

**Parliamentary Scrutiny of
European Union Documents**

Guidance for Departments

August 2013

CABINET OFFICE

PARLIAMENTARY SCRUTINY OF EUROPEAN UNION DOCUMENTS

GUIDANCE FOR DEPARTMENTS

KEYWORD INDEX

SECTION 1: PARLIAMENTARY SCRUTINY: OVERVIEW

SECTION 2: DEPOSIT OF DOCUMENTS IN PARLIAMENT

- 2.1 [Depositable documents](#)
- 2.2 [Documents the Committees have agreed need not be deposited](#)
- 2.3 [Documents not suitable for deposit](#)
- 2.4 [Procedure for deposit](#)

SECTION 3: EXPLANATORY MEMORANDA

- 3.1 [Timetable](#)
- 3.2 [Form and content](#)
- 3.3 [Unnumbered EMs](#)
- 3.4 [Supplementary EMs](#)
- 3.5 [EMs on Proposals subject to the Ordinary Legislative Procedure](#)
- 3.6 [EMs on Proposals subject to the Special Legislative Procedure](#)
- 3.7 [Short EMs](#)
- 3.8 [Corrigenda to EMs](#)
- 3.9 [Circulation of EMs](#)
- 3.10 [Withdrawal of EMs](#)

SECTION 4: THE SCRUTINY PROCESS

- 4.1 [The Commons Committee](#)
- 4.2 [The Lords Committee](#)
- 4.3 [Liaison with the Committees](#)
- 4.4 [Preparation for Committee meetings](#)
- 4.5 [Consideration by Committees](#)
- 4.6 [Scrutiny clearance](#)
- 4.7 [Further scrutiny](#)
- 4.8 [Withdrawal of debate recommendations](#)
- 4.9 [Cabinet Office records](#)
- 4.10 [Giving evidence to the Committees](#)
- 4.11 [Commission Legislation](#)
- 4.12 [Correspondence with the Scrutiny Committees](#)

SECTION 5: SCRUTINY DEBATES

- 5.1 [Arranging Commons debates](#)
- 5.2 [European Committee Debates](#)
- 5.3 [Floor Debates](#)
- 5.4 [Government Motions and amendments](#)
- 5.5 [Second Debates](#)

5.6 [Debates in the Lords](#)

SECTION 6: UNCLEARED PROPOSALS: ACTION TO BE TAKEN

- 6.1 [Government undertaking \(Scrutiny Reserve Resolution\)](#)
- 6.2 [Action required on uncleared proposals](#)
- 6.3 [Parliamentary scrutiny reserves](#)
- 6.4 [Statements to the House](#)

SECTION 7: PROCEDURE TO BE FOLLOWED DURING RECESSES AND BETWEEN PARLIAMENTS

- 7.1 [Procedure during recesses](#)
- 7.2 [Procedure between Parliaments](#)

1. ANNEXES

- A. [Commons Scrutiny Committee – terms of reference](#)
- B. [Lords Scrutiny Committee – terms of reference](#)
- C. [Standing Order 119: European Committees](#)
- D. [Commons Scrutiny Reserve Resolution](#)
- E. [Lords Scrutiny Reserve Resolution](#)
- F. [Lisbon Treaty Protocol on Role of National Parliaments](#)
- G. [Standard form of Explanatory Memorandum](#)
- H. [Example format for a corrigendum/addendum to an EM](#)
- I. [Example format for reference to scrutiny history in EMs.](#)
- J. [Circulation lists for various forms of Memoranda](#)
- K. Blank
- L. [Lisbon Treaty Protocol on Subsidiarity and Proportionality](#)
- M. [Flow Chart – legislative process where ordinary legislative procedure applies](#)
- N. [Pre and Post Council Evidence Procedures](#)
- O. Blank
- P. [Commons European Committee debates: Provision of papers and example motions](#)
- Q. Blank
- R. Blank
- S. [JHA Code of Practice: with Baroness Ashton Statement on Scrutiny of JHA Opt-In and Schengen Opt-Out decisions with Lords Scrutiny Resolution and MFE Statement](#)
- T. Blank
- U. [Government Undertakings on Scrutiny](#)
- V. [Best Practice Tips for Successful Scrutiny](#)
- W. [Instructions for Writing to the Committees](#)

KEYWORD INDEX

<u>Subject</u>	<u>Paragraph(s)</u>
Addenda to EMs	3.3.5 , Annex H
Amended proposals, handling of	2.1.1(i) , 3.2.1 , 3.4.1 , 3.5 , 3.6 , 3.7.1 , 4.7 , 4.8.1b , 5.1.2 , 6.2.11 , 6.2.15
Anti-dumping measures	2.3.1(i) , 2.3.10
Article 308	3.2.5(i)
Chief Whip's Office, role of	4.8.1(b) , 5.1.2 , 5.1.4-9 , 5.2.3 , 5.2.11-13 , 5.4.2 , 5.4.4
Ordinary Legislative Procedure	2.1.1i , 3.1.2 , 3.2.5(ii) , 3.5.1-3 , 6.1.1 , 6.2.1 , 6.2.10 , Annex M
Commission legislation	2.1.1 , 2.3.1 (iii) , 4.11
Common Foreign and Security policy	See inter-governmental pillars
Comitology	4.11.1-3
Confidential documents, handling of	2.3.1(i-ii) , 2.3.4 , 2.3.7 , 2.3.10 , 5.2.6 (see also negotiating mandates, anti-dumping measures and working documents)
Consultation documents, handling of	2.1.2
Consultation exercises	2.1.2ii , 2.1.4 , 3.2.16 ,
Special Legislative Procedure	3.2.5(ii) , 3.6.1-3
Correspondence with Scrutiny Committees	3.2.2 , 3.2.17 , 3.4.3 , 4.10.3 , 4.11.3 , 4.12.1
Corrigenda to EMs	3.7 , Annex H
Council Legal Service opinions	3.2.5 , 5.2.6
Devolution	2.4.6 , 3.1.2-3 , 3.1.6 , 3.2.3 , 3.2.11 , 3.9.1 6.1.3
European Economic Area (EEA)	3.2.1 , 3.2.6-89
Euros	3.2.15
External Agreements	2.3.1(iv) , 2.3.3 , 2.3.8-9
European Committees:	
Operating procedures	5.2.9-13
Provision of papers	5.2.5-6 , Annex P
Terms of Reference	Annex C

Foreign text	2.3.1(ix) , 3.2.19
Fundamental Rights analysis	See Human Rights
General Approach	6.2.1 , 6.2.16
Gibraltar	3.2.5(v)
Government Undertakings	Annex U
Human Rights Act 1998: compatibility with	3.2.5(vi) , Annex G
Impact Assessment	3.1.2 , 3.2.13
Inter-governmental pillars	2.1.1(iii-iv) , 2.2.1-5 , 2.3.11 , 6.1.1
Implementation of legislation	3.2.4(iv) , Annex G
Justice and Home Affairs	See Inter-governmental pillars
Limité Documents	2.3.1
Management Committee, documents arising from disagreement with the Commission	2.3.1(iii)
Minimum scrutiny period	6.3.4-6
Negotiating mandates	2.3.1(iv) , 2.3.3-7
Overrides; Report to Parliament	6.2.10
Political Agreement	6.2.1 , 6.2.8 , 6.2.11 , 6.2.15
Pre and Post Council Scrutiny	4.10.6 , Annex N
Regulatory Committee	See Management Committee and Comitology
Scrutiny Committee reports: Commons Lords	4.5.1 , 4.5.3 , 5.2.6 4.5.4-7 , 4.5.9
Statements to the House	6.2.12-13 , 6.5 , 7.1.4
Subsidiarity	3.2.10 , Annex L
Supplementary EMs	3.4.1-4 , 4.7 , 4.8.1 (b) , 5.4.3 , 6.2.15
Terms of Reference:	

Commons Scrutiny Committee	2.1.1 , 4.1.1 , Annex A
Lords Scrutiny Committee	2.1.3 , Annex B
European Committees	5.2.1 , Annex C
Unnumbered EMs	2.3.1 (iii) , 2.3.6 , 2.3.8-10 , 3.1.1 , 3.3.1-4 , 3.4.1 , 3.4.4 , 3.5.2 (ii) , 4.7 , 5.4.2 , Annex G
Unsigned EMs	3.2.1 , 3.7.1-3 , 3.8 , Annex G
Withdrawal of debate recommendations:	
Commons	4.8.1
Lords	4.8.2
Withdrawal of deposited documents	2.4.5
Working documents, handling of	2.1.2 , 2.3.1(ii) , 3.3.1(ii) , 3.3.2-4 , 3.4.1
World Trade Organisation	3.2.12

PARLIAMENTARY SCRUTINY: GUIDANCE FOR DEPARTMENTS

2. SECTION 1

3. PARLIAMENTARY SCRUTINY: OVERVIEW

1.1 This guidance is for departmental officials who will come into contact with the Parliamentary scrutiny process and provides comprehensive guidance on scrutiny policy and procedures. This section highlights the principles and stages of the process. Detailed practical guidance is given later.. For further advice, contact the European & Global Issues Secretariat of the Cabinet Office.*

4. WHAT IS PARLIAMENTARY SCRUTINY?

1.2 Parliamentary scrutiny is the process by which Parliament is given the opportunity to examine and express views on proposals for EU legislation and any other documents held to fall within the terms of reference of the Scrutiny Committees of both Houses of Parliament. (See Section 2, and Annexes A and B). The Government is committed to the principle of effective scrutiny of European legislation, and both Houses have agreed scrutiny reserve resolutions which state that Ministers will not agree to proposals in the Council of Ministers except in certain circumstances until scrutiny by the Committees has been completed (see Section 6). The importance attached to scrutiny by national parliaments throughout the EU is reflected in the *Protocol on the Role of National Parliaments* in the Lisbon Treaty (see Annex F). Parliament now has a direct role in considering the subsidiarity and proportionality implications of proposals (see ad hoc guidance letter (09)25 & (10)19). This role is set out in a protocol attached to the Lisbon Treaty (Annex L.)

1.3 A list of key Government undertakings on scrutiny is at Annex U

5. PRESENTATION OF EU DOCUMENTS TO PARLIAMENT

1.4 The Cabinet Office is responsible for the maintenance of the Government's scrutiny procedures and is responsible for deciding, in consultation with Departments, and with the Committee clerks where necessary, which EU documents should be deposited in Parliament – taking steps to make sure that these decisions are consistent with the Standing Orders of both Scrutiny Committees. The Cabinet Office will take the initiative in most cases, but Departments must be vigilant in looking for documents that may be eligible for deposit and scrutiny. There will always be grey areas about whether a document should be deposited or whether it is caught by the terms of the scrutiny reserve resolutions, and it is therefore important that the Government is as flexible as possible in its approach to ensure that the spirit of the scrutiny reserve resolutions is respected as far as possible. The Government must not be left open to allegations that it is withholding documents from Parliament. The FCO/MOD and Home Office/MoJ

* Unless otherwise indicated, references to the Cabinet Office in this guide are to the European & Global Issues Secretariat

take the lead in deciding which documents under the Common and Foreign Security Policy and in the area of Freedom, Security and Justice respectively, should be subject to scrutiny. HM Treasury take the lead in identifying which EU budget documents should be submitted for scrutiny. Details of the procedures concerning the deposit of documents and the different types of documents which are to be deposited are given in **Section 2**.

GOVERNMENT EXPLANATION OF EU DOCUMENTS: EXPLANATORY MEMORANDA

1.5 The deposit of a document (within 48 hours of circulation by the Council Secretariat) in Parliament activates the scrutiny process. Following deposit the Government is required to brief Parliament on a document's content and implications. This is done by an 'explanatory memorandum' (EM) which must be made available to Parliament within 10 working days of the document's deposit, (or sooner in the case of a proposal on which the UK's opt-in protocol in the area of freedom, security and justice applies). The EM (which is a public document) summarises the document, its legal, policy and financial implications and the likely timetable of its consideration by the Council of Ministers. It must also – crucially – set out the Government's view on the proposal. A separate EM is usually required for each document deposited though with the agreement of the Committees several documents can be covered by a single EM. In addition a further EM is normally required whenever a legislative proposal or other document undergoes revision which impacts upon policy implications during its consideration in Brussels. There are also circumstances where an EM is provided to Parliament even though a depositable document does not exist or is unavailable. An EM constitutes an official Government communication to Parliament and its preparation therefore needs the same care e.g. as an oral statement or evidence to a Select Committee. Guidance on the provision and drafting of EMs and the various types of EMs that may be submitted to Parliament is given in **Section 3**.

6. SCRUTINY COMMITTEE PROCEDURE

7. House of Commons

1.6 The House of Commons Scrutiny Committee (European Scrutiny Committee, ESC) normally meets every sitting Wednesday to examine documents and to report on them to the House with recommendations on the importance of each particular document and on whether further consideration by the Committee or by the House (i.e. debate) is required.

8. House of Lords

1.7 The Chairman of the Lords Scrutiny Committee (European Union Committee, EUC) carries out a sift of EMs and associated documents every sitting Tuesday. Sifts are occasionally held during Recesses. The purpose of this sift is to determine which document should be cleared or considered further by one of the Committee's sub-committees which meet usually weekly when the House is in Session and consider the proposals in detail.

1.8 Further details of both Committees' procedures are given in **Section 4**.

9. DEBATE ARRANGEMENTS

10. House of Commons

1.9 The Committee can:

- recommend documents for debate in European Committee where all members may attend and speak although only members of the European Committee may vote on the motion for debate; or
- recommend documents for debate on the Floor of the House but the debate is held on the Floor only if the Government agrees to provide time for it (otherwise the debate is held in Committee).

1.10 **Debates should be held in sufficient time** for the House to have the opportunity to influence the Government's stance on the proposal.

11. House of Lords

1.11 If the Lords Committee makes a report on a document and recommends it be debated, time is found for it. Liaison between the Government's business managers and the Clerk of the Committee is needed to ensure that debates are arranged at a time of mutual convenience. The appropriate sub-committee Chairman either moves a motion to take note of the Committee's report, or asks a "question for short debate" about the issues raised in the report and the Government's spokesman responds to the points made in the debate.

1.12 Details of the procedures for arranging debates are given in **Section 5**.

12. VOTING ON UNCLEARED PROPOSALS: ACTION TO BE TAKEN

1.13 If an uncleared proposal is expected to come before the Council of Ministers for any form of agreement e.g. political agreement, general approach (see CO guidance letter (08)24), agreement of a common position or for final adoption, action must be taken to avoid a breach of the "scrutiny reserve resolutions". These embody a Government undertaking that Ministers will not, except in some limited circumstances, give agreement to any proposal before Parliamentary scrutiny procedures have been completed. It is vital to inform the Committees if the timetable for agreement changes, particularly if it has been expedited, and provide any further information which may have been requested by the Committees. The Committees have the power under their terms of reference to agree that the Minister may support a proposal in advance of agreement whilst retaining it under scrutiny and

waive the requirements of clearance under the terms of the scrutiny reserve resolutions; this is known as a scrutiny waiver. Departments may ask (in writing) for such a waiver to be granted, explaining the reasons why this is necessary. Detailed guidance is given in **Section 6**.

COMPLETION OF SCRUTINY

1.14 Parliamentary scrutiny is normally considered complete in the **House of Commons** when the Scrutiny Committee has cleared the proposal in one of its reports or, if the document is recommended for debate, the debate has taken place and the House has agreed a resolution relating to the document (a debate in a European Committee does not on its own clear a document from scrutiny – see paragraph [5.2.14](#))).

