EU bodies will be required to provide to national parliaments under the Treaty. The obligations are set out in the Treaties, the Protocol on the Role of National Parliaments in the European Union (Protocol 1) and the Protocol on the Application of the Principles of Subsidiarity and Proportionality (Protocol 2). They apply to the categories of document set out in Annex 2.

Other documents

7. Experience has shown that anomalies arise from the current text:
   a. The current ToR do not refer expressly to certain CFSP instruments which are, in practice, deposited by the Government - general guidelines agreed by the European Council; acts of the Council authorising the opening of negotiations for, and the conclusion of, international agreements; acts of the European Defence Agency.
   b. Some other actions of the Council under the CFSP appear to be within the intention of the current ToR but the text does not clearly encompass them; e.g. action plans; crisis management concept; draft Council conclusions.
   c. Some first pillar documents are currently deposited though it is not clear that they are within the Terms of Reference; e.g., draft decisions to commit the EC to positions within international bodies in which the EC is a party.

8. The documents described in points (a) to (c) should be brought within the scope of depositable documents. To the extent that these are deposited under the current arrangements, no action is required, but in relation to documents not presently deposited, the agreement of the Government would be necessary.
   d. Draft Council conclusions, not amounting to acts under the legislative procedures, are also excluded from the current text. Conclusions may be significant, in scrutiny terms, where they effectively commit the EU to a course of action; e.g. where they endorse proposals made by the Commission in a Communication.

9. It is proposed that the ToR should make clear that it is expected that draft council conclusions will be deposited where they relate to a document which is itself depositable. This could be done by including a reference to Council conclusions in the non-exhaustive list of documents.

Drafting basis

10. It would be possible to draft the ToR so as to incorporate a list of depositable documents but that method of drafting carries risks. It is possible that significant documents would be missed. More important, the list could not evolve to deal with changes in EU practice. It is proposed, therefore, that the text should be drafted in general terms, like the current ToR, with an illustrative (non-exhaustive) list of categories of document.

11. Account must be taken of changes of nomenclature. Under the Common Foreign and Security Policy (CFSP), where the Council currently decides on common strategies or adopts joint actions or common positions, under Lisbon the Council will adopt decisions (Article 25 TEU). With the merger of the Third Pillar of EU activity (Police and Judicial Cooperation in criminal matters) and the First Pillar, legislation and other formal acts will all be adopted using the instruments of the First Pillar – regulations, directives, decisions, recommendations and opinions.

The Lisbon Treaty: Subsidiarity

12. The Treaty puts in place a procedure for national parliaments to submit reasoned opinions where they consider that a proposal for legislation does not comply with the principle of subsidiarity (the so-called “yellow/orange card”). Proposals for the Committee’s handling of issues of subsidiarity and a procedure for making reasoned opinions are the subject of a separate paper. It is proposed that the ToR include provision for a role for the Committee, assisting the House, in that procedure.

The Lisbon Treaty: Inter-parliamentary cooperation
In recent years, the Select Committee and members of its sub-committees have engaged in forms of cooperation with the parliaments and chambers of other Member States and with the European Parliament. Events include formal sessions of COSAC, inter-parliamentary seminars and the like arranged by the EU Presidencies and the European Parliament, and less formal meetings of parliamentarians.

The Protocol on the Role of National Parliaments in the European Union acknowledges the importance of cooperation among parliaments, calling for the European Parliament and national parliaments to “determine the organisation and promotion of effective and regular inter-parliamentary cooperation within the Union”. It is proposed that the ToR formalise this role.

A draft text for revised ToR is at Annex 3.

CURRENT TERMS OF REFERENCE OF THE SELECT COMMITTEE ON THE EUROPEAN UNION

To consider European Union documents and other matters relating to the European Union. The expression “European Union documents” shall include the following documents:

i. Any proposal under the Community treaties for legislation by the Council or the Council acting jointly with the European Parliament;

ii. Any document which is published for submission to the European Council, the Council or the European Central Bank;

iii. Any proposal for a common strategy, a joint action or a common position under Title V (provisions on a common foreign and security policy) of the Treaty on European Union which is prepared for submission to the Council or to the European Council;

iv. Any proposal for a common position, framework decision, decision or a convention under Title VI (provisions on police and judicial co-operation in criminal matters) of the Treaty on European Union which is prepared for submission to the Council;

v. Any document (not falling within (ii), (iii) or (iv) above) which is published by one Union institution for or with a view to submission to another Union institution and which does not relate exclusively to consideration of any proposal for legislation;

vi. Any other document relating to European Union matters deposited in the House by a Minister of the Crown.

The Committee has power to:

1. appoint the chairmen of sub-committees, but such sub-committees have power to appoint their own chairman for the purpose of particular inquiries;

2. co-opt any Lord for the purpose of serving on a sub-committee

3. appoint specialist advisers

4. report from time to time: reports shall be printed, notwithstanding any adjournment of the House

5. print the minutes of evidence taken before the Committee from time to time, if the Committee think fit.

The committee and any sub-committee have power to adjourn from place to place.

DOCUMENTS TO BE PROVIDED TO NATIONAL PARLIAMENTS

a. Commission documents (Protocol I, article 1):

   — Communications, Green papers, White papers
   — Annual legislative programmes

ANNEX 2
b. Draft legislative acts (Protocol 1, article 2), including statements assessing their compliance with the principles of Subsidiarity and Proportionality (Protocol 2, article 5):
   - proposals by the Commission (the Commission must draw specific attention to proposals under Article 352 TFEU, the “flexibility clause”)
   - initiatives from a group of Member States (on judicial cooperation in criminal matters and police cooperation, under Title V TFEU)
   - initiatives from the European Parliament
   - requests from the Court of Justice and the European Investment Bank
   - recommendations from the European Central Bank

c. Amended draft legislative acts, as amended by the Commission, the Council or the European Parliament (Protocol 2, article 4)

d. Legislative resolutions of the European Parliament (Protocol 2, article 4)

e. Positions adopted by the Council on draft legislative acts (Protocol 2, article 4)

f. Council agendas, “outcomes” and minutes of deliberations on legislative acts (Protocol 1, article 5)

g. Court of Auditors’ annual reports (Protocol 1, article 6)

h. The Commission’s annual report on the application of Article 5 TEU, on subsidiarity and proportionality (Protocol 2, article 9)

i. Initiatives of the European Council proposing the exercise of the Simplified Revision procedure, to authorise the Council to act by Qualified Majority instead of Unanimity, or to act under the Ordinary Legislative Procedure instead of a special legislative procedure (Article 48(7) TEU)

j. Applications by states to become members of the European Union (Article 49 TEU)

k. The content and results of any evaluation by Member States and the Commission of the Member States’ implementation of EU policies in the Area of Freedom, Security and Justice, under measures to be made under Article 70 TFEU

l. Commission proposals for a Decision determining that aspects of judicial cooperation measures concerning family law may be the subject of the Ordinary Legislative Procedure instead of a special legislative procedure (Article 81(3) TFEU)

ANNEX 3

DRAFT

Proposed new Terms of Reference of the Select Committee on the European Union

1. To consider European Union documents deposited in the House by a Minister, and other matters relating to the European Union.

The expression “European Union document” includes in particular:
   - a document published by the Commission;
   - a document submitted by an institution of the European Union to another institution, including, in particular, a draft legislative act or a proposal for amendment of such an act, and a draft decision relating to the Common Foreign and Security Policy of the European Union under Title V of the Treaty on European Union;
   - draft conclusions of the Council where they relate to a deposited document.

The Committee may waive the requirement to deposit a document, or class of documents, by agreement with the European Scrutiny Committee of the House of Commons.
2. To assist the House in relation to the procedure for the submission of Reasoned Opinions under Article 5 of the Treaty on European Union and the Protocol on the application of the principles of subsidiarity and proportionality.

