Proposal for a Council Regulation amending Regulation (EC) No 1683/95 laying down a uniform format for visas as regards the numbering of visas (Document 8595/08)

Sub-Committee F (Home Affairs) of the Select Committee on the European Union considered this document at a meeting on 18 June 2008.

The Committee believe that both the timing and the content of the Explanatory Memorandum are unsatisfactory. As to the timing, the Commission document is dated 14 April 2008, and the Council document 18 April. Publication must have been between these two dates. The document was deposited in Parliament on 23 April. The Cabinet Office Guidance currently requires that EMs should be submitted within 10 working days of the deposit. This would have taken us to 8 May. In fact it was only on 28 May that you signed the EM: 24 working days after deposit of the document, and some 6 weeks after its publication.

You will be aware that the Government, during the Report Stage of the European Union (Amendment) Bill in the House of Lords, committed itself to EMs relating to opt-in decisions being provided in future within 10 working days, not of deposit, but of publication of the document. It is vital that this timetable should be strictly adhered to, especially since the Government has undertaken to take the views of this Committee into account only if formulated within 8 weeks of publication.

I turn now to the content of the EM on the issue of opting in. Paragraph 13(iv) says only: “HM Government is considering whether to opt-in to this proposal. We seek further legal advice to clarify our position.” This gives no indication as to whether the doubts about opting in are on policy grounds, or legal grounds, or both. The United Kingdom is already governed by the 1995 Regulation. If there are policy grounds for doubting that the UK should be party to a Regulation simply amending the format of numbering of visas, we should like to know what they are.

There are respectable legal grounds for arguing that an instrument amending a measure already binding on the UK is itself binding on the UK without any need for a formal opt-in. If this is the issue on which legal advice is being sought, it would surely
have been possible for the EM to say so, and to explain the arguments. We believe that unless there is agreement between all the EU institutions and the UK that no formal opt-in is required for the UK to be bound, then the only safe course is for the Council to be notified that the UK does indeed wish to be bound by the Regulation.

We will keep this document under scrutiny until we know the Government’s views on the policy and legal arguments for and against the United Kingdom opting in to the proposal, and have had an opportunity to comment on them. In this connection we draw attention to the time constraints. Paragraph 13(iv) of the EM states: “If we decide to opt-in, we will need to complete…..Parliamentary scrutiny clearances before 23 July”. We doubt whether this is correct. The Protocol on the position of the UK states that opting in must be done “within three months after a proposal or initiative has been presented to the Council”, which would take us to a date between 14 and 18 July. I therefore look forward to receiving an early reply to this letter to give us time to consider the legal issues well before the end of the three-month period.

I am copying this letter to Michael Connarty MP, Chairman of the Commons European Scrutiny Committee; Alistair Doherty, Clerk to the Commons Committee; Michael Carpenter, Legal Adviser to the Commons Committee; Les Saunders (Cabinet Office); and Sue Garrod, Departmental Scrutiny Co-ordinator.

GRENFELL

Meg Hillier, MP
Parliamentary Under-Secretary of State
Home Office
2 Marsham Street
SW1P 4DF