1.15 In the **House of Lords** (see paragraph [4.6.1](#)) a document is cleared when:

- it is cleared by the Chairman at the sift; or
- having been sifted to a Sub-Committee, it is cleared , possibly after correspondence; or
- the Sub-Committee having conducted an inquiry, it is reported for information only; or
- the Sub-Committee having reported on it “for debate”, the debate has taken place.

1.16 However, where a proposal is subsequently modified in the course of Council discussion, for example under the ordinary legislative procedure (OLP) procedure (previously codecision), a further EM should be submitted, even if no new text can be deposited, in the light of which the scrutiny reserve resolutions apply again and the Scrutiny Committees may re-open their consideration of the proposal (see section 3.5 for details of the ordinary legislative procedure). If in doubt of handling such developments you should consult the Cabinet Office or the Committee Clerks.

SECTION 2: DEPOSIT OF DOCUMENTS IN PARLIAMENT

Introduction

2.0 This Section describes:

- the categories of document which fall to be deposited in Parliament; and
- the machinery for arranging the deposit of documents.

Depositable documents

2.1.0 The House of Lords EUC's Terms of Reference were revised on 16 March 2010. to take account of the changes to EU legislative procedures following the coming into force of the Lisbon Treaty (TFEU) (e.g. changes in in terms of references to the legislative procedures described in the Lisbon Treaty, the collapsing of the third pillar on JHA, and where the type of instruments have changed.) Similar changes have yet to be adopted for the House of Commons ESC. The Government has made it clear to the Committee that until such changes have been approved, the Committee should expect to receive all documents as now defined by the European Union Committees Terms of Reference. and certainly no less than they received before the Lisbon Treaty entered into force.

The passages below will require further amendment in the light of European Scrutiny Committee TOR changes.

2.1.1 The Orders of Reference of the two Scrutiny Committees are set out in full at Annex A and B. These state that the Committees will examine 'European Union documents', these being:

- i. **Lords TOR: a draft legislative act or a proposal for amendments of such an act. Commons TOR: any proposal under the Community Treaties for legislation by the Council or the Council acting jointly with the European Parliament.**

This category includes proposals for Directives, Regulations and Decisions. It also includes Commission amendments (for advice on handling amended proposals, including under the ordinary legislative procedure (OLP) see paragraphs [3.4.1](#) and [3.5.2](#)). Under the OLP, the category should be taken to include EP amendments at First and Second Reading, amended proposals from the Commission and joint texts agreed by the Conciliation Committee. These documents (with the exception of EP amendments and joint texts) are normally issued by the Commission in the 'COM' series of documents and should be automatically deposited. (See paragraphs [2.3.4](#) and [2.3.9i](#) for exceptions to this general rule). Where the Treaty provides for the Council to take decisions on a recommendation of the Commission, such recommendations should be deposited. Where the Council acts without a Commission proposal e.g. Presidency, High Representative (issued with a JOIN prefix

when issued jointly with the Commission) or Member State initiative any draft of such an act should be deposited. This heading is also held to cover documents proposing or amending the Community budget or seeking authority for transfers of appropriations between subheads of the Budget;

ii. **Lords TOR: a document submitted by an institution of the European Union to another institution put by it into the public domain. Commons TOR: any document which is published for submission to the European Council, the Council or the European Central Bank.**

The meaning of 'published' in this context has not been precisely defined. It includes proposals for non-legislative action by the Council such as draft Resolutions, Recommendations and Opinions, as well as Green Papers, White Papers, Commission Reports or Communications to the Council. If in doubt about the substance or importance of individual resolutions/recommendations you should seek the advice of the Committee Clerks on whether the proposal should be deposited if the instrument would:

- commit (politically or legally) the Government or the EU to a course of action;
- actually or potentially gives early warning of new legislation or policy;
- have any potential implications for EU competence; or
- indicate a significant change in the Government's policy.

Although Commission Staff Working Papers (now carrying the prefix SWD) are inter-institutional documents the practice has evolved where the Government consults the Scrutiny Committee clerks in each case to determine whether the document should be deposited. Many are technical and ephemeral in nature or precede formal Communications or proposals expected to be published and the majority will not be deposited; the arrangements for deciding whether they should be deposited are described in paragraph [2.1.2](#) below. Although documents presented to the European Council usually issue only just before the meeting, they should still be deposited as soon as an English text is available (but see paragraph [2.3.1](#)).

At the same time as we deposit consultation documents eg Green Papers, White Papers and certain other communications, the lead Department should send a copy of the document to the Clerk of the relevant Departmental Select Committee in the House of Commons and when doing so it would be helpful to tell the Clerk of the DSC what plans, if any, there are for consulting more widely on the document. This follows a commitment to do so given by the Government in 2007 following a request for this approach by the Chairman on the Liaison Committee – see ad hoc guidance letter (07)24.

iii. **Lords TOR: a draft decision relating to the Common Foreign and Security Policy of the European Union under Title V of the Treaty on European Union. Commons TOR: any proposal for a common strategy, a joint action or a common position under Title V of the Treaty on European Union which is prepared for submission to the Council or to the European Council;**

Additionally FCO has agreed handling arrangements with the Committees for the deposit of non-classified information on ESDP operations and unclassified summaries of classified information under CFSP and ESDP. This category also includes the annual report on the Main Aspects and Basic Choices in CFSP as well as the six-monthly Presidency reports on progress in ESDP. And in response to the Lords Scrutiny Committee's report on the scrutiny of CFSP issues (19th report, 05-06), the Government agreed to deposit a wider range of non-legislative CFSP documents, particularly those where the Council would be expected to agree, endorse or approve the content. Furthermore in response to the Lords Scrutiny Committee's report on the European Defence Agency (9th report, 05-06) MOD now makes available a range of Steering Board documents for scrutiny, including in particular guidelines for the Agency.

iv. **Lords TOR: a draft legislative act or a proposal for amendment of such an act. Commons TOR: [any proposal for a common position, framework decision, decision or a convention under Title VI of the Treaty on European Union which is prepared for submission to the Council;**

v. **Lords TOR: a document submitted by an institution of the European Union to another institution and put by it into the public domain. Commons TOR: 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.**

These include, for example, Commission reports to the European Parliament and Court of Auditors' reports to the Commission, but would not include routine exchanges of letters between the Commission and the European Parliament about legislative proposals.

vi. **Commons TOR: any other document relating to European Union matters deposited in the House by a Minister of the Crown.**

This provides for the ad hoc deposit of documents at the Government's discretion, perhaps in response to a specific request from the Scrutiny Committees, eg IGC documents. The Government has undertaken to view such requests

sympathetically but the Cabinet Office should be consulted before a request is met.

Scrutiny remains a document-based process and the deposit of a document triggers the scrutiny process. But the Government, in responding to the 2002 European Union Committee's report on scrutiny of EU business in the House of Lords, undertook to assist the Committees in drawing to their attention matters under consideration by the Commission which might merit detailed scrutiny when a proposal comes forward. Departments should discuss future handling with the Clerks when they identify such proposals – see also section [4.11](#).

2.1.2 The Government must not be left open to allegations that it is withholding from Parliament documents that could be held to fall within the terms of reference of the Scrutiny Committees.

Since practice regarding publication does not follow clear criteria, the definition of “published” must be interpreted widely and could include publication in the Official Journal (e.g. in cases where a text or document may not have been received in the usual way from the Council Secretariat – an approach for some papers on which HM Treasury lead e.g. ECA annual reports. The acid test is whether the Commission (or other institution) itself regards a document as published. Where this is in doubt UKRep may be able to check. In general, the Commission treats documents in its COM series as published unless they are classified (see para [2.3.1](#) below). Documents issued in the Commission's SEC series are classified according to their subject matter. The majority are internal to the Council and are not public documents. This is the same with Commission “C” documents but see below. Commission staff working documents are considered on a case by case basis. Where the matter is substantive or where there is precedent for deposit the documents will be deposited. On other occasions the Cabinet Office will request that departments consult the clerks on handling. They are always deposited where they issue as annexes to deposited documents. If in doubt the Committee clerks should be consulted.

2.1.3 The Terms of Reference of both Scrutiny Committees do not formally restrict them to consideration of “published” documents: the effect of this is that enquiries/consideration may not be related solely – or indeed at all – to deposited documents.

2.1.4. In February 2008 the Government gave an undertaking to alert the House at an early stage of consultation exercises. Clearly those consultations which are the subject of Green Papers, White Papers and other published communications to the Council will be caught by the established deposit procedures and explanatory memoranda. But there will be other consultations the Commission engages in that won't necessarily be the subject of a formal submission to the Council, at least not at an early stage. These can take various formats eg on line consultations or questionnaires and some will be specifically targeted to particular interest groups. These early consultations may in turn lead to further consultations or proposals emerging from the Commission. These consultations are announced and conducted through the Commission's web-based consultation platform “Your voice in Europe” at:

http://ec.europa.eu/yourvoice/consultations/index_en.htm

In taking forward the Government's commitment, Departments should consider the information that is available on the Commission's consultation site and draw attention to consultations of particular interest to the Government by engaging with the Clerks of the two Scrutiny Committees in the first instance. The Clerks will be interested to learn of those consultations that the Government will be responding to (that are not the subject of deposited documents), or following closely. They can then work with departments to decide whether the Committee would want to hear formally from the Minister.

Documents which the Committees have agreed need not be deposited

2.2.1 In the course of their reviews of the scrutiny of European business in 2002 and the consideration of the Government's responses to them, the Committees agreed that certain categories of documents need no longer be deposited for scrutiny. Instead the Committees agreed that quarterly lists should be provided to the Committees retrospectively confirming the documents falling into these categories that had been produced. These agreements have been supplemented by further ad hoc arrangements between the Government and the Committees e.g handling of certain documents under the Ordinary Legislative Procedure, Commission staff working documents and documents in the Commission's "C" series referred to above.

2.2.2 The Cabinet Office takes the lead in confirming the non-deposit in these categories with the Clerks though FCO take the lead on those which fall under the CFSP. The Cabinet Office is responsible for producing the quarterly lists of documents not deposited under these arrangements. Documents are not normally deposited in the following categories. If there is any doubt whether a document should be deposited, Departments should consult the Clerks:

- Community positions on rules of procedure for various Councils and Committees, including those established under Association Agreements; Potentially affects all Departments
- Proposals to extend Common Positions (now decisions since the Lisbon Treaty) imposing sanctions (without making substantive changes) in pursuance of UN Security Council resolutions; Affects FCO only
- Proposals for making minor changes to lists of people or organisations subject to restrictive provisions in existing measures; Affects FCO only
- Draft Council decisions relating to decisions already made in Association Councils or Committees; potentially affects all Departments
- Reappointment of members to EU organisations; potentially affects all Departments

- Agreements emanating from pre-scrutinised Model and Framework Participation Agreements in respect of ESDP missions where the individual agreements do not depart from the structure of the Model Framework Agreement; Affects FCO only (arrangements set out in letter from Denis MacShane, then Minister for Europe, to the Chairmen of 2 April 2005)
- ECB Recommendations to the Council on the external auditors of National Central Banks in the Eurozone; Affects HMT only
- Technical adaptations to third country agreements and other existing EU legislation following the accession of Croatia
- Other Member State proposals to derogate from the VAT and Energy Taxation Directives

2.2.4 Separately the Committees have agreed with the Home Office that certain documents on Justice and Home Affairs business need not be deposited. These include:

- Europol Data Protection Reports (pre-negotiation)
- Europol Annual Budgets and Supplementary and Amending Budgets
- Europol Work Programmes
- Europol draft Rules of procedure
- Europol Annual Reports
- Organised Crime Situation Reports

Documents in the last two categories will be provided to the Committees under cover of a Ministerial letter which will include an explanation of the Government's view but will not include a summary of the document. Scrutiny of these documents is being reviewed between the Home office and the Committee following Europol becoming an Agency.

2.2.5 Separate arrangements have also been agreed between the Home Office and the Committees on the handling of certain Resolutions and Recommendations in the JHA field. Without prejudice to the terms of the Committees' Standing Orders Ministers undertake to deposit Resolutions and Recommendations which arise in the JHA field which:

- commit (politically or than legally) the UK Government or the EU to a course of action;
- actually or potentially give early warning of new legislation/policy;
- have any potential implications for EU competence; or
- indicate a significant change in the Government's policy.

Proposals which are simply exhortatory or express a view, such as Resolutions condemning certain activity or those reflecting a concern of a specific member State, will not be deposited unless they fall within categories (1)-(v) of the Committees' Standing Orders.

Recommendations which are not Member State initiatives may fall

within category (v). These arrangements were set out in a letter from Lord Filkin to the Chairmen dated 25 March 2003.

Documents not suitable for deposit

2.3.1 Documents should not be deposited if they fall into one of the categories below. However, in applying the criteria set out in the paragraphs below, you should take account of whether, and on what terms, documents (or the substance of a document) might have been made available to the European Parliament or any of its Committees. The presumption should be that documents available to MEPs should be made available to Parliament. Where a depositable document refers to a non-depositable document, consideration should be given to providing a copy of the latter to the Scrutiny Committee Clerks.

Classified documents. Those bearing the classification “Confidential”, or “Restreint” are classified. Where a classified document contains proposals for legislation which are not themselves confidential, it may be appropriate to deposit a suitably edited version. Special arrangements apply to certain documents, such as anti-dumping proposals, which are regarded as confidential until adopted (see paragraph [2.3.10](#)). Confidential documents for consideration at the European Council are sometimes published at a later stage. Since it is impossible to define in this context what is meant by confidential, any doubts about the suitability of a document should be considered directly with the Cabinet Office. See also paragraphs [3.2.4](#) (CLS opinions) and ii below (working documents);

Limité documents. The Government accepted a recommendation from the House of Lords EUC in their report on "Codecision and national parliamentary scrutiny", 17th report, 08-09, that the Committee should be able to see EU documents carrying a limité distribution marking. This commitment was signalled in the debate on the Committee's report which was held on 28 January 2010 and formally confirmed in a letter to the Chairmen of both scrutiny committees from Chris Bryant MP, then Minister for Europe dated 23 March 2010. Both Committees welcomed the Government's initiative, while reserving a final view on the new arrangements until there is experience of the way they work in practice. The following paragraphs provide background, context and the handling arrangements for sharing these documents with the Committees.

What does Limité mean?

Limité is not a security classification level, but a distribution marking. The Council Secretariat guidance on handling documents with a limité marking says that documents marked limité may be given to any member of a national administration of a member state and the Commission. Limité documents may not, however, be given to any other person, the media, or the general public without specific authorisation, nor may they be published in any way which makes them accessible in the public domain.

Advice on handling

Documents are marked *limité* in various circumstances: e.g. when they contain a reference to a legal opinion; when they contain specific views expressed by Member States; when they contain drafting proposals which are of a provisional nature, which are evolving or when they contain sensitive financial or security information. It is for a Member State to decide whether to share *limité* documents with their national Parliaments. However, they must remain *limité* and must not be used by the Parliamentary Committees in any way which discloses the substance or detail of the document.

Sharing *limité* documents with the Scrutiny Committees.