3. To represent the House in inter-parliamentary cooperation within the European Union.

APPENDIX 2

SCRUTINY RESERVE RESOLUTION: ADAPTATION TO THE TREATY OF LISBON

1. This paper considers the changes that would be necessary to adapt the Scrutiny Reserve Resolution (“the Resolution”) to take account of the Treaty of Lisbon, if it comes into force. It also suggests that the terms of the Resolution be clarified but (except in one respect) without changing their meaning. A copy of the current resolution is at annex 1. A proposed new draft is at annex 2.

The Lisbon Treaty

2. The current text uses nomenclature from the Treaties which will change with the coming into force of the Lisbon Treaty:

- references to the European Community;
- titles of instruments of the Common and Foreign and Security Policy;
- titles of Third Pillar instruments which will cease to exist with the merger of the Third Pillar with the First;
- references to the co-decision and cooperation procedures.

No changes of substance are needed in relation to these changes. The revised draft seeks to avoid the use of expressions which may become outdated.

Drafting changes

3. Experience has shown that, while the thrust of the current text is clear, the drafting of certain parts would benefit from clarification.

4. The basic rule is: no agreement to documents which are subject to scrutiny until the process of scrutiny is completed. The components of the rule are:

- Documents subject to scrutiny
- Agreement
- Completion of scrutiny.

5. The Resolution should be clear on all three components:

- Documents – the Committee’s Terms of Reference refer to the kinds of documents which are subject to scrutiny. The Resolution need not repeat that, but it would be helpful to the reader to make a reference back to the Terms of Reference.

- Agreement –
  a. This is not as straightforward a concept as might appear, when account is taken of the informal as well as formal EU processes. The Resolution should cover any procedure, however described, by which the Government effectively commits the UK to an EU proposal. In particular, it should include “political agreement” or agreement on a “general approach” to a matter (both of which the Government has agreed constitute “agreement”) and other forms of informal agreement. It is proposed to use a general descriptive phrase rather than define forms of agreement, since the latter approach may lag behind practice as has happened in the case of the current Resolution.
  b. There is also the question of whether a document is one on which agreement will be sought in the Council. This is clear in the case of, for example, legislative proposals, but not obvious in the case of documents such as Communications which, in some cases, are made the subject of Council conclusions. The suggested way of dealing with this issue is for the Resolution to apply to any document which
in fact is to be the subject of agreement. The Government’s EM would be expected to point this out where it would not otherwise be clear.

Completion of scrutiny – there is no dispute that this means clearance from scrutiny by the Committee or, if the matter is the subject of a Report for debate, the conclusion of the debate. There have been a couple of recent cases where a Sub-Committee wished to continue scrutiny after the debate on its report, and the draft provides for such cases.

**Draft**

6. A draft text is at annex 2. The one change of substance is the reference to agreement to Council conclusions in paragraph 3(d), which reflects a proposed change in the Terms of Reference.

**ANNEX 1**

**SCRUTINY RESERVE RESOLUTION OF THE HOUSE OF LORDS**

Resolved, That,

1. No Minister of the Crown should give agreement in the Council to any proposal for European Community legislation or for a common strategy, joint action or common position under Title V or a common position, framework decision, decision or convention under Title VI of the Treaty on European Union:
   (a) which is still subject to scrutiny (that is, on which the European Union Committee has not completed its scrutiny); and
   (b) on which the European Union Committee has made a report to the House for debate, but on which the debate has not yet taken place.

2. In this Resolution, any reference to agreement to a proposal includes:
   (a) agreement to a programme, plan or recommendation for European Community legislation;
   (b) political agreement;
   (c) in the case of a proposal on which the Council acts in accordance with the procedure referred to in Article 251 of the treaty establishing the European Community (co-decision), agreement to a common position, to an act in the form of a common position incorporating amendments proposed by the European Parliament, and to a joint text; and
   (d) in the case of a proposal on which the Council acts in accordance with the procedure referred to in Article 252 of the treaty establishing the European Community (co-operation), agreement to a common position.

3. The Minister concerned may, however, give agreement to a proposal which is still subject to scrutiny or which is awaiting debate in the House:
   (a) if he considers that it is confidential, routine or trivial or is substantially the same as a proposal on which scrutiny has been completed;
   (b) if the European Union Committee has indicated that agreement need not be withheld pending completion of scrutiny or the holding of the debate.

4. The Minister concerned may also give agreement to a proposal which is still subject to scrutiny or awaiting debate in the House if he decides that for special reasons agreement should be given; but he should explain his reasons:
   (a) in every such case, to the European Union Committee at the first opportunity after reaching his decision; and
   (b) in the case of a proposal awaiting debate in the House, to the House at the opening of the debate on the Committee’s report.

5. In relation to any proposal which requires adoption by unanimity, abstention shall, for the purposes of paragraph (4), be treated as giving agreement.

**ANNEX 2**
Proposed Scrutiny Reserve Resolution

Resolved, That,

1. Subject to paragraph (5) below, no Minister of the Crown shall give agreement in the Council or the European Council in relation to any document subject to the scrutiny of the European Union Committee in accordance with its terms of reference, while the document remains subject to scrutiny.

2. A document remains subject to scrutiny if:
   
   (a) the European Union Committee has made a report in relation to the document to the House for debate, but the debate has not yet taken place; or
   
   (b) in any case, the Committee has not indicated that it has completed its scrutiny.

3. Agreement in relation to a document means agreement however described and whether or not a formal vote is taken, and includes in particular:
   
   (a) political agreement;
   
   (b) agreement to a general approach;
   
   (c) agreement establishing the position of the Council at any stage in a legislative procedure; and
   
   (d) agreement to Council conclusions.

4. Where the Council acts by unanimity, abstention shall be treated as giving agreement.

5. The Minister concerned may give agreement in relation to a document which remains subject to scrutiny:
   
   (a) if he considers that it is confidential, routine or trivial, or is substantially the same as a proposal on which scrutiny has been completed;
   
   (b) if the European Union Committee has indicated that agreement need not be withheld pending completion of scrutiny; or
   
   (c) if the Minister decides that, for special reasons, agreement should be given; but he must explain his reasons:

   (i) in every such case, to the European Union Committee at the first opportunity after reaching his decision; and
   
   (ii) if that Committee has made a report for debate in the House, to the House at the opening of the debate on the report.

Letter from Chris Bryant MP to the Chairman

The Lisbon Treaty provides new powers for national Parliaments to have a direct say in EU law-making. This is an important benefit of the Lisbon Treaty, as it allows for increased accountability and transparency of EU business.

The Lisbon Treaty gives Parliament two new powers:

1. Challenging draft EU legislative proposals on subsidiarity grounds (sometimes known as the yellow/orange card procedure);

2. Asking HMG to take cases to the European Court of Justice on behalf of Parliament on subsidiarity grounds.

During the passage of the EU (Amendment) Bill, the Government also offered two further new powers to Parliament:

3. Prior Parliamentary control of ‘passerelles’ (i.e. Treaty provisions which allow Member States to decide, by unanimity, to move a particular provision from decision making by unanimity to Qualified Majority Voting and/or to co-decision with the European Parliament);

4. Enhancing scrutiny of the UK’s decisions on whether or not to opt in to Justice and Home Affairs (JHA) legislation.
There will also be a need for some minor terminological changes to the Scrutiny Reserve resolution in both Houses as a result of the Treaty coming into force, e.g. ‘EC’ will become ‘EU’.

I anticipate that challenging draft EU legislative proposals on subsidiarity grounds and asking HMG to take cases to the European Court of Justice can be accommodated within existing procedures in the House of Commons, and require some adaptation of procedures in the House of Lords (where reports from the European Union Committee are usually taken note of by the House). The Government’s commitment on prior Parliamentary control of ‘passerelles’ can also be implemented within existing procedures in the House of Commons; the House of Lords would have to determine its own procedures and timing in this respect.

In the House of Lords, it may be necessary to adopt a new Scrutiny Reserve Resolution, or amend the current one, to reflect the Government’s commitments in the JHA area.

