MEMORANDUM OF UNDERSTANDING ON IMPLEMENTING ARTICLE 8 OF THE PROTOCOL ON THE APPLICATION OF THE PRINCIPLES OF SUBSIDIARITY AND PROPORTIONALITY

Her Majesty’s Government, the European Union Committee of the House of Lords and the European Scrutiny Committee of the House of Commons (the “Scrutiny Committees”) have agreed the following arrangements regarding the implementation of Article 8 of the Protocol on the Application of the Principles of Subsidiarity and Proportionality. This provides:

“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 in accordance with the rules laid down in Article 263 of the Treaty on the Functioning of the European Union by Member States, or notified by them in accordance with their legal order on behalf of their national Parliament or a chamber thereof.”

1. Under Article 263 TFEU, actions must be brought within **two months** of the publication of the measure. An additional ten days are allowed under the Court of Justice’s rules of procedure, but no further extension of time is permitted.

2. When either of the Scrutiny Committees is proposing to recommend to the House concerned that an action be brought pursuant to Article 8, the Committee will, at the earliest opportunity, notify the UK Agents to the Court of Justice of the proposed recommendation.

3. Where either the House of Lords or the House of Commons decides that an action should be brought pursuant to Article 8, the Government will lodge an application at the Court of Justice. Such an action will be brought in the name of the United Kingdom and the application will state that the action is brought on behalf of the House concerned or of Parliament, as the case may be, pursuant to Article 8.

4. The action will be conducted by the UK Agents to the Court of Justice, in the EU Litigation Team of the European Division of the Treasury Solicitor’s Department, who act under the oversight and authority of the Attorney General. As with all UK actions before the Court of Justice, the Agents will ensure that the UK’s submissions are presented as effectively as possible, in order to maximise the prospects of success before the Court.

5. For all communications with the UK Agents, each Committee will be represented by its Legal Adviser or such other person who may be notified to the Agents.

6. The Scrutiny Committee concerned will notify the UK Agents as soon as possible of the decision referred to at paragraph 3. The Committee’s representative will at the earliest opportunity discuss choice of Counsel with the UK Agents. The Committee will provide all information and documentation available to it that is relevant to the conduct of the proceedings.

7. The application and other submissions to the Court of Justice will be made in accordance with the decision referred to at paragraph 3. All matters concerning the conduct of the proceedings, including the choice of Counsel, instructions to Counsel, the written statements to be submitted to the Court and the submissions to be made at any hearing, will be agreed between the UK Agents and the Committee concerned. In order to protect the good standing of the United Kingdom before the Court of Justice, the conduct of proceedings will
avoid anything which could adversely affect the reputation of the United Kingdom before the Court of Justice.

8. If the UK agents consider that the conduct of proceedings could undermine the United Kingdom’s wider policy interests in relation to the European Union, and these concerns cannot be resolved in discussion with the representative of the Committee concerned, they shall convene a meeting of the Minister and the Chairman of the Committee concerned to resolve the disagreement.

9. The UK Agents will undertake the conduct of proceedings. This includes instructing Counsel on the basis of written instructions, approving the text of the UK’s pleadings and speech for any oral hearing, determining whether to request an oral hearing, and instructing Counsel in person at any hearing. The UK Agents may consult the lead UK Government Department or Departments with responsibility for the subject matter of the measure at issue in the proposed challenge with a view to drawing on their expertise and knowledge of the measure concerned.

10. This memorandum is not intended to create legal obligations.

Lord Boswell of Aynho, Chairman, European Union Committee, House of Lords

William Cash MP, Chairman, European Scrutiny Committee, House of Commons

Rt Hon David Lidington MP, Minister for Europe, Foreign and Commonwealth Office
SUPPLEMENTARY MEMORANDUM OF UNDERSTANDING ON IMPLEMENTING ARTICLE 8 OF THE PROTOCOL ON THE APPLICATION OF THE PRINCIPLES OF SUBSIDIARITY AND PROPORTIONALITY

This memorandum is supplemental to one between Her Majesty’s Government and the Scrutiny Committees of the two Houses on the management of actions under Article 8 of the Protocol.

Her Majesty’s Government and the Accounting Officers of the House of Commons and the House of Lords have agreed the following arrangements regarding the implementation of Article 8 of the Protocol on the Application of the Principles of Subsidiarity and Proportionality. This provides:

“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 in accordance with the rules laid down in Article 263 of the Treaty on the Functioning of the European Union by Member States, or notified by them in accordance with their legal order on behalf of their national Parliament or a chamber thereof.”

1. The House or Houses on whose behalf an action is brought will be responsible for:
   • the costs of conducting the proceedings, including any costs for preparation of a case which does not in the event proceed to Court. Such costs include the costs of instructing Counsel, any translation costs, attending the hearing and the reasonable costs of the UK Agents; and
   • any costs awarded by the Court against the United Kingdom in the course of the proceedings.1

2. This memorandum is not intended to create legal obligations.

David Beamish, Clerk of the Parliaments, Accounting Officer, House of Lords

Sir Robert Rogers KCB, Clerk of the House of Commons, Accounting Officer, House of Commons

Rt Hon David Lidington MP, Minister for Europe, Foreign and Commonwealth Office

1 There is a convention that the UK does not seek to enforce costs awards against the EU institutions, and likewise they have not enforced costs awards against the UK.