Many documents on the development of negotiations of a proposal will have a *limité* marking, particularly those proposals under the ordinary legislative procedure (formerly codecision) including for example the trilogue texts which set out the positions of the Council, Commission and the European Parliament, when trying to reach a compromise on changes to agree legislation. Releasing such texts will be a feature of the way in which the Government has undertaken to keep the Committees better informed of the passage of proposals through this procedure, either at the points in the process where the Government has undertaken to update the Committees or on those occasions when the Government has received a specific request for further information, or in other cases where the lead department judges it appropriate. See section 3.5. for further details of the stages of the procedure where *limité* documents may help in updating the Committees on developments.

Summary of the conditions attached to the sharing of these texts

- i. *Limité* documents can be shared with the scrutiny committees and are made available on the Government's authority
- ii. **They cannot be deposited** and subject to an explanatory memorandum as this makes their content public
- iii. The Committees cannot publish or comment directly on any *limité* document shared with the Committees in a way that puts the detail into the public domain but they will use the information to inform their overall scrutiny of a proposal
- iv. It is for each department to ensure that this handling caveat is clear in any correspondence with the Committee when using a *limité* text to inform the committees of developments. The following short statement is an example of standard text that can be used when sending a *limité* text to the Committees:

"The attached document [add description] is being provided to the Committee under the Government's authority and arrangements agreed between the Government and the Committee for the sharing of EU

documents carrying a limité marking. It cannot be published, nor can it be reported on in any way which would bring detail contained in the document into the public domain."

v. These principles apply equally when sending limité documents to the clerks at official level by agreement or to the Committees formally.."

Internal Working documents. This category includes papers prepared by the Council Secretariat, such as reports from Council Working Groups or Committees to other Committees or to the Council. Such documents are subject to the confidentiality of Council proceedings and should not be deposited; But where Limité marked documents can help the Committees in their scrutiny these can be made available in confidence as above;

Negotiating mandates on agreements with third countries or organisations (but see paragraphs [2.3.4](#) to 2.3.7);

Foreign text documents. Documents deposited in Parliament should be in English. Where documents contain some foreign text, a translation must also be provided if it would help Parliamentary consideration. You should liaise with the Cabinet Office and the Scrutiny Committee Clerks if such documents emerge (see also paragraph [3.2.17](#)).

Council Conclusions are not routinely deposited. In many cases they are not publicly available until they are agreed and published by the Council. The Government's line on whether Conclusions are subject to scrutiny was set out in responses to the European Scrutiny Committee's 2008 inquiry into the arrangements for the preparation, consideration and approval of the Conclusions of the European Council and the Council of Ministers (<http://www.publications.parliament.uk/pa/cm200708/cmselect/cmeuleg/cmeuleg.htm>) However, there may be occasions when the draft Conclusions are provided to the Committee(s) to meet a request to be kept informed of developments or respond to specific questions raised using the "in confidence" handling arrangements described above. There are also occasions when the conclusions on a Commission Communication submitted to the Council will be substantive in nature and commit the EU to a particular course of action and it is important to liaise with the Committees closely on these type of conclusions to ensure scrutiny can be completed before they are adopted by the Council of Ministers.

2.3.2 Documents emerging from the European and other Councils, such as communiqués, are not normally deposited. Copies may be placed in the libraries of both Houses and sent to the Scrutiny Committee Chairmen for information.

Negotiating Mandates and External Agreements

2.3.3 The Community procedure for external agreements with third countries and organisations normally includes the following stages:

- i. the Commission submits a draft negotiating mandate to the Council for approval (usually confidential and not subject to scrutiny but Ministers are required to inform the Committees of the mandate approved (see below));
- ii. the Commission negotiates with the third party and initials the resulting agreement with the approval of member states (not subject to scrutiny);
- iii. in some circumstances the Commission may submit a proposal to Council for signature of the agreement as a separate proposal or a proposal which combines proposals for signature and conclusion (subject to scrutiny) see also 2.3.9);
- iv. the Commission submits a proposal to the Council for conclusion (ratification) by the Community (subject to scrutiny).

In practice the Commission sometimes secures a broad political agreement that exploratory talks should begin, without a formal mandate but on the basis of clear informal indications of objectives from member states. In these circumstances, it is only after substantive negotiations and on the eve of clinching a deal for initialling that the Commission seeks approval of a mandate. Thus, the first piece of paper available for scrutiny will be the text of the final agreement, which only appears at a stage when Council approval is urgently needed. These procedures create considerable scrutiny problems. Ministers have agreed that the Scrutiny Committees should be informed **at the same stage as the European Parliament** about prospective EC external agreements. The detailed scrutiny procedures are described in paragraphs [2.3.4](#) – 2.3.8.

Draft Negotiating Mandates

2.3.4 Documents containing draft mandates relating to negotiations with third countries or organisations require careful consideration. These include draft proposals for Council decisions authorising the Commission to undertake or participate in bilateral or multilateral negotiations. Documents containing negotiating **positions** are normally issued in the Commission's "COM (or SEC) Confidential/Restreint" series and are not intended for publication. They should not be deposited in Parliament since publication could prejudice the Community's negotiating position.

2.3.5 Departments should provide the Chairmen of the Scrutiny Committees with details of negotiating mandates as soon as they have been approved. This should include mandates for negotiations with third countries and international organisations and also mandates for negotiations within international organisations without breaching confidentiality. An indication should be given as to the parties to the negotiation, the subject matter and any special factors – such as the date of expiry of a previous agreement. Departments should ensure that the Committees are kept informed as much as possible about the

scope and development of negotiations prior to signature and/or conclusion of an agreement.

2.3.6 When neither a detailed negotiating mandate nor simple authority to open negotiations has been submitted to the Council there is a difficult balance to be struck between preserving the confidentiality of the negotiating process and keeping Parliament informed of events in good time. Where it appears likely that an important negotiation will be concluded within about six months, with rapid submission of formal proposals to the Council thereafter, you should consider writing to the Committees about the opening of negotiations and their scope, although without providing details of EC or partners' negotiating positions.

2.3.7 Proposals which do not contain detailed negotiating mandates, but simply authorise the Commission to undertake or participate in negotiations, and which are issued in the Commission's ordinary "COM" series and published by the Institutions will be deposited in Parliament.

External agreements

2.3.8 Because of the difficulties on confidentiality described above, the timing of submission of an EM on external agreements may vary from case to case and will be dependent upon a public document being available to deposit. Paragraph [2.3.6](#) above advises Departments to consider writing to the Committees at an early stage in the negotiations in order to keep Parliament informed if no document can be deposited. The Scrutiny Committees should be kept informed at the same stage as the Commission informs the European Parliament. It is common for the Commission to brief the European Parliament prior to signature of Agreements with third countries. Formal consultation under Article 218 does not take place until later. You should keep in touch with UKRep to ensure they are alert to any such exchanges in the European Parliament. Where such briefings have been given to the EP, a letter or unnumbered EM should be submitted to the Westminster Parliament.

2.3.9 Whether or not scrutiny has taken place at an earlier stage through deposit of a document (paragraphs [2.3.4](#) and 2.3.7) or submission of a Ministerial letter (paragraphs [2.3.6](#) and 2.3.8), **a proposal for signature and/or conclusion of an external agreement must be deposited, with a copy of the draft agreement as soon as it is available.** This should normally be done immediately after initialling (or after signature if there is no initialling stage) so as to allow completion of scrutiny before final adoption by the Council. The following sub-paragraphs give more detailed guidance:

- i. proposals for a decision of the Council **authorising signature subject to a subsequent conclusion** on behalf of the EU of the agreement in question are submitted for scrutiny;
- ii. Commission proposals for a decision of the Council for a signature which will constitute **definitive** acceptance

by the EU, or for a conclusion after signature by the Community with **definitive** effect, should be submitted for scrutiny. They involve a firm commitment by the EU and, in some cases, confer directly applicable rights and obligations on individuals. In some cases the Commission issues a proposal to sign and conclude an agreement. These documents will be deposited. On some occasions the Commission publishes a proposal to sign which “may be subject to possible conclusion”. In these cases the document will be deposited;

iii. Proposals for decisions relating to **provisional application** by the EUy should be submitted for scrutiny. (Provisional application is a procedure, used for example in commodity agreements, whereby member states accept provisionally the obligation of an agreement pending definitive ratification);

iv. Where the United Kingdom will be a party in addition to the EU, the agreement may need to be specified under Section 1(3) of the European Communities Act 1972. This is separate from and additional to any requirement for scrutiny. Guidance on the specification of Treaties can be found at <http://www.lion.gsi.gov.uk/LION/areapres.nsf/0/67C7F629AB3AB312802571CB003DBB5A?OpenDocument> ;

v. Where Opinions are given by the Commission in connection with forthcoming Treaty negotiations, and are designed to lead to action by the Council, it may be useful to submit them for scrutiny. Each case should be considered individually.

Other Confidential Documents

2.3.10 Some documents must, by their nature, remain confidential until adoption, for instance certain **financial proposals**, **CFSP documents** or documents relating to **anti-dumping measures**. Special arrangements have been agreed with the Scrutiny Committees for the handling of such documents. It is important that the agreed texts are deposited quickly after adoption and an EM should follow in accordance with the usual deadline for all EMs.

CFSP/ESDP and JHA Documents

2.3.11 The FCO leads on the deposit of CFSP and ESDP documents (eg restrictive measures proposals), and the Home Office/MoJ will often take the lead in identifying certain Home Affairs/Justice matters.

EU Budget Documents

2.3.12 The Treasury takes the lead in liaising with the Committee Clerks to determine which EU budget and related documents are deposited in Parliament.

Procedure for deposit

2.4.1 The Cabinet Office and Departments receive from the Council Secretariat draft proposals for legislation and other documents which have been submitted to the Council of Ministers and other institutions. These documents are available via Extranet (the Council Secretariat's system for electronic transmission of EU documents).

2.4.2 Documents clearly for deposit are deposited automatically. Those of uncertain status are only deposited when, following consultation, the lead department has emailed the Cabinet Office confirming that they are suitable for deposit. You may be aware of emerging documents suitable for deposit sooner than the Cabinet Office. On such occasions you should contact the Cabinet Office to alert them to this and to discuss whether to deposit an early version, particularly if the item is expected to be fast-moving.

2.4.3 Once a document has been identified as suitable for deposit, the Cabinet Office notifies the FCO who arrange for the documents to be deposited. This should be done within **2 working days** of receipt via Extranet for documents falling to automatic deposit; or of the decision having been taken to deposit in other cases. In cases of doubt the Cabinet Office identifies the department most likely to have the lead interest in the document and writes seeking a view on the document's suitability for deposit requesting a reply within **5 working days**. You should make every effort to meet this deadline. Where there is doubt as to which department has the lead interest the Cabinet Office must be informed as quickly as possible (see paragraph [3.1.1](#)). As mentioned in earlier paragraphs, there are arrangements in place for HM Treasury, FCO and Home Office/MOJ to take the lead (in consultation with FCO) in the deposit of certain Community budget, CFSP, and JHA documents respectively.

2.4.4 The FCO produces a list (known as the batch list) which reports the deposit of documents in Parliament. This is copied to the Cabinet Office, Departments and Parliament.

Withdrawal of deposited documents

2.4.5 On rare occasions documents may need to be withdrawn from Parliament. A proposal may have been withdrawn by the originating body, or a document which does not satisfy the terms for deposit may have been deposited in error, or in some cases where the Clerks agree the document need not have been deposited. Cabinet Office will liaise with the Committee Clerks and with FCO to arrange for a withdrawal notice to go to all recipients of the deposited document. See also paragraph [3.10](#) for withdrawal of EMs.

Devolved Administrations

2.4.6

Under the devolution arrangements the Government has acknowledged that the devolved administrations should have the opportunity to consider and express a view on all EU documents submitted to Westminster for scrutiny. Arrangements are therefore in place for all EU documents to be made available to the legislatures and for EMs to be copied to the devolved Executives. However, the Government has not extended to the devolved bodies the terms of its undertaking to the UK Parliament not to agree to matters in the Council of Ministers before scrutiny has been completed (scrutiny reserve resolutions). See also paragraphs [3.1.2](#), [3.1.6](#), [3.2.3](#) and [6.1.3](#).

SECTION 3: EXPLANATORY MEMORANDA

Introduction

3.0.1 An EM is a formal Government communication to Parliament and its preparation therefore needs the same care as e.g. ministerial statements and PQs. They should therefore follow the EM template (Annex G) and be as full and helpful to the reader as possible. If an EM is incomplete neither Committee will complete their consideration of the document until all relevant information has been provided.

3.0.2 This Section describes:

- the timetable for the production of explanatory memoranda (EMs);
- the form and content of EMs; and
- variations on the basic case.

Examples of the various types of EM, contents, and the circulation requirements for each type are shown in Annexes G-J. EMs are public documents are published by the Cabinet Office on its EMs website together with the associated EU document on which the EM is based and related Ministerial letters to the Committees. The website address is: <http://europeanmemoranda.cabinetoffice.gov.uk/>

Timetable

3.1.1 **The Government is committed to bringing proposals rapidly before the Scrutiny Committees.** As soon as a document has been deposited in Parliament the Cabinet Office will write to the lead department requesting that an EM be prepared. EMs must normally be provided no later than **10 working days** from the date of deposit of the document. Every effort should be made to submit the EM by this date. If an extension to an EM deadline is required you should consult the Committee clerks at the earliest point. If a deadline extension is agreed the Committees will not record an EM as late if it is submitted by the revised deadline otherwise a late EM will be seen as an occasions where the Government has failed to meet its commitment to parliament. **However, a shorter deadline (8 working days) is attached to those EMs on JHA proposals which are subject to the UK's opt-in decision** where the Scrutiny Committees have 8 weeks in which to complete their scrutiny of such proposals. During the passage of the Lisbon Treaty Bill in June 2008 The Government (Baroness Ashton) agreed to key commitments on how Parliament would oversee the application of the opt-in where the key elements were:

- o not to make a decision to opt-in within the first 8 weeks of publication of a proposal (where the UK has 3 months to notify its decision to the Council) and
- o to take the views of parliament into account in deciding whether to opt-in where those views were given during the first 8 weeks of this 3

month period; in this context the EM should explain the factors the Government will be taking into account in reaching their decision.

The full commitments given to Parliament are set out in Annex S.

Additionally, for all legislative documents covered by the **Subsidiarity protocol** (ie any act adopted by the ordinary or legislative procedure – so these may include proposals from the Commission, initiatives from a group of Member States, initiatives from the European Parliament, requests from the Court of Justice, Recommendations from the European Central Bank, and requests from the European Investment Bank), the Committees have made it clear that they expect EMs to be submitted promptly to ensure the Committees have the full 8 weeks available to them to consider the subsidiarity implications and if necessary send a reasoned opinion stating why it considers the draft in question does not comply with the principle of subsidiarity.

Therefore Departments cannot expect the Committee staff to extend the deadline for EMs in these cases.

For all documents which need to be agreed quickly the EM should be prepared as soon as possible – using an unnumbered EM if no official depositable text exists to ensure as much chance of scrutiny clearance as possible – see paragraph [3.3.1](#) for examples of when to use an unnumbered EM. The Scrutiny Committees accept that it may take a little longer in the case of non-legislative documents which pose particular problems (eg, where the lead department needs to consult other interested Departments). The Cabinet Office will provide guidance in the special circumstances of the Summer Recess (see Section 7).