I outline in the attached Annex how I propose the main elements of the package of powers could work in practice. Of course the final decisions on how these powers will work are for the Houses respectively. Before then, I hope the EU scrutiny committees in both Houses will consider these proposals and give their views, so both Houses can take a view informed by your expertise.

I have discussed and agreed the proposals jointly with the Leaders and Business Managers of both Houses of Parliament.

These proposals are based on principles which I hope will find wide favour in both your Committees, namely:

— that these new powers are essentially independent powers for each House to exercise;
— that decisions on how these powers should be exercised are ultimately for each House as a whole to make;
— respect for the prerogatives and procedures of each House;
— building on the work of the Modernisation Committee report of 16 March 2005 and on the Lords EU Committee Report of 2005 (Strengthening national parliamentary scrutiny of the EU - the Constitution’s subsidiarity early warning mechanism) which considered some of these issues in relation to related provisions of the defunct Constitutional Treaty.

The Government is keen to see these powers operational as soon as possible. I recognise that changes to Parliamentary procedures are unlikely to be fully in place by the time the Lisbon Treaty enters into force on 1 December. The Government will bring forward proposals to facilitate the necessary changes when Parliamentary time allows. However, the Government will be prepared to act on the basis that both Houses can exercise the new powers fully from entry into force of the Treaty, as we are already doing for scrutiny of JHA opt-ins.

I am happy to come and talk to Committees either formally or informally to discuss any of these proposals in more detail.

16 November 2009

ANNEX

‘YELLOW/ORANGE’ CARDS

The EU level process is set out in Article 6 of the Protocol on the Application of the Principles of Subsidiarity and Proportionality (attached).

I suggest that these could operate as follows:

— Where the EU Scrutiny Committees in either House come across an EU legislative proposal that they believe does not comply with the principle of subsidiarity, they produce a report on the proposal, and append to it a “reasoned opinion” setting out their concern. The Committee would then recommend that its report be debated by the House.

— In the House of Commons, the Committee could indicate whether it wanted its report debated in Committee or on the floor of the House, in keeping with the processes the Committee already uses for scrutiny of EU proposals. The Government would table a motion, which would be
amendable, to endorse the Committee’s recommendation. A decision on
the motion would give the view of the whole House on whether or not to
submit a reasoned opinion.

— In the House of Lords, such a motion would be tabled in the name of the
Chairman of the EU Committee for the House to agree to the
Committee’s recommendation. The most likely procedure would be for a
motion to take note of a Report from the Committee and a second, free-
standing motion to follow asking the House to endorse the reasoned
opinion. The second motion would be amendable and divisible and give the
view of the whole House.

— Each House can independently use this mechanism i.e. no agreement is
needed between them. The Lisbon Treaty is clear that all these
procedures will have to be completed within 8 weeks from the date of
transmission of a proposal to national Parliaments from the Commission.

— Each House can decide whether/how to lobby other national parliaments.
HMG can offer to bring the position of either or both Houses to the
attention of other Member States’ parliaments through our EU Posts. But
we would expect that the most effective lobbying role would be for the
Committees themselves through COSAC (Conference of Community and
European Affairs Committees of EU national Parliaments) and Parliament’s
own Brussels representation.

I recommend that recess arrangements should be:

— The scrutiny committees identify and as far as possible prepare in advance
– with advice from HMG through Explanatory Memoranda on forward
looks such as the Commission’s Annual Work programme – on proposals
that may be sent from the Commission during recess periods.

— Committees can meet – if they wish – during recess to consider EU
proposals and prepare reports and reasoned opinions to present to their
respective Houses. However, debates and decisions on the Committee’s
report and reasoned opinion would have to await the return of the
relevant House, in order to give the view of the House as a whole.

— As you are aware, the Commission is expected to propose that the month
of August should not be counted towards the eight week deadline set out
in the Treaties.

PARLIAMENTARY CONTROL OVER USE OF SPECIFIC PASSERELLES

Section 6 of the EU (Amendment) Act 2008 provides that before agreeing to the use of any of the
passerelles listed in that section, the Government must obtain the agreement of both Houses. Section
6 sets out a clear mechanism for how Parliament’s agreement would be given: the Government would
have to bring forward a Motion for agreement by each House. In practice:

— In most cases, it is anticipated that the Motion would be ‘That this House
endorses the Government’s intention to support the use of the passerelles
in Article X to move area Y to QMV/Co-decision’ or similar wording;

— The House of Commons would have at least 90 minutes of debate on the
Motion brought forward under Standing Order 16.

— The House of Lords would decide its own procedures and timing, but we
envision that the procedure would most likely be similar to that used for
approving affirmative instruments, with the motion seeking the House’s
approval moved by a Minister and open to debate.

JHA OPT-INS

Baroness Ashton proposed a package of measures to enhance the scrutiny of UK decisions to opt-in
to Justice and Home Affairs legislation in her statement to the House of Lords on 9 June 2008, during
passage of the EU (Amendment) Act. The bulk of these measures are already being taken forward by
Home Office/Ministry of Justice. The remainder will come into force with the Lisbon Treaty. The
Government proposed these enhanced scrutiny measures at the time because of the changes to JHA which the Lisbon Treaty introduces.

Baroness Ashton gave the following commitment:

"The package of measures will be reflected in a Code of Practice, to be agreed with the Scrutiny Committees, setting out the Government’s commitment to effective scrutiny. The Government believes that the Scrutiny Reserve Resolution should also be amended, or a new resolution brought forward, to incorporate these commitments."

The remaining enhancements proposed by Baroness Ashton that will be implemented on entry into force of the Lisbon Treaty are:

— To table a report in Parliament each year and make it available for debate, both looking ahead to the Government’s approach to EU Justice and Home Affairs policy and forthcoming dossiers, including in relation to the opt-in and providing a retrospective annual report on the UK’s application of the opt-in Protocol.

According to the undertaking given by the Government, Ministers will take account of the views of the Scrutiny Committees on whether the UK should opt into a specific JHA legislative proposal, provided that the Committees make their views known within 8 weeks of a new proposal being published.

It would be open to the Committees to make a report to their respective House making their views known, and to recommend the report for debate. The Government has given an undertaking that it will facilitate the holding of a debate on this type of report. However, the 8-week deadline would not be extended pending such a debate.

In the House of Lords, we envisage that such debates could take place on an amendable motion in the name of the Committee’s Chairman, inviting the House to endorse the Committee’s view as expressed in the report. However, this is ultimately a matter for the House to decide.

**Taking cases for breach of subsidiarity to the European Court of Justice (ECJ) on behalf of Parliament**

The EU level process is set out in Article 8 of the Protocol on the Application of the Principles of Subsidiarity and Proportionality.

I suggest that this could work along the following lines:

— The EU Scrutiny Committees in either House indicate to HMG that you may want the Government to challenge before the ECJ a piece of EU legislation which has just been adopted. Given the deadlines set out in the Treaty, HMG would need to know as early as possible that a Committee intends to recommend that the House asks HMG to take a challenge in order to be able to feed in any views HMG may have to inform the Committee’s view in good time. As subsidiarity will have been considered during scrutiny of the original proposal we are hopeful that the various arguments for and against this will have been well-aired between the Scrutiny Committees and HMG during the negotiation of the proposal;

— If the Committee decides to proceed, it would produce a reasoned opinion recommending a challenge as part of a report.

— In the House of Commons, the Committee would recommend the House have an opportunity to consider a substantive Motion to give the view of the whole House on asking HMG to take a challenge on their behalf.

— In the House of Lords, the Committee would recommend its report for debate, alongside a free-standing, divisible motion in the name of the Committee’s Chairman inviting the House to endorse the Committee’s opinion that the Government should take a case to the ECJ.

— If either House votes for a challenge, HMG, on behalf of the House, takes the case forward to ECJ;

— Treasury Solicitors (EU Litigation team) act as UK Agents before the ECJ, and are responsible for preparing and lodging submissions in the case, as for any UK litigation before the Court. One or both Houses (most likely
through their legal advisers) would be fully involved in proceedings alongside the lead HMG Department, e.g. providing memoranda to inform instructions to Counsel, case conferences etc. Final decisions on choice of Counsel, instructions and arguments to be run will rest with the UK agents, with the aim of protecting the good standing of the UK as a whole before the ECJ.

The Treaty requires that the entire process must be completed and the UK challenge lodged within two months and 10 days of the legislation in question being adopted in Brussels.

Letter from the Chairman to Chris Bryant MP

Thank you for your letter of 16 November with proposals for parliamentary procedure in relation to the Treaty of Lisbon, and for a most constructive meeting about this on 20 November. The Committee discussed your proposals on 24 November.

On 27 February your predecessor Caroline Flint MP wrote to me,

“Our commitment remains ... to ensure that effective systems to operate the parliamentary aspects of the Lisbon Treaty are agreed in both Houses and in place by the time the Treaty enters into force. Procedures will be agreed with Parliament in advance of this happening. Work on the detail required will be done in collaboration with business managers, EU Committees and House authorities in both Houses. My officials along with colleagues across Whitehall are working on the Government’s proposals in the areas you list in your letter: yellow and orange cards; Eurojust and Europol and general passerelles. When our proposals are ready my officials will be in touch with the EU Select Committee Clerks in both Houses to discuss these in greater detail before we put ideas forward to the Committees and House authorities.”

Proposals were originally expected in May. Your letter finally arrived on 16 November, during Prorogation, just 15 days before the Treaty will come into force on 1 December. The Committee asked me to express its dissatisfaction in strong terms.

On 16 July I wrote to the Leader of the House of Lords with this Committee’s proposals for amendments to its terms of reference and the scrutiny reserve resolution. Your letter makes no reference to that letter; you simply refer to “a need for some minor terminological changes to the Scrutiny Reserve resolution in both Houses as a result of the Treaty coming into force, e.g. ‘EC’ will become ‘EU’”. In our view rather more is required than “minor terminological changes”, and we look forward to a response to our proposals.

Our comments on your proposals follow, and we look forward to your response. In particular it will be important to hear from you on points 1F (summer recess), 1G (Council of Ministers), 2 (Passerelles), 3 (Opt-ins – no decision before debate) and 4C (red card – costs) before the House of Lords Procedure Committee meets to consider these matters on 7 December. I will be at that meeting, and might have difficulty supporting proposals along the lines of your letter without answers on these points.

REASONED OPINION ON SUBSIDIARITY (YELLOW / ORANGE CARDS)

1A Report

You propose that, “Where the EU Scrutiny Committees in either House come across an EU legislative proposal that they believe does not comply with the principle of subsidiarity, they produce a report on the proposal, and append to it a “reasoned opinion” setting out their concern. The Committee would then recommend that its report be debated by the House.” We agree.

1B Debate

You propose that “Such a motion would be tabled in the name of the Chairman of the EU Committee for the House to agree to the Committee’s recommendation. The most likely procedure would be for a motion to take note of a Report from the Committee and a second, free-standing motion to follow asking the House to endorse the reasoned opinion. The second motion would be amendable and divisible and give the view of the whole House.”

We agree. We would point out only that the motion could be moved by any appropriate member on the Committee’s behalf, not just by the Chairman of the Select Committee.

1C House of Commons
You say, “Each House can independently use this mechanism i.e. no agreement is needed between them.” This is correct.

**ID Eight weeks**

The process will depend crucially on HMG stating their position promptly; yet you make no reference to the following recommendations from this Committee’s report of 2005 on which, you say, your proposals are built:

— We welcome the commitment by the Government to assist parliament during the six week period [now eight weeks]. We expect the Government to assist parliament as early as possible in the six week period and to provide a detailed analysis in each case of the application of the subsidiarity principle.

— We expect, given the short time frame allowed, that the Government’s subsidiarity assessment will be received by Parliament no later than two weeks after submission of the draft legislative proposal. This is the timetable to which the Government currently works. In the event of a delay in preparation of an Explanatory Memorandum, the subsidiarity analysis should if necessary be presented separately to avoid delay.

We reiterate these recommendations, and look forward to your response.

**IE Other parliaments**

You say, “Each House can decide whether/how to lobby other national parliaments. HMG can offer to bring the position of either or both Houses to the attention of other Member States’ parliaments through our EU Posts. But we would expect that the most effective lobbying role would be for the Committees themselves through COSAC (Conference of Community and European Affairs Committees of EU national Parliaments) and Parliament’s own Brussels representation.” We agree.

**IF Summer recess**

The summer recess presents a particular difficulty for this Committee. Our report of 2005, referred to in your letter, recommended that “The House could agree that the exercise of its vote on any legislative proposal would be delegated to the EU Select Committee in the event of a six week period expiring during a recess” 3. (This report was based on the Constitutional Treaty, which proposed a six-week period for subsidiarity scrutiny; in the Treaty of Lisbon this became eight weeks.)

At the time, the Government response was, “This is a matter for the House to decide but it is important, as the Committee recognises, that alternative arrangements are made for the long recesses.” 4 Now, however, you neither endorse the recommendation nor propose alternative arrangements. Instead you say:

“The scrutiny committees [should] identify and as far as possible prepare in advance – with advice from HMG through Explanatory Memoranda on forward looks such as the Commission’s Annual Work programme – on proposals that may be sent from the Commission during recess periods.

Committees can meet – if they wish – during recess to consider EU proposals and prepare reports and reasoned opinions to present to their respective Houses. However, debates and decisions on the Committee’s report and reasoned opinion would have to await the return of the relevant House, in order to give the view of the House as a whole.”

You add, “As you are aware, the Commission is expected to propose that the month of August should not be counted towards the eight week deadline set out in the Treaties.” We invite HMG to propose to other Member States that the Council of Ministers should also recognise that the four weeks of August should not count towards the deadline. The Council could do this either as part of its current project to amend its rules of procedure to take account of the Treaty, or in some less formal publicly available statement. The effect would be that the Council would not, under normal circumstances, place a qualifying proposal on its agenda for eight weeks, plus the four weeks of August where they fall within that eight week period, after the adoption of the proposal by the Commission.

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2 EU Committee 14th Report 2004-05 Strengthening national parliamentary scrutiny of the EU – the Constitution’s subsidiarity early warning mechanisms, paras 300 and 313.
3 Op cit para 294.
It has been suggested that this is unnecessary, since it is the Commission (not the Council) which needs to review legislative proposals if they have been yellow/orange carded within the deadline. But, if the Council do not discount August, they could go ahead and agree a proposal before national parliaments have had time to persuade the Commission to review it.

If this were agreed, then we would be prepared to give your approach to the summer recess a trial run, reserving the right to return to the issue if it proves impractical.

1G Council of Ministers

In our 2005 report we said, “We recommend that the Government should not support a proposal in Council which has been the subject of a subsidiarity yellow card in either House of Parliament without first further explaining to Parliament its reasons for doing so.” HMG accepted this in principle at the time, but you do not refer to it. We draw it to your attention.

PASSERELLES

Your proposals follow from the EU (Amendment) Act 2008, and are in themselves unobjectionable.

However, the Act’s provisions include no role for this Committee. We propose that a motion to approve a passerelle should not be moved until this Committee has reported on it. This would parallel the House of Lords rule that a motion to approve an affirmative instrument cannot be moved without a report from the Joint Committee on Statutory Instruments. We also propose a reasonable period – perhaps eight weeks - for scrutiny of any proposed use of a passerelle. Such scrutiny might be carried out by other committees besides this one. Any such rule would of course have to allow for exceptions.

OPT-INS

Your proposals on opt-ins are based on Baroness Ashton of Upholland’s undertakings during the passage of the EU (Amendment) Bill.

You say, “In the House of Lords, it may be necessary to adopt a new Scrutiny Reserve Resolution, or amend the current one, to reflect the Government’s commitments in the JHA area.” This is a weaker statement than the actual undertaking, which said that a new or amended Resolution “should” be put in place, and not just in the Lords. On 8 July I wrote to the Leader of the House of Lords with this Committee’s proposals for doing so; your letter makes no reference to that letter.