3.1.2 EMs are submitted electronically by email ([Circulation lists for various forms of Memoranda](#)). Both Committees have requested that wherever possible, advance copies of all EMs are sent electronically, ahead of the final copy circulation. Email address information is circulated separately by the Cabinet Office from time to time but details of recipients can be obtained from the Committee Offices (Commons, 219 3292, and Lords, 219 5791). **If an EM is likely to be delayed beyond the 10 day deadline, the Cabinet Office and the Committee Clerks should be informed as early as possible of the reasons, particularly where this will have implications for the commitments set out above on opt-in decisions and on subsidiarity. Departments should also keep colleagues in the devolved administrations informed as necessary to help with the timetabling of the scrutiny of measures in the devolved legislatures.** If the UK policy has not been agreed or there are other areas of uncertainty, the EM should say so while giving as much information as is available at the time. Where an Impact Assessment (IA) has yet to be produced, an initial assessment of costs should be given where this is known. **Submission of the IA must follow as soon as possible** (see paragraph [3.2.12](#)). Where a proposal is expected to progress rapidly, you should work to a shorter deadline and should, where possible, start to prepare the EM before deposit and keep the clerks informed. In respect of re-examined proposals submitted to the Council under the special legislative procedure or new

texts that emerge under the ordinary legislative procedure (see [Annex M](#)) the Council must act within a specified timeframe. In these circumstances it is essential that EMs are submitted quickly.

3.1.3 If a particular EM needs to be taken by the Scrutiny Committees as a matter of urgency, the Clerks (if forewarned) will normally find it helpful to receive an advance draft copy of the EM in anticipation of receiving the final EM in time for formal consideration by the Committees. It would also be helpful if these drafts could also be copied to the devolved administrations and legislatures. **However, if the final version is to differ from the draft submitted earlier, the Clerks must be notified at the earliest opportunity and provided with details of the changes.**

Lead Responsibility

3.1.4 The Cabinet Office will identify the most likely lead department for a document. If it is unclear which Department has the main policy interest in a particular proposal, interested Departments should make urgent efforts to agree among themselves who will take responsibility for the preparation of an EM, and ensure that it is cleared with other interested Departments and let the Cabinet Office know what has been agreed.. Exceptionally, EMs may be signed by more than one Minister, or signed by one Minister on behalf of another as well as him/herself. If Departments are unable to reach agreement, they should inform the Cabinet Office quickly by telephone and then follow-up **in writing (by email) urgently** within the 10 day deadline, setting out their views on the allocation of responsibility for the proposal. The Cabinet Office will then take a decision consulting those with an interest. If it is later decided that the responsibility for the proposal lies with another Minister, the Cabinet Office will notify the Scrutiny Committees, and agree a new deadline for the submission of the EM.

3.1.5 In cases where a document contains more than one proposal it may be appropriate to submit more than one EM under the single document reference number which would normally take the form of free-standing parts addressing each proposal contained within the document (eg, 2001/00, Parts A-D etc.). There are also occasions when it may be appropriate to address more than one document in a single EM; and approach commonly used where there are e.g. separate proposals to sign and conclude an agreement. The Cabinet Office should be informed of this approach, if possible before deposit, so the staff of the Scrutiny Committees can be consulted.

3.1.6 The Concordat on the co-ordination of European Union policy issues (paragraph B 3.32) states that the lead Whitehall department should liaise as necessary with the devolved administrations in the preparation of EMs and will keep them informed of progress. Copies of the final EM should be copied to the devolved administrations at the same time it is submitted to the UK Parliament (see paragraph [2.4.6](#) above).

Form and content

3.2.1 All EMs should bear the date of submission to Parliament. They should also bear the same Council number as the document to which they refer. The COM, SEC, JOIN or SWD number of the document (where appropriate) should also be shown. The standard form of EM is shown at [Annex G](#). This form should be used for all proposals for legislation, for substantial amendments to legislative proposals, and for other documents published for submission to the Council of Ministers or the European Council. However, when preparing memoranda on amended proposals, it may be appropriate to delete some of the standard side headings, eg, Ministerial Responsibility, Legal and Procedural Issues etc, where the information may not have changed since the submission of the EM on the original proposal. If this approach is adopted it is important that the EM makes its absolutely clear that the information not included remains the same as that given in the earlier EM. In respect of some non-legislative documents eg, Commission Communications to the Council, Reports etc, certain parts of the standard form may be irrelevant (eg, legal and procedural issues). These headings may be disregarded but it is safer to include them but simply confirm that no such issues arise. This avoids the need for the Committees to question whether the issue is relevant. The EM need not be strictly confined to reporting on the deposited text; Parliament should be kept informed of recent progress. Guidance on the information to be provided under each heading is given in paragraphs [3.2.2](#) – [3.2.16](#) below and Annex G. **Exceptions to the provision of full, signed memoranda are rare, and are explained in paragraphs [3.7.1](#)-[3.7.3](#).**

Content of a Standard EM

Subject Matter

3.2.2 **The description of the subject matter should be sufficient to enable all recipients to understand broadly what is proposed without reference to the EU document.** This section should include the scrutiny history of the document (details can be obtained from departmental scrutiny co-ordinators or the Cabinet Office on 276 0241); reference numbers of any earlier proposals on the same subject or other relevant documents which have previously been scrutinised should be quoted and reference should also be made to reports **by either Scrutiny Committee** or to debates in **either House** on those documents. In respect of the Lords Scrutiny process, any correspondence with Ministers on earlier documents should be referred to (see paragraph [4.10.3](#)). An example of how scrutiny history should be referred to is shown in Annex I. References to any deferment of a document by either Committee (ie, where the Committee has postponed consideration of an EM because further information/clarification is being sought) should be included as appropriate. **Scrutiny history should be checked against the relevant Reports of the Scrutiny Committees, and in the Lords the “Progress of Scrutiny” document (these can be accessed from the Committee websites at http://www.parliament.uk/parliamentary_committees/european_scrutiny_cfm and http://www.parliament.uk/parliamentary_committees/lords_eu_select_committee.cfm respectively.** It may be convenient to set out the scrutiny history in tabular form if it is long and complex.

Ministerial Responsibility

3.2.3 The EM should state which Departmental Minister is primarily responsible for a proposal (usually the Minister in charge of the Department even if another of the Department's Ministers signs the EM) and any other Minister who may have a Departmental interest. EMs commenting on policy issues must be signed personally by a Minister (ie, Private Secretaries cannot sign on their Ministers' behalf).

Interest of the Devolved Administrations

3.2.4 Reference should be made to the interests of the devolved bodies referring to "Scottish Government Ministers", "Welsh Government Ministers" and "Northern Ireland Ministers" as appropriate. The Government has given an undertaking to the Committees that whenever an EM indicates that a Minister from one or more Devolved Administration "have an interest" in the subject matter, this should be taken to mean that the devolved administration has been consulted about the terms of the EM and therefore its subject matter. This should be stated explicitly in the EM using the following template guidance. It should be remembered that international relations, including relations with the EU are a reserved matter. But the agreements with the devolved administrations do provide for them to be directly and fully involved in decision making on those EU issues that touch on devolved areas, and on those non-devolved matters that have an impact on devolved areas. The devolved administrations are of course responsible for implementing European obligations in respect of devolved matters.

These interests can be captured as below.

- **Where EU proposals and other documents are on matters that are reserved under the devolution settlements and where the devolved administrations clearly have no interest and need not be consulted;** this should be clearly stated in the EM and departments must be ready to rebut any challenges made about why the devolved administrations have not been consulted. For the vast majority of these cases it will be quite clear that there is no separate devolved interest to record.

Example language to use in EMs: [The UK's Foreign Affairs policy] is a reserved matter under the UK's devolution settlements and no devolved administration interests arise. The devolved administrations have therefore not been consulted in the preparation of this EM.

- **Where EU proposals and other documents are on matters which are reserved under the devolution settlements but where there may be a particular impact upon the devolved and on which the relevant devolved administration(s) has been consulted in the preparation of the EM;** where there is a clearly identifiable issue or interest it would be appropriate for the EM to set that out.

Example language to be used in EMs: [The UK's Trade policy] is a reserved matter under the UK's devolution settlements but the devolved administrations [either collectively or singly – insert as appropriate] have an interest in [highlight issue(s)] and have been consulted in the preparation of this EM.

- **Where EU proposals and other documents are on matters which are devolved under the devolution settlements and will therefore impact directly on the responsibilities of the devolved administrations** and where in every case the EM should be prepared in consultation with the devolved and should say so explicitly.

Example language to be used in EMs: [Agriculture] is a devolved matter under the UK's devolution settlements and the devolved administrations [either collectively or singly] have been consulted in the preparation of this EM.

The precise nature of the devolution settlements vary between Scotland, Wales and Northern Ireland and are subject in some areas to on-going change and revision. Therefore Departments should consult the MoJ and Territorial Departments on the details of the specific devolution settlement in relation to a particular Devolved Administration if there is any doubt about what the settlements cover or where a reserved matter may impact on the responsibilities of a devolved administration. As a general rule, however, issues reserved to the Westminster Parliament include:

- The Constitution
- Foreign Affairs
- Defence
- International Development
- Economic and Financial Policy
- Immigration and Nationality
- Trade
- Aspects of energy regulation (eg electricity, coal, oil and gas and nuclear energy)
- Aspects of transport (eg regulation of air services, rail and international shipping)

Consequently devolved matters include:

- Education and training
- Health and social work
- Local Government and housing
- Agriculture, forestry and fisheries
- The environment
- Tourism, sport and heritage
- Economic development
- Internal transport.

Legal and Procedural Issues

3.2.5 The section on **legal and procedural issues** should contain the following information; you should consult lawyers:

- (i) The **Legal basis** upon which the proposal relies. This will normally be the Treaty Article cited in the preamble. If the proposal is based on secondary EU legislation, the EM should refer to that legislation and the Treaty Article on which it was based. Occasionally a proposal may not cite any specific legal basis – for instance it may simply cite “the Treaty”. In such cases, where practicable, the EM should identify any Article or

Articles on which the proposal could or should have been based. Cross-refer to any reference under “policy implications” to any doubt about the vires of a draft instrument (see paragraph 3.2.12). The Government has given an undertaking to the Committees that EMs will provide a clear commentary on the justification of the use by the Commission of Article 352 (formerly 308EC) where this has been chosen as the sole legal base for a proposal. This should draw on the Commission’s reasoning and comment on why the Government sees this as justified. That commentary should explain why Article 352 is necessary to attain one of the Treaty objectives set out in Article 3(2), 3(3) or 3(5) EU. EMs commenting on Article 352 should be cleared with the Cabinet Office and FCO given the potential for an Act of Parliament to be required to support such a proposal as provided for in the EU Act 2011. In accepting a legal base, even if it not the Government’s preferred legal base, clear justification must be given as to why the legal base is acceptable.

(ii) **Legislative procedure**; whether the ordinary legislative procedure (OLP), formerly codecision, or special legislative procedure (SLP), procedures are applicable. This can be found by consulting the text of the Article on which the proposal is based in the EC Treaty. In the case of SLP or other procedures, it will be necessary to describe the type of SLP or other procedure which applies e.g. SLP (Council after consulting the European Parliament);

(iii) The **voting procedure** applicable;

(iv) The **impact on United Kingdom law** is of fundamental interest to the UK Parliament. Under this heading the aim should be:

- if there is an impact on UK law, to give as much detail as possible of the **existing provisions** or **the area of existing law** (including both enacted and common law) likely to be affected, whether or not new or amending legislation will be required. Where the position differs in different parts of the United Kingdom, this should be explained. If there is no impact on UK law, or if the instrument is unlikely to have any implication in this country (eg, a proposal relating to Community staff), it is sufficient to state just that, with a brief explanation; to say whether legislative action might be required to **implement** or **supplement** the instrument. If so, mention should be made of any relevant domestic enabling powers; there is no need to suggest whether these powers or Section 2(2) of the European Communities Act 1972 will be regarded as more appropriate. This section should include a

best assessment, on the basis of the proposal as it stands, of the plans the Government has to implement the legislation either by primary or secondary legislation. The Scrutiny Committees acknowledge that a definitive view cannot be given at the outset. But EMs on subsequent amendments or supplementary EMs submitted at a later stage, may be used to update the Committees where the position may have become clearer. This section (or under policy implications if more appropriate) should include any relevant information about particular difficulties in implementing the legislation as appropriate. Section 2 of the BIS Transposition Guide on how to implement European Directives effectively should be consulted. This guidance provides detailed information about how to handle a Commission proposal and the options available to implement the legislation. This guide can be found at; <https://www.gov.uk/government/publications/implementing-eu-directives-into-uk-law>

Where amendments to existing EC Directives will be amended in domestic law without any further amendment of the S.I. implementing the original EC Directive, and therefore without recourse to any further parliamentary procedure (using **Ambulatory References**), it is important that this point is made in this section of the EM;

(v) application to **Gibraltar**. The UK, as the Member State responsible for Gibraltar's external relations, is responsible for ensuring Gibraltar's compliance with EU requirements. EC legislation (with some exceptions) applies in Gibraltar. Common Foreign and Security Policy instruments generally apply to Gibraltar (unless the contrary is clear from the instrument). The territorial application of Justice and Home Affairs instruments is dealt with on a case by case basis. See COLA guidance on Gibraltar at <http://www.lion.gsi.gov.uk/LION/areapres.nsf/70601a68a73227d480256e8c004bca59/740f1bb65883d2288025771400536f40?OpenDocument>

(vi) **Fundamental rights analysis.** In March 2007, the Government gave Parliament an undertaking to provide an analysis of the compliance with fundamental rights of every draft legislative proposal submitted for scrutiny. Article 6(1) TEU states that: *“The Union recognises the rights, freedoms and principles set out in the Charter of Fundamental Rights of the European Union of 7 December 2000, as adapted at Strasbourg on 12 December 2007 which shall have the same legal value as the Treaties”* Article 6(3) TEU states *“Fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms and as they result from the constitutional traditions common to the Member States, shall constitute general principles of the Union’s law”*. The lead Government Department must therefore provide not just a statement but an analysis of whether, and why, in its view, the proposal respects those fundamental rights. It is worth noting that the Committees interpret the term “legislative proposal” in the widest sense (though as to CFSP instruments – see below). For consultative documents eg Green and White Papers and other Commission communications which may lead to legislation it may also be appropriate to draw attention to fundamental rights issues if they arise – but at such an early stage in the legislative process it is unlikely that a detailed analysis of such documents will be required. All EMs on legislative proposals (and consultation documents where appropriate), should therefore be complete and contain a fundamental rights analysis, whatever its length/depth (see more detailed guidance below). The analysis will assist Parliament in the scrutiny process of European legislation and should be provided along the following lines:

- Provide details on the most significant fundamental rights issues thought to arise in the European proposal, together with the Minister's conclusions on whether the proposal respects those rights. For some proposals, no fundamental rights issues arise, in which case this should be stated.
- Departments must properly explain fundamental rights issues, identifying which provisions of the EU proposal may engage fundamental rights and explaining what rights are potentially engaged, and whether (in the opinion of the Minister) they are respected. In some cases, where the issue is not particularly complex, it may be sufficient to state that an issue has been considered, and that a particular conclusion has been reached. The basis for that conclusion should be stated succinctly. For example, the proposal might record the Minister's conclusion that a provision should not be regarded as affecting the right to respect for private and family life and give a brief explanation how that conclusion has been reached. However where a fundamental right is likely

to be engaged, Departments should analyse both whether it is engaged, and, in the case of qualified rights, whether any potential interference with the rights is justified within the human rights framework. Legal advice should of course not be disclosed.