We proposed to go beyond the letter of the undertakings in just one respect, by providing that the 8 weeks allowed for scrutiny would be extended, “if the Select Committee on the European Union has made a report to the House for debate, until the debate has taken place”. In our view this was within the spirit of the undertakings, since there would be no point in a debate if an opt-in decision had already been taken, nor any incentive for the business managers to find time, and since the Treaty gives HMG a full three months to decide, with no penalty for leaving it to the last minute. Your letter rejects this proposal; we invite you to think again.

If the Committee recommends debate, you propose that it should take place “on an amendable motion in the name of the Committee’s Chairman, inviting the House to endorse the Committee’s view as expressed in the report”. We would observe only that, as with a subsidiarity report, the motion could be moved by any appropriate member, not just by the Chairman of the Select Committee.

Baroness Ashton’s undertakings include this: “This package of measures will be reflected in a Code of Practice, to be agreed with the Scrutiny Committees, setting out the Government’s commitment to effective scrutiny.” Your letter does not mention this; we would remind you of it. We also draw particular attention to the undertaking “To place an Explanatory Memorandum (EM) before Parliament as swiftly as possible following publication of the proposal and no later than ten working days after publication of the proposal” – which is a more demanding deadline than the current one of 10 days from deposit.

REFERENCE TO ECJ (RED CARD)

The new Protocol on the application of the principles of subsidiarity and proportionality, Article 8, provides:

6 Standing Order 73.
“The Court of Justice of the European Union shall have jurisdiction in actions on grounds of infringement of the principle of subsidiarity by a legislative act, brought ... by Member States, or notified by them in accordance with their legal order on behalf of their national Parliament or a chamber thereof.”

This provision survived from the equivalent protocol to the Constitutional Treaty, and our report of 2005 went into this matter in detail. The main issue was whether, if one or other House were to ask HMG to mount such an action, HMG would be bound to do so or not.

The Government’s response was brief and non-committal⁷. Subsequently Lord Lester of Herne Hill asked Parliamentary Questions about the issue. The key point in the Government’s responses⁸ was that the Treaty did not in HMG’s view oblige them to initiate proceedings in all circumstances.

The Government have changed their position. You now say, “If either House votes for a challenge, HMG, on behalf of the House, takes the case forward to ECJ”. We warmly welcome this commitment.

4A Procedure

You envisage a motion for an action being moved by the Chairman of this Committee on the basis of a report. Again, you propose a “take note” debate first. We would again observe only that the motion could be moved by any appropriate member.

4B Control of the case

You propose that the Treasury Solicitor’s EU Litigation team act as UK Agents before the ECJ, with responsibility for preparing and lodging submissions in the case, as for any UK litigation before the Court. We agree. It would be helpful to have the expertise and experience of the EU litigation team at the disposal of the House.

You say: “Final decisions on choice of Counsel, instructions and arguments to be run will rest with the UK agents, with the aim of protecting the good standing of the UK as a whole before the ECJ.” You also indicate that the relevant Government Department would be involved in preparing the case. In practice, it is highly unlikely that a case would arise where we could not agree on choice of Counsel, etc. The advice of the Treasury Solicitor’s team will be necessary, and the House would not want to run arguments which could put the Government in difficulty or risk damaging the high reputation that the UK has at the Court for the quality of the written observations and oral arguments. But we would remind you that the House will be the paying client (see below) and that it would expect to agree all aspects of the conduct of a case with the EU litigation team. In cases of disagreement, we would expect the House’s view to prevail unless the Government demonstrated a real policy or reputational risk for the UK.

Following our meeting on Friday, I understand that we are agreed that this is a question of language rather than a difference of view, and that you would be happy for our lawyers to discuss it with a view to finding a form of words acceptable to both of us.

The Treaty allows an action in the name of a “national Parliament or a chamber thereof”. This raises the possibility of a joint action by both Houses. We draw this possibility to your attention.

4C Costs

Finally, your letter is silent on the cost of taking a case to the ECJ, but the House which sought the action would presumably foot the bill for the work of the EU litigation team and Counsel. We understand that this is likely to be in the range £15,000-£33,000. Although the ECJ normally makes an award of costs against the losing party, the convention is that in proceedings between states and EU Institutions such orders are not implemented. The House would be liable only for its own costs, win or lose. We invite you to confirm all this.

25 November 2009

LISBON TREATY: PREPARING FOR RATIFICATION

Letter from Caroline Flint MP, Minister for Europe, Foreign and Commonwealth Office, to the Chairman

When I wrote on 19 January, I promised to keep you informed on plans for handling of Lisbon Treaty issues.

To address Irish concerns, EU leaders agreed in December to give Ireland the assurances it needs on the Lisbon Treaty. It is now clear that these assurances will be on the agenda for the June European Council.

We set out the content of the assurances sought by the Irish for Parliament in December. They are assurances that the Lisbon Treaty does not change competence over tax or national control over defence, and that the Charter and provisions on justice and home affairs do not affect Ireland’s constitution on the right to life, education or family life. They include an assurance that if the Treaty of Lisbon enters into force, a decision will be taken to the effect that the Commission shall continue to include one national of each Member State.

The Irish have been considering how their concerns should be addressed to the mutual satisfaction of Ireland and the other Member States. Until very recently, the Irish have concentrated on internal consultations. They have now started to discuss some of the issues informally with Member States.

From these informal discussions, we expect that the package will include a number of elements:

— text in European Council conclusions;
— legal guarantees endorsed by all Member States;
— declaratory text, which might include text endorsed by all Member States and text which is unilateral on behalf of Ireland

The Irish have confirmed that they will be seeking legal guarantees in relation to the right to life, family and education, taxation and security and defence. I gave more detail of the options for legal guarantees in my earlier letter. The declaratory text is likely to cover other issues flagged up in the December European Council conclusions. The Irish have not yet circulated a text.

The UK’s negotiating objectives will be to secure agreement on the Irish guarantees in line with the parameters agreed in December, so that the Irish proceed to fulfil their commitment to seek ratification of the Treaty of Lisbon by the end of the term of the current Commission. To remind you, the December European Council conclusions on the Irish guarantees are already fully in line with what Ministers said to Parliament about the impact of the Lisbon Treaty on tax, defence, justice and home affairs, and the Charter. Our approach will be in line with the two objectives which the Government has consistently set out to Parliament on the Lisbon Treaty.

Firstly, to ensure that the Lisbon Treaty comes into force, reflecting the will of all Member State governments. To do that, the EU collectively has to address the concerns of the Irish people.

Secondly, to ensure that the Lisbon Treaty is not changed. Just as the EU collectively has to listen to the Irish people, so we also have to respect the positions of the other Member States on the Lisbon Treaty. The UK position – the position of the Government and Parliament – is that we support the Treaty, which the UK ratified in July 2008.

I should also inform you that on the 6 May, the Czech Senate approved the Treaty of Lisbon. This means that 26 out of the 27 Member States now have the Parliamentary approval necessary for ratification of the Treaty of Lisbon, although Germany, the Czech Republic and Poland have not yet completed the full ratification process.

10 June 2009

Letter from Baroness Kinnock of Holyhead, Minister for Europe, Foreign and Commonwealth Office, to the Chairman

I am writing to update your Committee on developments surrounding the Lisbon Treaty.

During Lisbon Treaty implementation discussions under the Slovene Presidency in 2008, the FCO kept the EU Scrutiny Committees in both Houses updated as discussions progressed in Coreper. Parliament was therefore kept informed before any Ministerial consideration in the Council. You will
recall that, to respect the classification imposed by the Presidency, these fiches were sent to the Committees on a strictly confidential basis.

Sweden assumed Presidency of the EU on 1 July and has outlined to Member States its planned approach to the implementation work necessary to prepare for the scenario that the Lisbon Treaty enters into force. I wanted to inform your Committee that this work had resumed under the Swedish Presidency and that the FCO would undertake the same arrangements as last year to ensure you receive, on a similarly confidential basis, Presidency texts.

The Foreign Secretary made it clear to Parliament on 28 January this year that preparatory implementation work did not pre-empt decisions of those countries that have yet to ratify the Lisbon Treaty. However, we have a responsibility to engage in discussions to ensure that any institutional arrangements being planned in the event that the Lisbon Treaty comes into force reflect our national interest. This work will continue on a contingency basis and no formal decisions will be taken unless and until the Treaty enters into force.

13 July 2009

Letter from Baroness Kinnock of Holyhead to the Chairman

I wrote to you on 13 July to inform you that the Swedish Presidency had resumed work to prepare for the entry into force of the Lisbon Treaty if ratified by all Member States this autumn. I undertook at that time to keep your Committee updated and to forward Presidency texts related to Lisbon Treaty implementation, on a confidential basis, as we did under the Slovene Presidency in 2008. As a first step, I am attaching the Presidency fiche in respect of the transition to co-decision of legislative acts already proposed.

In addition, Home Office colleagues will shortly forward on to you the Presidency text on the Standing Committee on Operational Cooperation on Internal Security (COSI).

I also attach the timetable proposed by the Swedish Presidency for handling Lisbon Treaty implementation issues. Our contacts with the Presidency and other Member States suggest that most EU partners want to see at least some of these texts being adopted by the Council quickly after the Lisbon Treaty enters into force. Obviously this cannot be done unless and until the Lisbon Treaty is ratified by all Member States and the relevant legal bases are in force.

In the event that the Lisbon Treaty comes into force, it seems probable that the Presidency, having completed preparatory discussions in advance of entry into force, would table some texts for adoption very quickly, possibly even the same day. We are consequently concerned that this would leave national Parliaments with very little time between entry into force and adoption to complete formal scrutiny where that is required.

The Committee might therefore wish to consider taking advantage of the time available before the possible entry into force of the Treaty to consider any substantive issues raised in the various Presidency texts. We would welcome the Committee's views on the substance of these and will endeavour to answer any further questions the Committee may have. We will of course keep the Committee updated as the Presidency plans on timing become clearer.

On the basis of the current Presidency timetable, we envisage that the following texts may also require scrutiny clearance within a limited timeframe:

— Commission proposals for a new Multi-annual Financial Framework regulation and amended Financial Regulation (EC No 1605/2002), as well as any formal Inter-institutional agreement, arising from the changes to the Financial Provisions of the Treaty; and


I will write to you again once we know more about the timing of these texts and as the Presidency plans become clearer.

I should be very grateful for your views on this proposed approach and, if you would find it helpful, I would be most happy to discuss this matter further.

21 August 2009
Letter from the Chairman to Chris Bryant MP, Minister for Europe, Foreign and Commonwealth Office

We are grateful for your predecessor’s letter dated 21 August. The Select Committee considered it during its meeting on 20 October. We appreciate the Government’s efforts to keep us informed as we approach the entry into force of the Lisbon Treaty.

We believe that rapid adoption of texts listed in the Presidency note should not come at the expense of parliamentary scrutiny. This point has already been made by Michael Connarty MP, Chairman of the Commons European Scrutiny Committee, in a letter of 10 September to your predecessor, and we agree. It was made also in the Contribution of the most recent meeting of COSAC, as follows:

COSAC welcomes the strengthened role of national parliaments laid down in the Treaty and emphasises the importance of the full, immediate and efficient implementation of the new Treaty once it comes into force, observing the time period set out in the Treaties to allow for full and effective scrutiny by the national parliaments and by the European Parliament.

Thank you for your own letter of 21 October enclosing some of the texts listed in the Presidency note. We look forward to receiving the remaining texts as soon as possible, i.e. the implications for the JHA, the Chairmanship of preparatory bodies in the area of external relations, the future budget procedure and the draft decisions for appointing the President of the European council, the High Representative and the Secretary General of the Council. We also look forward to receiving Explanatory Memoranda on the documents already received.

Of the legislative dossiers likely to be agreed before the adoption of the Treaty only two are still held under scrutiny by the Committee. We would be grateful if the departments responsible for these dossiers contacted the relevant Sub-Committee Clerks to discuss how the Government will make sure that scrutiny can be carried out.

The arrangements for dealing with legislative dossiers under discussion which will move to codecision seem sensible. We would ask that, where a European Parliament opinion is to be considered as a First Reading, the relevant Minister write to the Committee explaining the European Parliament’s position and the procedures being followed.

We look forward to receiving further information as the timetable for adoption becomes clearer.

23 October 2009

Letter from Chris Bryant MP to the Chairman

Following Baroness Kinnock’s letter to the Scrutiny Committees on 21 August about Lisbon Treaty implementation, the European Scrutiny Committee in the House of Commons raised some concerns. I wanted to flag up my response to Michael Connarty MP, Chair of the European Scrutiny Committee in the House of Commons, please find this letter attached (not printed).

I also wanted to take this opportunity to attach the latest documents, explained in the attached draft letter, on a confidential basis, for circulation to your Committee.

21 October 2009

Letter from the Chairman to Chris Bryant MP

Thank you for your letter dated 21 October and for the various documents attached to it. The Committee considered it at its meeting on 3 November.

In the light of the of the evidence you gave to the Commons European Scrutiny Committee on 28 October, the Committee decided to wait for the formal deposit of the draft Decision on the European External Action Service and the two financial Regulations. When we receive these I will sift them to the appropriate Sub-Committees for scrutiny in the normal way. The draft Decision on the Committee of Internal Security (COSI) has already been considered by Sub-Committee F and I have written to Phil Woolas MP; that letter is attached to this letter. In the meantime, I will refer the remaining fiches and non-papers to the relevant Sub-Committees for consideration and comment.

9 8150/09: Proposal for a Council Framework Decision on combating the sexual abuse, sexual exploitation of children and child pornography, repealing Framework Decision 2004/68/JHA
8151/09: Council Framework Decision on preventing and combating trafficking in human beings, and protecting victims
We understand that the documents have been forwarded to us in confidence and we shall respect that. However, as is our usual practice, we will make public any correspondence with the Government arising from our consideration of them.

In my letter of 23 October, I asked for Explanatory Memoranda to be submitted covering the documents received. This has already been done for the COSI draft Decision. I would be grateful if you could confirm that any such Explanatory Memoranda will be made public in the usual way.

We appreciate your efforts to keep the Committee informed of the implementation of the Lisbon Treaty given the pressure at EU level for some of the measures to be adopted quickly. We reiterate the point made in my letter of 23 October that the rapid adoption of implementing measures should not come at the expense of parliamentary scrutiny. Given that the Lisbon Treaty introduces an eight week period for national parliamentary scrutiny to take place, it would be disappointing if the prompt adoption of the very first implementing measures came at the expense of such scrutiny.

The importance of respecting the provisions to allow full scrutiny by national parliaments was also highlighted in the Contribution of the most recent meeting of COSAC:

COSAC welcomes the strengthened role of national parliaments laid down in the Treaty and emphasises the importance of the full, immediate and efficient implementation of the new Treaty once it comes into force, observing the time period set out in the Treaties to allow for full and effective scrutiny by the national parliaments and by the European Parliament.

5 November 2009

Letter from Chris Bryant MP to the Chairman

Further to my appearance before both the Commons European Scrutiny Committee and the Lords European Union Committee to discuss the October European Council and the Treaty of Lisbon, I would like to provide a further update on the programme of work relating to the implementation of the Treaty ahead of entry into force on 1 December; and further information on the detail of the proposed Council and European Council Rules of Procedure, both of which are due to be tabled for adoption immediately following entry into force.