- For proposals which do not (or have a minimum) impact on the UK or UK citizens in Europe, the lead department has some flexibility on the length/depth of the analysis. For example, in the case of Title V TFEU or Schengen measures to which the UK has not opted in a less detailed analysis may be appropriate. However, if the lead Department is aware that the Government is likely at a later stage to opt in to the EU measure under scrutiny, then a more thorough analysis is needed. In all cases the Committees expect analysis appropriate to the content of the proposal whether or not the Government has decided to opt in. See letter from Michael Wills to Lord Grenfell dated 8 May 2008 and Lord Grenfell's reply (http://www.cabinet-office.gsi.gov.uk/euro/adhoc_guidance_for_scrutiny.htm).
- Proposals for CFSP measures differ from the legislative proposals referred to above, but fundamental rights analysis should continue to be provided as a matter of best practice insofar as such issues arise (or should simply state if no issues arise).

Departments should be aware that EMs are considered public documents and are published by the Cabinet Office. This should not prevent Departments from providing a full explanation of the policy justifications insofar as relevant to the analysis of whether fundamental rights are respected by the proposal.

In cases of doubt about the appropriate length/depth of the analysis, the lead Department should immediately contact the Committees' Clerks or Legal Advisers and the Cabinet Office.

The complexity or length of some proposals may make it difficult for Departments to complete the fundamental rights analysis within the current 10-day deadline for EMs (or earlier in respect of opt-in decisions). In these rare occasions, the relevant Department must:

- (a) Immediately** contact the Committees' Clerks and the Cabinet Office European & Global Issues Secretariat to agree that the fundamental rights analysis should be submitted separately in the form of a supplementary EM.
- (b) Send the EM to Parliament within the agreed 10-day deadline (or earlier if the proposal relates to a JHA opt-in decision) without including the fundamental rights analysis. This is done in order not to delay consideration of other aspects of the proposal pending completion of the fundamental rights analysis.

Although this guidance is aimed predominantly at legislative proposals, there may be occasions when it is appropriate for EMs on consultation documents to include an analysis, though the Committees recognise that at such an early stage in the legislative process it is unlikely that a detailed analysis of such documents would be required. If in doubt consult the Committee clerks of what they think would be helpful.

Note: Specific mention should not be made of Council Legal Service opinions since these are not public documents.

European Economic Area

3.2.6 The Government has given an undertaking to keep Parliament informed of the development of EU legislation which is to be extended to apply to the European Economic Area (EEA). The EEA Agreement extends the principles of the EC Single Market to three of the four European Free Trade Association (EFTA) countries (Norway, Iceland and Liechtenstein – Switzerland rejected membership of the EEA in 1992). It covers the “four freedoms” (free movement of goods, capital, services and persons), competition rules and additional co-operation intended to strengthen the internal market (such as research and development, consumer protection etc), but does not include the Common Agriculture Policy or the Common Fisheries Policy. EMs should therefore refer to a measure’s **application to the EEA**.

3.2.7 One of the central features of the EEA Agreement is that its common rules are continuously updated by adding new Community legislation on the internal market. Each month a number of EEA-relevant pieces of legislation are incorporated into the EEA Agreement by decision of the EEA Joint Committee.

3.2.8 Once a new EC measure has been formulated, a decision is taken on whether it falls within the scope of the EEA Agreement. If relevance is established, the Commission notifies EFTA of the measure when making a formal proposal to the Council on the EC measure. The measure is then discussed separately in the EEA Joint Committee in parallel with discussions within the EC. Once the measure is adopted by the EC, the EEA Joint Committee decides whether it should be adopted as an EEA measure. This requires agreement by both the EC (whose decision is decided in the Council) and EFTA. The decision to extend the measure to the EEA should take place as soon as possible after it has been adopted within the EC.

3.2.9 Parliamentary scrutiny of a measure to be included in the EEA Agreement takes place at the same time as that of the EU measure. The section in the EM on Application to the EEA should be used not only to highlight EC measures applying to the EEA but also potentially important issues likely to arise during the negotiations.

Subsidiarity

3.2.10 The aim of this section is to provide Parliament with a concise assessment of whether the Government believes that the proposal in question is justified in accordance with the principle of subsidiarity as set out in Article 5 TFEU (see also Protocol No.2 annexed to the Treaty on the application of the principles of subsidiarity and proportionality which sets out how the principles of subsidiarity should be applied.). So these may be proposals from the Commission, initiatives from a group of member states, initiatives from the European Parliament, requests from the Court of Justice, recommendations from the European Central bank and requests from the European Investment bank for the adoption of a legislative act.

The protocol will not apply to e.g. CFSP instruments, nor will it apply to matters within exclusive competence of the EU. It will not apply to non-legislative documents eg Commission communications and reports. But where the Commission has issued a consultation paper for future legislation it may be appropriate to draw out any subsidiarity issues to inform the scrutiny committees' early thinking on future legislation. The Commission (or whoever initiates) should provide a justification of any proposal against the principle of subsidiarity in the explanatory memorandum which forms part of their document. Where the Government reaches the same conclusion as the Commission, it will be necessary to explain the reasons from the UK perspective. In cases where the Government disagrees with the Commission's conclusions, the reasons for doing so should be set out fully. It should not be assumed that proposals to which the UK objects on policy grounds are defective in subsidiarity terms or that those which match UK policy are necessarily acceptable on subsidiarity grounds.

Care should be taken not to confuse subsidiarity with other legal and procedural issues, such as Treaty base, which should be covered elsewhere in the EM, or to restrict consideration of subsidiarity to the question of competence as referred to in Article 5. Where the proposal in question is a draft legislative act within the meaning of the EU treaties, certain procedures apply under the Subsidiarity Protocol (Protocol No. 2 annexed to the Treaties on the application of the principle of subsidiarity and proportionality) which enable either House to issue to the EU institutions a reasoned opinion stating that it considers that the draft act does not comply with the principle of subsidiarity. The Protocol does not apply if the EU proposal is not a draft legislative act. It is not necessary for the Government to give a view in the EM as to whether these procedures apply. But it is important to note that the Government's assessment of the principle of subsidiarity should be set out in the EM, whether or not the Subsidiarity Protocol applies.

Policy Implications

General

3.2.11 This section should present a clear account of the principal issues from a UK viewpoint, taking account of the Commission's EM, but providing the Government's own analysis and position. The implications of policies may be different in Scotland, Wales and Northern Ireland to that of the UK as a whole. It is therefore important that all implications are considered as necessary, in

consultation with officials from the devolved bodies. It may be helpful to give some factual background on the situation in the rest of the EU if this bears on the nature of the proposal or its origin. If there are no policy implications, it is better to avoid a bare negative and to explain why this is so, even at the risk of being obvious. Where possible, the Government's attitude to a proposal should be given perhaps referring to public or Parliamentary statements already made by Ministers. You must ensure that where appropriate, the EM comments on any concerns the Government might have about the effectiveness of the Commission's evaluation of EU funding programmes, and also where the Government feels that Communications or other non-legislative documents from the Commission are excessively long or unfocussed. You should comment on any representations the Government has made or intends to make about these issues. **Taking the time and effort to get this right at the outset will pay dividends for both the Committees and Departments as it will limit the occasions when the Committee(s) will need to ask for further information.**

3.2.12 If it is intended to pursue a point on the vires of a proposal, you should indicate this here (with a cross-reference under "legal basis") and provide an explanation of the concerns and the arguments relied upon. Care should be taken not to present the Government's view too dogmatically, particularly if the legal issues are unresolved. Where another member state has publicly (ie, outside Council meetings) questioned the vires or the policy of the proposal, you should consider whether these concerns are sufficiently significant to be indicated under this heading. This section should also highlight any questions relating to compatibility with the UK's international obligations, particularly those resulting from the membership of the World Trade Organisation. This section should be used to comment on the factors the Government will take into account when considering whether or not to **opt-in to a JHA proposal**, and should also be used to provide a clear commentary on the Government's view on powers to be conferred on the Commission **Delegated or Implementing Acts**.

Impact Assessment Checklists

3.2.13 In July 2011 Ministers approved new operating principles for the negotiation of European legislation which included "Departments will endeavour to seek clearance for their proposed UK negotiating position promptly. Departments should analyse the order of magnitude of likely impacts of different negotiating options to help Ministers make evidence-based decisions. The analysis should be proportionate to the proposal and time available and be presented succinctly." A new Impact Assessment Checklist has been introduced to capture the information and enable Ministers and Parliament understand the potential impacts and take an informed view. Key factors on the level of detail for a Checklist include:

- The level of interest and sensitivity surrounding the policy
- The degree to which the policy is novel, contentious or irreversible
- The stage of policy development

- The scale, duration and distribution of expected impact
- The level of uncertainty around likely impacts
- The data already available and resources required to gather further data
- The time available for policy development

Guidance and correspondence with the Scrutiny Committees can be found at

<http://www.civilpages.gsi.gov.uk/display/EGIS/Ad+Hoc+Scrutiny+Guidance+Letters>

Other key points are:

- an IA Checklist must accompany an EM wherever possible. Where necessary, the EM may contain an initial assessment of risks, costs and benefits – but must make it clear that a more comprehensive IA Checklist with a robust assessment of options, costs, benefits and who will be affected, will follow if this cannot be provided within the normal 10 day deadline for submitting EMs;
- where the IA Checklist follows the EM it should normally be submitted under cover of a signed supplementary EM though the Clerks may agree that it be submitted under a Ministerial letter;
- if an existing EU proposal is modified such that a new EM is required, an updated Checklist should also be submitted;
- some legislation does not require an IA. These include regulations which amend an existing regulatory regime without imposing any additional costs or savings or have a negligible impact on business, charities or voluntary bodies – **in such cases, Departments should explain their position to the Committees at the earliest opportunity and be prepared, if challenged, to defend their decisions not to produce a Checklist;**
- Where the parliamentary Committees are not satisfied that sufficient analysis has been provided for them to understand a proposal effectively, they will continue to request further information on a case by case basis.

The European Commission has a two-stage system of impact assessment for its own proposals, covering their economic, environmental and social impacts. More information on this system is contained in the above guide. If such an assessment has been carried out, it would be helpful to refer to it here and give the Government's views.

Financial Implications

General

3.2.14 This section should cover **financial implications** for the EU, and the UK if this can be done without prejudicing the Government's negotiating position. Where relevant information has been made available by the Commission (usually in the 'fiche' attached to draft proposals) this should be given. If there is uncertainty about the Commission's figures it should be noted that the estimates may be subject to revision. In some cases it will be clear that no financial implications arise but it is helpful to the Committee if the reasons none arise are spelt out clearly.

Euros

3.2.15 Where figures are quoted in euros, they should also be shown in sterling. As a general rule the rate of exchange for the last working day of the month preceding submission of an EM should be adopted. The Cabinet Office provides Departments with details of the rates to be used at the beginning of every month. These can either be obtained from Departmental Scrutiny Co-ordinators or from the Cabinet Office European & Global Issues Secretariat.

Consultation by the Government

3.2.16 This should cover consultation past, current or planned by the Government where appropriate with outside bodies. It should cover substance as well as process. There may be occasions, however, when the information is covered elsewhere in the EM and simply sign posted under this heading. This section of the EM should not normally refer to routine consultation with other Government Departments. Consultation documents and lists of respondents should be provided to the House libraries and copied to the Committee Clerks. Guidance on consultation can be obtained from DirectGov site <http://www.direct.gov.uk/en/governmentcitizensandrights/ukgovernment/publicconsultations/index.htm>

Timetable

3.2.17 In the case of a legislative proposal, you should be as informative as possible on its likely progress in the Community institutions. Specific dates or phrases such as "before the end of" should be used in preference to "shortly" or "in the near future". **It is important this information is up to date** as this will assist Committee staff as they timetable the business which goes before the Committee. You should in particular say whether or not the opinions of the European Parliament and other institutions have been sought (and give references to such opinions if they have been published) and indicate where possible when the proposal can be expected to come before the Council (see also paragraph [4.4.1](#) for urgent cases). When the timetable changes between the submission of an EM and consideration by the Scrutiny Committees, the Scrutiny Committee Clerks should be informed immediately; this information may also be included in correspondence with the Committees from Ministers where letters are being provided to update on developments.

Official Contact

3.2.18 The email covering the submission of the EM should contain a contact point in the lead Department with name, telephone and email details.

French Text in Documents

3.2.19 There are occasions when documents deposited contain some French text, most commonly in the financial fiche; in these circumstances the financial implications should be set out with particular care. Where there is any reason to expect Parliament to take a particular interest in the Commission's assessment, you should provide an informal translation of the fiche except in straightforward cases. You should ensure that informal translations of French text are provided to Parliament in all cases where the document is recommended for debate. Such translations should be provided in the form of an addendum to the original EM as far in advance of the debate as possible. If in doubt about the handling of documents with foreign language text please consult the Committee Clerks and the Cabinet Office.

Unnumbered Explanatory Memoranda

3.3.1 An unnumbered EM is a memorandum which describes a proposal to be considered by the Council for which no depositable (i.e., no official or numbered) text yet exists. Examples of when one should be prepared include when:

- (i) a document (including a lapsed proposal which is re-presented) is fast moving and is likely to come to the Council of Ministers for decision before a formal text is available. This can include stages under the ordinary legislative procedure/special legislative procedure (see paragraphs [3.5.2](#) and [3.6.2](#)). You should be particularly aware of the need to provide unnumbered EMs where agreements such as Council Resolutions are expected on the basis of a Presidency paper which has not been deposited; or
- (ii) the lead Department has a reasonable knowledge of the likely content of an anticipated document, for example because it has a working document or early draft in another Community language or because routine or recurrent measures such as annual trade quotas are to be renewed. Special arrangements have been agreed between the FCO and the Committees for dealing with fast-moving CFSP/ESDP instruments on the basis of unnumbered EMs to which texts, where they are available, are attached.
- (iii) When a document has been deposited but where it does not carry a unique reference number to identify it.

The Government has given Parliament an undertaking to present an EM as soon as practicable, consistent with commitments discussed elsewhere in this guidance. The timely submission of unnumbered EMs is an essential part of this process. **If there is any doubt when it might be appropriate to use an unnumbered EM please contact the Clerks and the Cabinet Office to discuss.**

3.3.2 Unnumbered EMs should follow as closely as possible the form and content of numbered EMs (including a Ministerial signature) except that where a reference number would normally be quoted the words “**official text not yet received**” should be inserted at top right corner of the EM (see Annex J). If it is probable that a depositable text will never exist, the words “**official text not available**” should be inserted in the top right hand corner of the EM. A text, however incomplete, will usually assist scrutiny. It may, therefore, be useful to annex an unofficial English text (showing manuscript amendments or re-typed to show amendments).

3.3.3 Special considerations apply if the unofficial text is a record of the deliberations of the Council at any level. Such documents are, under the Council’s Rules of Procedure, covered by professional secrecy and should not, therefore, be made public.

3.3.4 If such a document is already in the public domain then it can be annexed to an unnumbered EM. Special arrangements cover the handling of limité documents – see Section 2.

Addenda to Unnumbered Explanatory Memoranda

3.3.5 When the official text becomes available the Cabinet Office will normally be able to determine that the document links to an earlier unnumbered EM, but if this hasn’t been spotted you should confirm this with the Cabinet Office and should prepare within 10 working days of deposit an addendum stating that the EM should be given the reference number on the Council document. This need not be signed by a Minister. An example of the format of an addendum is given in [Annex H](#).

Supplementary Explanatory Memoranda

3.4.1 Supplementary (or updating) EMs can be prepared if a proposal is revised but **no depositable text is expected** reflecting this change. Where the Commission formally amends a proposal, the amendment will be a depositable document and an EM must be provided. (An unnumbered EM should be used if there is a delay before the text is deposited.) But where amendments to a proposal are contained in Council working documents or Presidency compromises, it is likely that a depositable text will only be produced at a late stage, if at all. As soon as it is clear that the proposal to be considered by the Council will differ substantially from the original text, the Scrutiny Committees must be informed by a supplementary EM or by Ministerial letter even if the proposal was cleared previously by the Committees. Each case has to be considered on its merits but the general presumption must be that a supplementary EM or Ministerial updating letter is needed, for example, when new policy implications arise. For

EMs on measures under the ordinary legislative procedure please consult the guidance in section 3.5 where there is flexibility to consult the Committees on whether updates can be provided by Ministerial correspondence or EMs. But the onus is on Departments to identify cases where further information should be reported to Parliament. The key test is that information should be provided to the Committee if developments impact upon policy implications. In cases of doubt, guidance may be sought from the Committee Clerks or the Cabinet Office.

3.4.2 Sometimes the Committees ask to be kept informed of progress. In such cases a letter to the Committees (either to the Chairman from a Minister or to the Clerk from an official) reporting developments is usually the preferred approach. However if the developments to be reported are of any real substance, a supplementary EM (which is available to all members of both Houses) is preferable to a letter (which goes only to the Scrutiny Committees). All Ministerial correspondence with the both Committees is published by the Committees (unless handling caveats have been attached to the correspondence). If, on the other hand, it becomes clear that a Council decision is likely, but there have been no developments impacting upon policy implications since the Committee's recommendation, it may be sufficient simply to inform the Clerk of the Scrutiny Committee of this in writing.

3.4.3 Supplementary EMs should follow the normal format for EMs as closely as possible. Only the latest document of substance to have been considered by the Scrutiny Committees should be referred to in the top right hand corner, though in the text of the EM, appropriate reference should be made to earlier scrutiny history including correspondence with or reports by either Scrutiny Committee and to debates in either House. Since the original text will be out of date, an informal revision may usefully be prepared and annexed to the EM as long as the text is publicly available. Where a supplementary EM is to be submitted solely to cover a IA Checklist, it need only take the form of a cover note making it clear that all the other information provided in the original EM remains unchanged. A similar approach should be taken where a supplementary EM is submitted to answer specific questions raised by either Committee.

3.4.4 If a revised text is expected in the absence of a formal depositable text, an unnumbered EM (see paragraphs [3.3.1](#)-[3.3.4](#)) must be prepared in preference to a supplementary EM. When the text is eventually issued, an addendum (see paragraphs [3.3.5](#)) should be provided to complete the scrutiny process. **When considering the appropriate timing for the preparation of an unnumbered or supplementary EM, you should bear in mind the need for the scrutiny procedures to be completed before a proposal goes to the Council for adoption.**

Provision of memoranda on proposals subject to the ordinary legislative procedure (formerly co-decision procedure) as set out in Article 294 TFEU.

3.5.1 This section sets out guidance on the stages in the process at which agreement may be reached and covers the commitments the Government has made to the Committees to ensure that scrutiny is conducted effectively at each stage and is completed before agreement is reached in the Council at any point in the process; and includes the enhancements to the scrutiny process the Government supported in its response to the House of Lords European Union Committee’s report on “Codecision and national parliamentary scrutiny”, 17th report 08-09, HL251, which was debated in the House of Lords on 28 January 2010. Key points arising from that report with which the Government agreed were that the Government should update the Committees when there have been developments which impact upon policy implications, and that the Government must provide relevant documents in the process including those that are distributed as Limité documents – see section 2.3.1. It retains flexibility in providing for updates at both official and Ministerial level, as well as recognising that whilst a range of documents might be deposited eg Commission amended texts in the light of EP first reading amendments, Commission Opinions on EP second reading amendments and joint texts, they are best handled on a case by case basis in consultation with the clerks rather than being automatically deposited.

3.5.2 The ordinary legislative procedure (OLP) applies to most EU legislation.. There are three points in the OLP where a positive vote in Council can lead to the adoption of legislation; each of these stages is covered by the scrutiny reserve resolutions in each House:

- i. at the first reading – if the EP makes no amendments to the Commission proposal and the Council adopts it as it stands; or if the EP makes amendments and the Council approves them without making further amendments of its own; or if the Council adopts a common position which is then approved by the EP (by default or by simple majority);
- ii. at the second reading – if the Council approves all the EP’s amendments to its common position;
- iii. after agreement between the EP and Council in the Conciliation Committee (a “Joint Text”).

Documents at each of these stages must be deposited with an EM, and at any of these stages scrutiny must be completed to avoid a breach of the scrutiny reserve resolution of both Houses, unless the Committees have waived the need for agreement to be treated as a breach of their resolutions. Departments must ensure that the Committees are provided with information at the key stages of the process to allow for effective scrutiny; provide information on changes and proposed changes to proposals, to allow the Committees time to comment before

UK Ministers agree to them; and in fast-moving situations to use the scrutiny reserve, within practical limits, to delay a decision at Council.

Flow charts of the OLP and the scrutiny requirements at each stage are at [Annex M](#).

3.5.3 Informing or updating the Committees occurs:

- through the deposit of the original document and submission of the initial EM
- through the deposit of further documents/EMs or updates in Ministerial letters or at official level at specific points in the process
- through providing details of amendments with policy implications made or proposed in the Council, Coreper, Council working group or informal trilogue meetings;
- when Coreper agrees to send a letter from the Presidency to the EP indicating the Council's agreement to amendments to be proposed by the EP; and
- where either Committee requests further information or an update. However the Government should be proactive. If no update has been provided for some time, consideration should be given to updating the Committees without waiting for a specific request from the Committees.

An EM at any stage of the process reimposes the Scrutiny Committees' scrutiny reserve whereas a letter does not. Departments should consult the Committee clerks on a case by case basis on which approach is most appropriate.

These stages are set out below:

- i. Commission proposal: the proposal is deposited and a numbered EM should be submitted in the normal way when the Commission.
- ii. First Reading deal: If there is a prospect of a First Reading deal, Departments must make this clear in the original EM, or if this becomes clear as negotiations develop, including in informal trilogue negotiations, as soon as this becomes a clear possibility. The committees should be informed by way of a Ministerial letter which should provide the Committees with a copy of the trilogue text under the arrangements for handling limité documents set out in section 2. The same principles apply to Second reading deals – see below.
- iii. EP first reading: EP Opinion
 - The result of the EP's First Reading must be promptly communicated to the Committees. This is usually by means of a Ministerial letter **unless the clerks advise that the report should be deposited**. This should detail:
 - a) the Government's view on the amendments and the prospects of their being accepted by the Council; and

- b) the Commission's response (this is normally given orally by the responsible Commissioner at the appropriate EP plenary session).
- o On occasion, the Commission formally amends its proposal as a result of the EP's first reading. Such an amended proposal should be deposited with a new EM **unless the Clerks advise that this is unnecessary.**

To ensure that EP first reading reports and amended proposals are handled effectively the Cabinet Office will consult departments on handling who in turn should consult the clerks urgently to agree the most appropriate way forward for these documents. This will avoid documents being deposited unnecessarily and having to be withdrawn.

iv. Council first reading: Common Position

- o The Scrutiny Committee should be informed promptly by Ministerial letter when the Council adopts its Common Position. This should:
 - a) detail the Government's view on the Common Position and the prospects for second reading negotiations; and
 - b) should include the text of the Common Position as an annex.

iv. Commission response to the Common Position

- o Sometime after the adoption of the Common Position by the Council, the Commission produces a document setting out its view. This document should be sent to the Committee Clerks for information.

v. EP second reading: adoption, rejection or amendment of the Common Position

- o If the EP **approves or rejects** the Council's common position Departments should inform the Clerks of the Scrutiny Committees immediately in writing, copying the letter to the European & Global Issues Secretariat, Cabinet Office.
- o If the EP proposes **amendments to the Common Position**, the EP report should be deposited promptly and an EM produced unless the Clerks advise that a letter is advisable. Cabinet Office will liaise with departments on handling of such documents urgently. The Minister's letter or EM should
 - a) explain the main policy differences between the Council and EP;
 - b) detail the Government's view;
 - c) examine whether agreement at second reading is a prospect or whether
- o Commission opinions on EP second reading amendments will not normally be deposited unless the Committees have not been updated fully in Ministerial correspondence. You should consult the Clerks on handling. If it is agreed this document should not be

deposited it should be sent to the Clerks for information.

- vi. Council second reading
 - If the Council **approves** all the amendments proposed by the EP in its second reading report, the Committees should be informed by Ministerial letter, copied to the European & Global Issues Secretariat, Cabinet Office.
 - If Council **does not approve** the EP's second reading amendments, the Clerks of the Scrutiny Committees should be informed immediately in writing that a conciliation committee will be convened, copied to the European & Global Issues Secretariat.

- vii. Conciliation: approval of a joint text or no agreement
 - The timescales at this stage are very short. It is therefore important that information is sent immediately to the Committees. It may help to speak to the clerks in advance. In practice, the Committees acknowledge that time constraints mean that it is not possible to apply the scrutiny reserve between the publication of a Joint text and its agreement in the Council.
 - if the Conciliation Committee **approves a joint text**, the Minister should write as quickly as possible to update the Committees on the agreement reached and to give the Government's reaction. The approved Joint Text is likely not to emerge before the text is formally adopted by the Council so the letter can be sent without the text itself. The Minister's letter should offer to deposit a copy of the Joint Text (with an EM) if the Committees would find it helpful to have this.
 - If the Conciliation Committee **fails to approve a joint text**, the Clerks of the Scrutiny Committees should be informed immediately in writing, copying the letter to the Cabinet Office European & Global Issues Secretariat.

3.5.4 Presidency compromise texts, which aim to restart stalled negotiations on a proposal or introduce changes with policy implications should always be made promptly available to the Committees (if this is a limité text see Section 2 for handling).

Provision of memoranda on proposals subject to the special legislative procedure (Article 289(2)).

3.6.1 Special legislative procedures replace the former consultative, cooperation and assent procedures. As their name indicates, these procedures derogate from the ordinary legislative procedure and therefore constitute exceptions. In special legislative procedures, the Council of the EU is, in practice, the sole legislator. The European Parliament is simply associated with the procedure. Its role is thus limited to consultation or approval depending on the case. Unlike the ordinary legislative procedure, the Treaty on the Functioning of the EU does not give a precise description of special legislative procedures.

The rules of special legislative procedures are therefore defined on an ad hoc basis by the Articles of the Treaty on European Union and the Treaty on the Functioning of the EU that provide for their implementation. The EM must make it clear that this procedure is being used.

Short Explanatory Memoranda

3.7.1 In exceptional circumstances, it may be appropriate to provide a short EM instead of a full EM. This may apply for example to:

- (a) minor amendments which contain changes of little substance, but nevertheless need some explanation;
- (b) Proposals for the consolidation of existing legislation which have no policy implications;
- (c) Self-explanatory factual reports raising no policy issues;
- (d) Documents of a technical or administrative nature;

3.7.2 If you consider that a document falls into one of these categories **you should consult the Cabinet Office and should seek the agreement of the Committee Clerks.** The Scrutiny Committees have the right to ask for a full EM if they consider that a document on which a short EM has been provided does in fact have policy implications. Equally there may be occasions when the Committee clerks will agree that an EM will not be required and that a document can be withdrawn from scrutiny. If a Department expects a document like this to be deposited it is better to have this conversation with the Cabinet Office and the Clerks before deposit if possible.

3.7.3 Short EMs should contain the same main headings at the top of the paper as a full signed memorandum (see [Annex G](#)). However the normal side headings may be omitted as appropriate. As a general rule if a document has **policy implications** a full EM must be submitted.

Corrigenda to Explanatory Memoranda

3.8 Every effort should be made to check the accuracy of EMs. However, occasionally it may be necessary to correct an EM by issuing a corrigendum (normally unsigned). This should state clearly the date, reference number and title of the original EM and be circulated to all the recipients of that EM. An example of the format is given in [Annex H](#). Amendments of substance affecting policy implications should be made over a Ministerial signature by letter or amendment sheet.

Circulation of Explanatory Memoranda

3.9.1 The full circulation lists for EMs and corrigenda/addenda are given in Annex J as a guide. Addresses and details are subject to change and you are advised to use the circulation list included with the

Cabinet Office request for EMs. **You should ensure that other interested Departments including the devolved administrations receive copies as appropriate.** However, if you take the initiative to produce an EM which has not been commissioned on a depositable text you should check with the Cabinet Office that you have the most up to date circulation list to work from.

3.9.2 **EMs are public documents.** Departments may meet any request from members of the public for copies of EMs at their discretion. EMs submitted from 2012 can be found on the Cabinet Office website at <http://europeanmemoranda.cabinetoffice.gov.uk/>. Earlier EMs are stored by the Cabinet Office and be obtained on request.

Withdrawal of Explanatory Memoranda

3.10 EMs may occasionally need to be withdrawn from Parliament (e.g., to correct an error or make some substantial changes) where neither a corrigendum nor supplementary EM would be appropriate. Withdrawal can only be arranged if neither of the Scrutiny Committees has reported on the document and you should notify the Cabinet Office and the Scrutiny Committee Clerks in advance. Depending on how soon the replacement EM will be available; either a withdrawal notice should be issued to all recipients of the original EM or the new EM submitted with a cover note drawing attention to the withdrawal of the original EM.

SECTION 4: THE SCRUTINY PROCESS

Introduction

4.0 This Section:

- describes the composition and operation of the Scrutiny Committees and arrangements for liaison between Government and the Committees;
- explains how the Committees consider and report on EU documents and defines what is meant by “clearing scrutiny”; and
- advises on giving evidence to the Committees.

The Commons Scrutiny Committee

4.1.1 The Commons Scrutiny Committee is appointed for the whole of each Parliament and comprises sixteen members. Details of the Committee’s membership can be found on the Committee’s website at <http://www.parliament.uk/business/committees/committees-a-z/commons-select/european-scrutiny-committee/>. It examines the EU documents deposited in Parliament and the associated EMs, and reports on them to the House with its assessment of the legal and political importance of each proposal. The Committee’s Orders of Reference are contained in House of Commons Standing Order No.143 – see [Annex A](#).

4.1.2 The Committee normally meets every Wednesday while the House is sitting. The Committee is supported by a first and second Clerk, two lawyers and a number of Clerk/Advisers who brief the Committee on deposited documents and the Government’s EMs. It may also conduct inquiries. The Committee has the power to refer matters to other Departmental Select Committees for opinions.