LISBON TREATY IMPLEMENTATION: PROGRAMME OF WORK

I attach the most recent update note from the Swedish Presidency on the Lisbon Treaty implementation programme of work. You will note in section 2 that a number of documents are scheduled for approval at the JHA Council on 1 December. The Presidency considers that the entry into force of the new treaty constitutes an exceptional circumstance, and I made clear in my letter of 21 October that this is an assessment with which the Government agrees. However, I am determined to ensure that the Committee with as much of an opportunity as possible to consider the issues and give us any views, and to this end would be pleased to receive any thoughts in good time before 1 December. HM Treasury and Home Office colleagues will continue to provide updates to you as required on their dossiers.

The Draft Decision of the European Council on the exercise of the Presidency of the Council and the draft Council Decision on its implementation have both only recently been circulated to Member States, and a copy of these are attached for your information. These decisions are required largely to formalise some of the provisions in the Council’s Rules of Procedure; and otherwise reaffirm existing measures, such as the order in which Member States will undertake the function of Presidency of the Council. The Council Decision also incorporates the previously separate dossier on the chairmanship arrangements for Council preparatory bodies on external relations. The Government is supportive of these draft texts.

The Presidency has not yet tabled the draft Council Decisions related to conditions of employment of the President of the European Council, High Representative or Secretary-General of the Council; but we will endeavour to share these with the Committees as we have done with the texts attached.

As page 2 of the note also makes clear, the Commission intends to adopt a Commission Communication on how it intends to implement the provisions of Article 290 TFEU on the management of delegated acts, which apply from entry into force. Consultation on the future management of implementing acts is also likely to occur soon after entry into force ahead of a new regulation, a draft of which is expected early in 2010.
RULES OF PROCEDURE OF THE COUNCIL OF MINISTERS OF THE EU

One of the documents due to be tabled for adoption on 1 December will be the draft Rules of Procedure for the Council of Ministers of the EU (‘the Council’), and I attach the latest version of the draft text. These internal rules of procedure require amendment in a number of areas to reflect changes in the operation of the Council brought about by the entry into force of the Treaty of Lisbon. The Government is broadly content with the draft text and will support its adoption at the JHA Council.

The Rules of Procedure govern how the various configurations of the Council operate in practice, including: notice periods and planning required before Council meetings; the agreement of Council meeting agenda; how meetings should be run; questions of transparency and openness, including the opening up to the public the consideration and voting of legislative matters in the Council; voting arrangements and quorum; the status and operation of official-level working parties and committees; how legislative acts are processed prior to and following Council deliberations provisions on the Council Secretariat; and representation before the European Parliament. The main changes to the Rules proposed by the amendments in the draft Council Decision (otherwise referred to as ‘the draft text’) are summarised below.

The draft text makes explicit that the trio of Rotating Presidencies will collectively be responsible for the Presidency of the Council, with the exception of the new Foreign Affairs Council configuration, for a period of 18 months; though each Presidency would still in effect hold the Presidency of the Council for the usual six-monthly period unless alternative arrangements are agreed between the trio.

The draft text also sets out the responsibilities for the two new configurations which will replace the current General Affairs and External Relations Council (GAERC): the General Affairs Council (GAC) and Foreign Affairs Council (FAC). In particular, questions on enlargement and the establishment of the multi-annual financial framework will be dealt with by the GAC; trade and development policy will be dealt with by the FAC. However, footnote 9 of the draft text makes clear that when common commercial policy questions are to be tabled at the FAC, the High Representative will vacate the Chair and the member of the Council from the Rotating Presidency will chair those items of business.

The Government supports the proposed split of responsibilities between the new General Affairs and External Relations configurations, and in particular the proposal to carve out the chairmanship of common commercial policy within the FAC to the Rotating Presidency given the Government’s preference for common commercial policy to be kept separate from the future EEAS. In practice, as the two portions of the former GAERC configuration have been conducted separately, there should be no substantive difference. The Government is keen to ensure that the GAC continues to work effectively once split from the external relations portion of the GAERC configuration. A good way to achieve this would be to preserve the previous practice of holding the general affairs and external relations portions of the GAERC on the same day, which would promote more regular attendance of Foreign Ministers at both the GAC and FAC in future.

The provisions in the current Rules of Procedure relating to the European Council are all to be reproduced in the new Rules of Procedure for the European Council. However, references are made in the draft text to the effective co-operation which will be required between the key actors, namely the President of the European Council, the Rotating Presidency and the President of the European Commission. The draft text will also need to be reviewed once further progress has been made in finalising the draft European Council Rules of Procedure, as indicated in article 2(3) on the draft text.

As the Rotating Presidency will continue to chair all of the sectoral Councils (except the FAC), it will be important that the GAC continues to exercise its overall co-ordination role of the other Council configurations; and co-operates effectively with the other key actors in the preparation of and follow-up to European Council meetings. Moreover, the Government is clear that the Rules of Procedure for the Council and the European Council should be consistent with the text of the Treaty of Lisbon, notably in respect of the role and the interaction of the President of the European Council with the relevant members of the Rotating Presidency, the High Representative, the President of the European Commission and the President of the European Parliament.

The draft text also provides for the temporary replacement of the High Representative by the relevant member of the Rotating Presidency more generally, for example in case of illness, in chairing the FAC; and by a member of the Rotating Presidency or a representative from the EEAS in representational duties before the European Parliament. The Government supports this approach.

Article 3(3) of the draft text details the provisions in respect of the eight-week period set out in the Protocol on the role of national Parliaments. The single change to these provisions concerns the Council’s ability to derogate from the eight-week period; the Council is currently required to agree
unanimously to derogate from this, but the draft proposes that the Council would instead agree according to the voting basis for the act concerned – unanimity, qualified majority or simple majority depending on the relevant legal base. The Government has registered its reservations with the Presidency and other Member States on this move. However, given the lack of support from other Member States on this issue, we have had to reluctantly concede this point. The Government of course remains committed to the scrutiny process, and we fully expect the derogation to be used only in exceptional circumstances as set out in Article 4 of the Protocol.

The draft text also makes several administrative changes as a result of the entry into force of the Treaty, mainly in respect of changes to Treaty article references; and in respect of the change to the role of the Secretary-General of the Council (currently the Secretary-General is also the High Representative for Foreign and Security Policy; under the Treaty of Lisbon, the Secretary-General will be a separate post).

The Government notes that there are no proposals to amend the other Council configurations (Annex A), though the Government notes that further discussions may be required in future on where certain policy questions will be managed. The Government’s priority, however, continues to be to ensure the effective and coherent operation of Council business.

RULES OF PROCEDURE OF THE EUROPEAN COUNCIL

The establishment of the European Council as an institution under the Lisbon Treaty and the creation of the post of President of the European Council requires the drawing up of a set of Rules of Procedure for the European Council, which we expect to be tabled for adoption by the European Council either at the December European Council or by written procedure following agreement in Council. I shared the draft text with both Committees when I wrote to you in October, and we expect a new version to be issued following the informal European Council this week. I would like to take this opportunity to draw out what the Government considers the key points related to the draft text, though I should highlight that the discussion of the European Council Rules of Procedure is not yet as far advanced as those on the Council’s Rules of Procedure.

The Government has long since been clear that we believe that the President of the European Council should be a strong figure with a significant internal and external role and who can bring greater coherence and consistency to the EU’s actions than a President who changes every six months can. The Lisbon Treaty makes clear that the European Council President should chair the European Council and drive forward its work, the Government firmly supports this. The European Council President will give Member States greater capacity to give direction and momentum to the EU’s agenda and represent around the world the priorities elected EU leaders agree. Externally, the Council President should ensure greater credibility at the very top level, working effectively with the High Representative to ensure that the EU can be a global actor and a leader on the world stage.

A key aspect of the future effectiveness of the European Council President will be the need to co-operate effectively with the Head of State or Government and Ministers of the Member State holding the Rotating Presidency; and the President of the European Commission. The Government supports the need for effective co-operation between these individuals in the successful leadership of the Council and European Council, and reference is made to this in the draft text.