The Lords Scrutiny Committee

4.2.1 The House of Lords EU Committee is reappointed each Session and consists of 19 members. The Committee’s terms of reference are at [Annex B](#). Its Chairman, by convention the Principal Deputy Chairman of Committees, conducts an initial “sift” of all deposited documents (see paragraph [4.5.2](#)), clearing some and remitting others to one of a number of Sub-Committees, responsible for considering documents within particular policy areas (see [Annex B](#)). The Sub-Committees conduct scrutiny of documents by correspondence, by one-off hearings, and sometimes by inquiry; they also conduct non-scrutiny-based investigative inquiries, to which this guidance is not relevant. Any Lord may attend meetings held in public – indeed Lords with particular interests or expertise, including MEPs, may be specially invited. Information about the committee can be found at their website <http://www.parliament.uk/business/committees/committees-a-z/lords-select/eu-select-committee/>.

Liaison with the Committees

4.3.1 The Cabinet Office acts as the central link between the Committees and Government Departments generally. The existence of this central link, however, does not detract from the importance of an effective working between Departments and the staff of the Committees. Departments should deal directly with the Committee Clerks on issues concerning the general handling of a document or on a substantial procedural point. Detailed points on particular documents in the House of Commons may be addressed to the relevant Clerk/Adviser or the Legal Adviser. In the case of documents referred to Sub-Committees in the Lords, the point of contact is the Sub-Committee Clerk. Where there is any doubt as to the correct procedure, you can consult the Cabinet Office or the Clerk(s) of the Committee(s). Instructions for Ministerial correspondence are at the end of this chapter and at Annex W.

4.3.2 FCO's Minister for Europe has responsibility on behalf of the Government for the proper functioning of the arrangements for assisting the work of the Scrutiny Committees; Leaders of both Houses (supported by the FCO and Cabinet Office) have overall responsibility for Parliamentary procedures. The FCO/Leaders or the Cabinet Office should therefore be consulted on any sensitive issues.

Preparation for Committee meetings

4.4.1 A week before each meeting of the **Commons** Scrutiny Committee the Cabinet Office circulates a copy of the list of items on which EMs have yet to be submitted. Departments must immediately provide the Cabinet Office with information on the progress towards the production of EMs. This information is passed to the Scrutiny Committee by the Friday and the Committee's final agenda is drawn up. Departments should also consider whether there is any other proposal on which an urgent decision is needed from the Scrutiny Committee, and which, in their view, should be included on the final agenda and inform the Cabinet Office and the Scrutiny Committee staff accordingly. **It is important that the signed EM is received by the Clerk by midday on the Thursday preceding the meeting;** documents where this is not the case will automatically stand deferred to the following meeting unless the Clerk has exceptionally agreed to retain the item on the agenda. Last minute items for the weekly Lords sift also need to be with the Lords Committee staff by midday on the **Thursday preceding the weekly sift unless later submission is agreed by the Committee staff.** The submission of EMs (or Ministerial letters) at the last minute imposes a heavy burden on the Committee staff and can inconvenience the Committees.

4.4.2 The **Lords** Sub-Committees usually meet weekly when the House is sitting. If you are aware of a document requiring urgent clearance you should contact the relevant Sub-Committee Clerk at the earliest possible date. **At least 10 working days should be allowed in normal circumstances** to ensure that an item is placed on the agenda of a Sub-Committee. Details of when Sub-Committee meet can be found in the Lords Weekly Bulletin at <http://www.parliament.uk/business/committees/lordscommitteebulletin/>.

Consideration by Committees

Commons

4.5.1 The Commons Committee reports after weekly meetings on the documents that:

- raise questions of legal and/or political importance and require further consideration by the House (either in European Committee or on the Floor). These documents have not cleared scrutiny until the motion relating to them has been agreed on the floor of the House;
- raise questions of legal and/or political importance, but are not cleared. In these cases the Committee will ask for more information, or oral evidence or request to be kept informed of developments;
- raise questions of legal and/or political importance but are cleared. However, in some cases the Committee requests further information or asks to be kept informed of developments.
- raise no such questions and are cleared.

The Committee may also:

- recommend that a particular document need not be debated in its own right but is “relevant” to a debate on a related topic (in which case it will be “tagged” – see paragraph [4.6.2](#)).

Within 48 hours of each Scrutiny Committee meeting, the Cabinet Office informs Departmental Scrutiny Co-ordinators by email (letter) of the decisions taken, although in practice the Committee staff will email advance draft copies of the Committee’s reports to Departments the following day so that Departments can begin to initiate follow-up action quickly. The Cabinet Office also circulates to Departments on a weekly basis (except during Recesses) a full list of outstanding debate recommendations. This list is also sent to the Scrutiny Committees.

Lords

4.5.2 Once an EM has been received, documents are sifted by the Chairman (normally each Tuesday morning whilst the House is sitting) into those not requiring special attention (cleared) and those remitted to Sub-Committees for further consideration (retained under scrutiny). The sift result will also include an assessment by the Clerk on whether proposals are subject to the subsidiarity check or an opt-in decision. The Cabinet Office circulates the results of the weekly sift to all Departments. Documents which are retained under scrutiny are then considered by the Sub-Committees, which meet weekly: when a Sub-Committee clears a document from scrutiny, the Chairman

normally informs the Minister by letter. You should monitor the progress of documents by reference to the **Progress of Scrutiny** document which is published by the Lords Committee after each meeting, (usually fortnightly when the House is sitting), listing the decisions taken (see paragraph 4.5.4). In cases of urgency, confirmation of the scrutiny position can be obtained from the staff of the Committee. The **Progress of Scrutiny** document can be accessed from the Committee's website at <http://www.parliament.uk/business/committees/committees-a-z/lords-select/eu-select-committee/>.

Committee Reports

Reports from the Commons Committee

4.5.3 The Committee makes Reports to the House following each Scrutiny meeting. Reports contain not only the Committee's decisions, but also analysis, requests for further information, that Departments have to act upon, and matters upon which the Committee suggests that a debate should focus. It is thus essential to have up to date Reports. The reports can be found on the Committee's Website at www.parliament.uk/escom. The Committee also circulates to Departmental Scrutiny Co-ordinators a weekly list of items (known as 'Remaining Business') which have not cleared scrutiny, and also those items which have cleared but on which the Committee has requested further information. The Government has given a commitment that this list will be reviewed regularly (ideally on a monthly basis) and that Departments will keep the Committee staff informed of progress towards responding to the Committee's reports. The **Remaining Business** document can also be consulted at <http://www.parliament.uk/escom>.

Tracking the Scrutiny Process in the Lords

4.5.4 The decisions of the Committee are included in its **Progress of Scrutiny** document. The document contains 5 sections and each Section lists matters in Departmental order. They are:

- Documents under Scrutiny or Awaiting correspondence from Ministers. The history of correspondence with Ministers is included where appropriate with a description of information requested from Ministers.
- Inquiries and Reports; with dates when Committee reports were published and the dates of Government responses submitted or due.
- Documents cleared from Scrutiny since the last edition of the document was published.
- Scrutiny Overrides.
- Details of Committee members and staff.

It is important that the list is regularly reviewed to ensure that responses to correspondence and Reports are not submitted late and also to ensure that the information on overrides is correct.

4.5.5 The Committee also publishes a monthly newsletter <http://www.parliament.uk/business/committees/committees-a-z/lords-select/eu-select-committee/>.

4.5.6 The Government must reply formally in writing to reports published by the Lords Scrutiny Committee. **It has undertaken to respond to the Committee's reports that reach substantive conclusions or recommendations by no later than two months after publication or within six weeks where this is possible i.e where the reports are short and where the issues are not complex. If a response is likely to take longer you must consult the Clerk of the Committee to agree an approach with the Committee. If a new deadline is agreed with the Committee and the reply is submitted by that new deadline the Committee will not record the reply as late in the reports they compile twice-yearly on the Government's compliance in meeting deadlines. A written response should be available by no later than a week before a debate where this is urgent and is to be held within two months of publication. However, those reports prepared by the Committee that simply publish the transcript of evidence sessions would not require a reply; if in doubt, consult the Clerk.**

4.5.7 Written responses to Lords' Scrutiny Reports are normally submitted in the form of a Memorandum by the Department (which may be published as a Command Paper) accompanied by a Ministerial letter, or by Ministerial letter alone to the Chairman of the Select Committee copied to the Chairman of the Sub-Committee which conducted the enquiry and to the Clerks of the Select and Sub-Committee. Whatever form the response takes it should state clearly the title and number of the European Union Committee report to which it responds. It should also state clearly which Government Department has prepared the response.

4.5.8 It is important to remember that the reply must in all circumstances be delivered to Parliament first. A written response is regarded as evidence submitted to the Committee, which the Committee may publish if it so decides, with its own further comments on the Government's reply. The Committee's current practice is to publish all written responses in compendium reports which publish from time to time unless a response is published with a follow-up report. All other Ministerial correspondence with the Committee is published in compendium reports under the title "Correspondence with Ministers" or on the Committee's website or both. Publicity is thus in the Committee's hands but the Committee may, on request, agree to earlier publication by a Department. This is usually done by the Department placing a copy in the House Library and drawing attention to it by means of a written Ministerial Statement. This procedure can, in particular, be followed in those cases when the Committee's report is to be debated, to ensure that all Peers wishing to take part in the debate are aware of the Government's response.

4.5.9 Departments should ensure, in advance of a debate on a Report, that where the Government's response has not been published by the Committee copies are made available to the Printed Paper Office in the House of Lords so that it may be obtained by Peers who have an

interest in the debate. Ideally copies should be made available a week before the date of the debate unless it is clear that the response will be published by the Committee. The Clerk of the European Union Committee can advise if that is likely to be the case. Details of the options available and advice on what the response might cover can be found in the Memorandum of Guidance for Officials Appearing before Select Committees: copies are available from the Propriety and Ethics Team, Cabinet Office or can be found at http://webarchive.nationalarchives.gov.uk/+http://www.cabinetoffice.gov.uk/propriety_and_ethics/civil_service/osm/otherly_rules.aspx. In deciding which form of response might be appropriate you should consult your Parliamentary Branch and may wish to seek the views of the Committee or Sub-Committee Clerk. It is, however, particularly important to make clear which paragraphs in a response are the Committee's conclusions and which are the Government's response eg by highlighting the different passages in bold or italic font style.

Scrutiny Clearance

4.6.1 Scrutiny is complete when the document or proposal has been reported on by the Commons Committee as 'cleared' (or listed in the report paragraph headed "Documents not raising questions of sufficient legal or political importance to warrant a substantive report to the House") or it has been recommended for debate, debated in Committee or on the floor of the House, and a motion relating to it agreed on the floor of the House.

In the Lords, a document is cleared when:

- it is cleared by the Chairman at the sift; or
- having been sifted to a Sub-Committee, it is cleared by them, possibly after correspondence; or
- the Sub-Committee having conducted an inquiry, it is reported "for information"; or
- the Sub-Committee having reported it "for debate", the debate has taken place.

If Departments have questions on this the Clerk of the relevant Sub-Committee can advise. There is then no further Parliamentary obstacle to a Minister supporting the adoption of the document or proposal by the Council of Ministers, unless the proposal undergoes substantial amendment (see paragraph 4.7 on further scrutiny). If the Commons Committee recommends that a document should be given further consideration by the House (see [Section 5](#)) the scrutiny procedures are not complete (unless the Committee has indicated that this need not delay adoption) until an appropriate Motion has been approved by the House. In the case of the Lords, if urgent clearance is required of a document awaiting debate, the Clerk to the Sub-Committee or the Select Committee should be consulted as soon as possible.

4.6.2 There are occasions when the Commons Committee reports on a document as raising issues of importance but where the issues may be fairly narrow or may not be substantive enough in their own right to support a debate on the individual document. On these

occasions the Committee may recommend the document(s) as relevant to a future debate (i.e. to be “tagged” to a future debate). Such documents are usually regarded as having completed scrutiny as soon as the Committee has reported on it since clearance does not depend on the debate being held. But there are occasions when an item is recommended as relevant to a future debate but is not cleared because the Committee has asked for further information or is awaiting developments. A list of all documents to be tagged to future debates is included in the Cabinet Office’s weekly “items recommended for debate” list which is circulated to departmental scrutiny co-ordinators. Such recommendations are carried forward on this list from Session to Session. **It is the responsibility of Departments to monitor forthcoming debates and identify opportunities for documents from the list to be shown on the Order Paper as relevant to a particular debate (i.e. tagging), either on the Floor of the House or in European Committees.** Those items, which have yet to clear scrutiny, are listed by the Committee in their weekly list of uncleared business (known as “Remaining Business before the Committee”) which is also circulated to departmental scrutiny co-ordinators.

Further Scrutiny

4.7 Scrutiny is an on-going process. A further round of scrutiny is required when a proposal undergoes amendment (see paragraph [3.4.1](#)). This is set in motion when the Department concerned submits a supplementary EM (or a new EM) if the proposal is formally amended during negotiation) on a proposal which has previously been considered by the Committees. This should be done as far as possible before the proposal is expected to be adopted by the Council to allow time for scrutiny clearance as defined in paragraph [4.6.1](#). See also sections [3.5](#) and [3.6](#) for scrutiny of amended proposals under the ordinary legislative or special legislative procedures.

Withdrawal of debate recommendations

4.8.1 The Commons Scrutiny Committee has indicated that it is prepared to consider withdrawing a recommendation for a document to be debated in the following circumstances:

- (a) where the document in question has been withdrawn by the Commission following the Commission’s periodic reviews of outstanding proposals. Where a document has been superseded without being withdrawn, the Committee will normally substitute a new debate recommendation for any previous one that is outstanding;
- (b) where the document in question has been amended so as to remove those features which the Scrutiny Committee identified as giving rise to the need for debate. If you believe this to be the case you should alert the Cabinet Office and the Chief Whip’s Office. Then either a supplementary EM should be submitted or the responsible Minister should write to the Chairman of the Scrutiny Committee (see paragraphs [6.4.1](#)-[6.4.3](#)) explaining the circumstances and suggesting that the Committee might reconsider the relevant document.

Alternatively, it may be appropriate for a letter at official level to be sent. You should consult the Clerk of the Committee on which approach is required in each case.

4.8.2 Withdrawal of recommendations for debate in the Lords requires a decision of the Select Committee and is rare. Its recommendations for debate take the form of reports published for debate. These are substantial documents, usually raising wider issues, and will therefore almost always be debated even if the proposal has been adopted or withdrawn or if the scrutiny reserve has been overridden. If you feel that a debate recommendation by the Lords Scrutiny Committee may have been overtaken by events, you should consult the Cabinet Office and the Committee Clerk.

Cabinet Office records

4.9 The Cabinet Office maintains a database of all deposited documents which details each document's progress through scrutiny. This can assist particularly with previous scrutiny history. They also upload all Government EMs and correspondence from Ministers to the Committees onto the Cabinet Office EMs website found at: <http://europeanmemoranda.cabinetoffice.gov.uk/>.

Giving evidence to the Committees

General

4.10.1 Both Committees can take evidence both in writing and orally. Such evidence may be sought from a variety of sources including Ministers and Officials from Government Departments, representatives of professional organisations, trade associations, pressure groups, academic experts and other individuals, the European Commission and MEPs following a written request from the Committees. A similar approach should be followed in giving evidence to the two Committees.