Furthermore, we believe that the European Council President is mandated by the Treaty to chair and drive forward the work of the Council. To this end, the President should remain in the lead in drawing up and finalising the draft agenda, draft conclusions and any draft decisions of the European Council for presentation to the European Council. In accordance with the principle of effective co-operation, the General Affairs Council should also have an important role in reviewing and assisting in the finalisation of these draft documents. There remains a question of the extent to which the President of the European Council should participate in the discussions of the General Affairs Council, and the Government would advocate the President’s participation to ensure a coherent link between the work of the Council and the European Council. We continue to seek clarification on this point.

The draft text outlines a proposal that, for the first time, the Head of State or Government of the Rotating Presidency will present a review of the work of the Council to the European Council. The Government would support this move in principle, as an illustration of the vital linkage between the Council and European Council. However, the question of whether this provision should be fixed for each European Council meeting remains open: the European Council should be free to shape its agenda to focus attention of leaders of the Member States on the key issues.
As with the Council Rules of Procedure, the European Council Rules of Procedure makes proposals on how the European Council should be represented before the European Parliament. The draft text makes clear that the President of the European Parliament should carry out these responsibilities, and that the Head of State or Government of the Rotating Presidency should present their Presidency’s priorities to the European Parliament at the start of the six-month mandate. The Government supports this, which illustrates the leadership role required of the European Council President, and the linage between the work of the European Council and the Council of Ministers under the leadership of the Rotating Presidency.

The Government is content on the whole with the current draft of the text, though we continue to discuss the key points set out above with the Swedish Presidency and other Member States, as we look to finalise the text for adoption soon after entry into force.

20 November 2009

Letter from Chris Bryant MP to the Chairman

Further to my letter of 20 November, I am now able to share with you the draft texts confirming the names of those appointed to the posts of President of the European Council (Herman Van Rompuy); the High Representative (Baroness Catherine Ashton of Upholland); and the Secretary General of the Council (Pierre de Boissieu). In parallel, the Presidency has also circulated three short texts setting out the terms and conditions of the three posts. Please find these annexed to this letter.

The Government only received these texts from the Council Secretariat yesterday, and we are restating to the Presidency our concern that such texts need to be circulated in sufficient time to allow for them to be sent to and considered by you before their formal adoption, which in this case will be at the Justice and Home Affairs Council on 1 December. I apologise for the lack of time given to your Committee to consider these texts. However, please be assured that we continue to make clear to the Presidency that Member States and National Parliaments need to be given adequate time to consider all relevant Lisbon Treaty implementation proposals.

The Government is content with the substance of these procedural texts and we believe that the remuneration packages for the President of the European Council and the Secretary General of the Council are comparable with similar positions, for example the remuneration of the President of the European Council will be comparable to that of the President of the European Commission. It is proposed that the High Representative should receive a slightly higher salary compared to other Commission Vice-Presidents (130% of the salary awarded to a grade 16 EU official at level three of that particular salary scale; compared to 125% for other Vice-Presidents). We believe that this is justified given Baroness Ashton’s role as First Vice-President of the European Commission and her additional responsibilities as High Representative.

However, I would welcome any views you may have on these texts as soon as possible, to allow us to consider these before 1 December. More generally, I shall continue to keep your Committee appraised of any further developments surrounding implementation of Lisbon Treaty measures.

27 November 2009

SCRUTINY OVERRIDES

Letter from the Chairman to Baroness Royall of Blaisdon, Leader of the House of Lords

On 29 July, we received from the Cabinet Office the list of scrutiny overrides for July–December 2008. We note that, in contrast to a decreasing trend in recent years, the number of overrides has increased on last year’s total. This is of considerable concern to us. Whilst some of the overrides are in response to rapid European timetables and others have occurred over Parliamentary recesses, there have still been a number of avoidable overrides.

The letter of 29 July observed that FCO and DEFRA had carried out “internal scrutiny refreshes”. We would be interested to know what these have involved and what the departments expect the results to be.

Some departments have not had any scrutiny overrides this session, despite handling a significant number of EU documents. What steps are other departments taking to learn from the practices of these departments with better scrutiny records?
In order to raise awareness in departments of the importance of the Parliamentary Scrutiny Reserve and the need to avoid overrides where possible, we have decided on three actions:

i. Overrides are now logged in Progress of Scrutiny, which is published fortnightly and sent to all departments;

ii. On receipt of each 6-monthly list of scrutiny overrides in future, starting with January–June 2009, which I hope we will receive soon, I will table a Question for Written Answer on the subject, in order to give the list wider circulation;

iii. Whenever a scrutiny override occurs that we consider to have been avoidable, we will consider tabling a QWA asking why the override happened.

3 November 2009

**Letter from Baroness Royall of Blaisdon to the Chairman**

Thank you very much for your letter of 3 November. I understand the concern you express on behalf of your Committee at the increased number of scrutiny overrides for the July-December 2008 period compared to the same period in the previous year. I am grateful to you for setting out the steps that the Committee intends to take, particularly if the Committee considers a scrutiny override to have been avoidable. I note also that you have commented on this new approach in your 2009 Annual report which was published recently.

I am very keen to ensure that Departments continue to work closely with Committee clerks to ensure that the scrutiny process works smoothly and that potential issues – such as recess timings – are identified and worked around. I encourage all Departments to ensure that their scrutiny coordinators keep in regular contact with Clerks and that Departments hold regular awareness-raising sessions with staff whose work brings them into contact with Parliament. That contact might also usefully explore whether there are mutually satisfactory ways in which to facilitate rapid scrutiny where circumstances demand it. I know, for example, that the FCO, Department for Transport and the Department of Health have all held such sessions recently, involving staff from the Committees.

You asked specifically about the “internal scrutiny refreshes” carried out by the FCO and DEFRA and referred to in the Cabinet Office’s letter of 29 July. As far as the FCO is concerned, following their “Scrutiny Refresh” in February this year, additional staff resources were assigned by the Europe Directorate to deal with the scrutiny process; FCO guidance has been re-written to ensure that Explanatory Memoranda are given the priority they deserve (and signed-off by a suitably senior official); and their Minister wrote to senior staff within the Department reiterating the importance of the scrutiny process. The Department has also written over 90 letters to the Committee in the past year to keep it informed of events in the EU. The current Europe Minister has made it very clear that he is committed to the scrutiny process.

Of course, sometimes the sheer speed of events in the international arena – the crisis in Georgia and the need to launch a mission to combat piracy off the coast of Somalia, for example – can result in an operational need to agree actions before they can be cleared by the Committee, but the Department does all that it can to avoid that. The actions outlined above, combined with the flexible approach by the Committee and its Clerks, have had an effect. I hope that the Committee is better satisfied with the level of service and the seriousness with which the FCO has approached its work in this area. This is also demonstrated in the openness of the FCO to an increased level of informal contact and briefing, as recently demonstrated when officials briefed sub-committee C on Afghanistan.

As for improvements to DEFRA’s scrutiny procedures, Dame Helen Ghosh’s letter of 23 July to Lord Freeman, Chairman of sub-committee B, set out the position. DEFRA conducted an initial review in February 2009, following which its record on the timely submission of EMs has improved. Further work is underway, which Dame Helen undertook to report back on to sub-committee B by the end of the year. This has included discussions with the Clerks in both Houses and with UKREP on how to improve systems for the recording, handling, processing and quality assurance of correspondence from DEFRA Ministers. One of the objectives of the new system for correspondence handling is to minimise the risk of overrides by ensuring that follow up inquiries to EMs are answered promptly. As with the FCO, DEFRA’s performance is affected by the speed at which proposals move, for example those relating to negotiating mandates for fisheries issues.

I accept that there is more that many Departments still need to do to improve their own performance and I will continue to ensure that, in my dealings with them, I stress the vital importance of the scrutiny process to the effective delivery of Government policy on EU matters. Cabinet Office
officials will draw your annual report to the attention of all departments to ensure that all Departments are notified of the trends you have identified and the actions you intend to take. I am very grateful to you and to your Committee for the vital work that you do. If at any time it would be helpful to discuss these, or any other, issues with me, please do not hesitate to do so.

17 November 2009