Written evidence

4.10.2 You should meet specific requests by either Committee for supplementary information on proposals under scrutiny. The Commons Committee generally makes such requests in its reports rather than by letters to Ministers. You should assume that once information has been supplied to one of the Scrutiny Committees, even by means of a letter to the Clerk, it becomes evidence and may be published, though limited documents which may have been attached to correspondence may not be published. In this situation or in any case where you provide information to the Committees that should not be published you must make this clear, and the reasons for providing such information, in the correspondence. Where appropriate, you should clear written evidence in draft with other interested Departments as appropriate. Care will need to be taken to ensure that such a request complies with FOI provisions.

Ministerial correspondence with the Lords

4.10.3 The Lords Scrutiny Committee in particular sends letters to Ministers to express their view on proposals under scrutiny. Such letters are always signed by the Chairman of the Select Committee. All such letters require a substantive reply from the relevant Minister; the Chairman will make it clear when a reply is required urgently (the letter will ask for a reply within 10 days which is the norm, or will specify a date by which a response should be received, and where the Government has committed to meeting these deadlines (or sooner in exceptional circumstances), where a reply can be provided in slower time when the information requested becomes available, or whether no reply is expected by the Committee.. The letters make it clear whether scrutiny clearance is being given. The Select Committee publishes correspondence on line and in collections of letters in their reports on *Correspondence with Ministers*. The Committee's Progress of Scrutiny document shows clearly where such correspondence has been sent and where Ministers' responses are outstanding. Instructions for ministerial correspondence are at the end of this Chapter. **If there is any doubt about when a reply is expected by the Committee or if a Department needs to agree an extension to the deadline set by the Committee you should contact the relevant Sub-Committee clerk to agree a new approach as soon as possible and certainly before a deadline has been reached.** Where a deadline set by the Chairman is changed, the Committee will amend their records so a later response will not be recorded as late as long as the letter is submitted by the revised deadline agreed. This is an important point to note as the Committee produces twice-yearly reports on compliance with Government undertakings in replying promptly.

Oral evidence

4.10.4 The usual rules apply when Ministers and/or Officials are asked to appear before the Committees to give evidence about EU proposals. The Clerks to the Committees will usually give as much notice as they can of the need for oral evidence – at least two weeks if possible where a proposal is not urgent. Officials invited to give oral evidence should refer to the Memorandum of Guidance for Officials Appearing before Select Committees (see paragraph [4.5.7](#)). You should inform the Cabinet Office of any difficulties experienced in giving oral evidence. See below for arrangements for pre- and post- Council evidence.

4.10.5 The Committees may, exceptionally, agree to treat information as confidential although the impact of the FOI Act on this practice has to be considered. The Lords Committee occasionally takes evidence in private at an early stage in an inquiry, or when considering whether to undertake an inquiry on a particular subject, but otherwise there is a strong presumption in favour of hearing evidence on the record. The Government has undertaken that officials stand ready to appear before the Committee to provide technical help and informal advice on the meaning and purpose of proposals as a means of avoiding lengthy exchanges of correspondence between the Committee and Ministers.

Pre- and Post-Council Scrutiny

4.10.6 This procedure provides for the Committees to have a regular dialogue with Departments on Council business. The procedure was introduced by the Commons Scrutiny Committee but is held to apply also to the Lords Committee. Further details of the procedure can be found in [Annex N](#).

Commission Legislation

4.11.1 The Standing Orders governing the operation of the Scrutiny Committees allows the Committees to scrutinise Commission legislation.

4.11.2 The Committees will not routinely scrutinise Commission measures but will consider particularly important pieces of legislation and will look at trends in the way the Commission has exercised its powers and how comitology is working generally. In responding to a report from the Lords Scrutiny Committee entitled “Delegation of Power to the Commission: Reforming Comitology ([3rd report, 98-99](#))” the Government noted that whether or not a proposal is “particularly significant” will be a question of political judgement. But the Government welcomed the Committee’s ideas on how this judgement might be exercised and undertook to adopt the criteria proposed by the Committee as a good basis on which to work. This commitment was restated when the Government responded to the Lords Scrutiny Committee’s report on the review of scrutiny ([1st report, 02-03](#)). The Government has agreed to let the Committees see all comitology documents which:

- are likely to require decision by the Council; or
- are of such political or practical significance that they might cause the Minister to be concerned if he or she were to learn of them first from the newspapers.

Historically these are the principles under which comitology proposals have been handled. Except in these cases (which will be identified by agreement between the lead department and the Committee) Commission legislation will not be deposited; Departments will not be expected to produce EMs; and the Committee will not recommend Commission legislation for debate. This guidance was reinforced by the Cabinet Office in ad hoc guidance letter (04)08 ([click here](#)).

4.11.3 However, the Committees have proposed a new approach to considering Delegated and Implementing Acts adopted following new procedures introduced by the Lisbon Treaty. Whilst these proposals, which are based on a consultative approach with the Committee clerks, have not been formally adopted by the Government, Departments should follow their principles which are that:

- Any proposal to revoke a power for the Commission to adopt delegated legislation should be deposited. The Committees acknowledge that the scrutiny reserve does not apply but the Government should provide the document and EM at an early enough stage to allow the views of the Committees to be taken

into account where such an opinion is received at least two weeks before the date when agreement is required.

- Deposit of proposals for delegated Acts will be subject to consultation with the Committee clerks and as with revocations should be deposited in time for the Committees to provide an opinion that the Government should take into account if received at least two weeks before agreement is required. The EM should therefore indicate the latest date on which the Council can request that the delegation be revoked or object to the proposal.
- Proposals for implementing Acts should be brought to the attention of the Committee clerks if they are considered to be sensitive or if they have been referred to the Appeal Committee. As above the EM should be submitted within the usual timescales and indicate the date on which a vote on the proposal is expected and that the Government should take into account opinions received from the Committees where such opinions are received at least two weeks before the date on which decisions are required.

Correspondence with the Scrutiny Committees

4.12.1 Whenever a Minister writes to the Chairman of the Scrutiny Committee(s), they must state clearly:

- the subject matter and relevant Council document number in a title
- where appropriate, reference to the correspondence or reports from either Committee being responded to; it is helpful to the Commons Committee if the letter also refers to the Committee's agenda number (shown in brackets on their reports eg (12345))
- where appropriate, the name of the Lords sub-committee that has considered the proposal
- Ensure that attachments referred to in the letter are enclosed
- If a limited document is being attached to the letter it should be made clear that the information is being provided in confidence

4.12.2 Both Committees must be treated with equal importance when corresponding at both official and Ministerial level. When responding to correspondence from either Committee it may be appropriate to copy the response to the other Committee. But when a Department takes the initiative to write on an issue relevant to both Committees, it is important that separate letters are sent to both Committees and not addressed to one and copied to the other. An appropriate sentence should be included in the letter along the lines of the following example:

"I am writing in similar terms to [Or copying this letter to], [Named Chairman of the Lords/Named Chairman of the Commons Scrutiny Committee] [and am copying this letter] to the Clerk of both Committees, to Mr L Saunders, Cabinet Office European & Global Issues Secretariat, and to (Named Departmental EU Co-ordinator)."

4.12.3 Separate copies of the letters should go to the appropriate Committee Clerk and should be despatched with the same priority as the letters to the Chairman. Correspondence should be emailed in advance.. In cases where the issues relate to wider policy or business management matters, it may be appropriate to copy the correspondence to the Leader and Chief Whip of each House and to FCO's Minister for Europe.

4.12.4 Letters to the Chairmen of both Scrutiny Committees should be signed personally by a Minister. Postal addresses are:

Commons (letters to the Chairman should be sent in an envelope addressed to; the Clerk should receive a separate copy)

William Cash MP
Chairman
House of Commons
Room 270
7 Millbank
London SW1P 3JA
Tel Contact: 219 3296/3292
Fax: 219 2509

Advance copies of Letters should be emailed to the Committee's generic email address escom@parliament.uk

Lords

The Committee no longer requires hard copies of correspondence; only electronic copies should be sent as below

Copies of Letters in PDF and Word format should be emailed to euclords@parliament.uk

Note: Correspondence may be received from the Chairman of a Lords Sub-Committee, in the context of a non-scrutiny-based inquiry. In this case the reply is addressed to the sender, with a copy to the Sub-Committee Clerk.

The committees have asked that as well as scanned or PDF versions of correspondence, that word versions also be sent as the Committees will be able to use these versions when compiling reports etc.

SECTION 5: SCRUTINY DEBATES

Introduction

- 5.0 This Section describes:
- the responsibilities of Departments for arranging debates recommended by the Commons Scrutiny Committee;
 - the procedures for debates in European Committees in the House of Commons; and
 - the responsibilities of Departments in respect of debates in the Lords.

Arranging Commons Debates

Timing

5.1.1 The Government is committed to arranging debates recommended by the Scrutiny Committee well in advance of the Council meeting at which the proposal is likely to be agreed or adopted. Agreement means; adoption of the measure, or the adoption of a general approach, or a common position (or political agreement that might be reached prior to a formal common position). Early scheduling of debates keeps business flowing and avoids backlogs. It is important to plan ahead for debates needed after the summer recess.

5.1.2 In order to fulfil this commitment you must initiate action **as soon as possible** after the Committee's recommendation has been made. You should contact the Chief Whip's office immediately and then arrange for a letter to be sent (see paragraph [5.1.6](#)) about the possible timing of the debate and the terms of the Government Motion (see [Annex P](#)). There should be a presumption that an early debate will take pace. Occasionally, however, debates may be postponed, particularly where there is clear evidence that the proposal stands no chance of being accepted in its present form and is likely to be superseded by amended proposals from the Commission. In such cases you should consult the Cabinet Office before drafting a letter to the Chief Whip's Office (see below). The letter should recommend that the lead Minister write to the Chairman of the Scrutiny Committee to inform him of plans to defer the debate. Even in cases where the Scrutiny Committee has said that debate need not delay adoption, the Government has given a commitment to arranging debates before adoption if at all possible.

Choice between debate on Floor or in European Committee

5.1.3 All documents recommended for debate by the Scrutiny Committee stand referred automatically to a European Committee established under House of Commons Standing Order No.119 (see [Annex C](#)), unless the Government puts down a motion allowing the document to be debated on the Floor of the House. The Scrutiny Committee, however, retains the discretion to recommend that a particular proposal be debated on the Floor of the House. It is for the

Government to decide whether to accept such a recommendation following consultation through the usual channels.

5.1.4 **The Government has undertaken that where a recommendation for debate on the Floor is not to be taken up, the Minister will notify the Scrutiny Committee, subject to any difficulties caused by last minute changes in business.** This allows the Scrutiny Committee to make further representations although it is unlikely that anything new could be added to the balance of factors already taken into account. Reasons for accepting or rejecting requests for Floor debates should be fully set out in the letter to the Chief Whip's Office so as to enable the Business Managers to reach an informed decision after consultation through the usual channels. **Certain documents will be of sufficient political importance to require a debate on the Floor.**

The Role of the Chief Whip's Office

5.1.5 Arrangements for handling debates are settled in consultation between Departments and the Office of the Chief Whip. The papers are copied to the Chairman and members of the Parliamentary Business and Legislation Committee which has formal responsibility for the matter. They may intervene in correspondence as necessary. Where the handling of a document raises business management considerations on the Floor of the House, it will be addressed by the Leader of the House (who is Chairman of this Committee) in the context of the weekly Business Statement. The initial correspondence on such matters should follow the standard arrangements set out below.

5.1.6 It is important that departments contact the CWO within two days of a debate recommendation being received. This should ordinarily be done through your Parliamentary Branch so you will need to alert them to the need for a debate and discuss possible timings with them. They will then liaise with the CWO to find a suitable date and agree to the timing of a letter confirming when the debate should be held and the terms of the Government's motion. Once agreed a letter should be prepared for either the Private Secretary of the relevant Minister or the Parliamentary Clerk to send to the Private Secretary of the Chief Whip, copied to the Private Secretaries of: members of European Affairs Committee (and PBL Committee <https://www.gov.uk/government/publications/the-cabinet-committees-system-and-list-of-cabinet-committees> other Ministers with a Departmental interest in the subject; the Secretary of the Cabinet; and the Secretaries of EAC and PBL Committees. This early contact will allow for discussion of the handling of urgent cases, as the need for a debate may impact upon other debates that may already have been scheduled to meet other Departments' needs. **In no case, even when an early debate is not proposed, should the letter be left longer than 4 weeks.** (The only exception is where the Scrutiny Committee has recommended debate "on the occasion of" a debate on a related issue.) If there are circumstances which might prevent the 4 week deadline from being met, you should advise the Cabinet Office in the first instance.

5.1.7 Very occasionally, the Scrutiny Committee may recommend documents for debate in the knowledge that further documents taking into account later developments are likely to be produced. In such cases, the Scrutiny Committee usually asks Departments to keep them informed of developments in Brussels, and eventually recommends that the later documents only should be debated. Where this situation is known to apply, a holding letter to the Chief Whip's Office (copied as shown in paragraph [5.1.6](#)) should be sent within 4 weeks. A substantive letter should then be sent as soon as the definitive documents have been produced and have been, or are likely to be, recommended for debate. You should review the position on a regular basis and keep the Chief Whip's Office and the Cabinet Office informed of the latest state of play (see paragraph 5.1.8 below also).

5.1.8 The letter to the Chief Whip's Office should give only such details of the substance of the document as are necessary to inform decisions on Parliamentary handling. Unless there are strong reasons for proposing that the debate be deferred (see end of paragraph), it should always include a motion for debate, the wording of which should be agreed by the Clerk of the Scrutiny Committee (paragraph [5.4.2](#) and [Annex P](#)). It should cover the following points:

- i) **the recommendation** made by the Scrutiny Committee;
- ii) **the tactical considerations**, in particular the state of negotiations in Brussels, including a best estimate of the timing of Council consideration, and the implications for the timing of a debate. The Government's commitment to early debates makes it desirable to hold a debate within one or two months and certainly well before final Council consideration. If there are special factors which require a debate to be delayed, these factors should be brought out fully in the letter. Such cases should be rare, and it is likely to be appropriate for the letter to recommend that the Chairman of the Scrutiny Committee should be informed;
- iii) **the exact wording of the Motion agreed, where necessary, between interested Departments.** The Scrutiny Committee's Second Clerk should be consulted on the terms of the motion before writing to the Chief Whip's Office. Any subsequent amendments to the motion should also be cleared with the Second Clerk and submitted to the Chief Whip's Office. The letter should confirm that the terms of the motion have been cleared with the Second Clerk. For further guidance see paragraph [5.4.2](#);
- iv) **the proposed line**, including the line to be taken on likely amendments to the Government motion;
- v) **where** the debate should take place, on the Floor of the House or in European Committee (debates are normally in European Committee, see paragraph [5.1.3](#)). The letter should refer to any views expressed by the Scrutiny Committee and any known Opposition view that the debate should be held on the Floor. If

you advocate that a document should be debated on the Floor of the House or that a recommendation by the Scrutiny Committee for a debate on the Floor of the House should be rejected, the letter should explain your reasons in detail;

- vi) **the preferred date** for the debate, taking account of the tactical considerations discussed at (ii) above;
- vii) **the name of the Minister** who will lead in the debate.

Points (iii) and (iv) need not be covered in detail if a debate is not proposed for the near future. However, at least two weeks before a debate is eventually held (following consultation with the Chief Whip's Office on timing), a further letter covering these points should be sent. You should constantly keep under review the Government's debate requirements and **must** write again to the Chief Whip's Office recording any change in requirements. There may be occasions where there are legitimate reasons for deferring a debate for some time (see paragraph [5.1.2](#)). In these circumstances where a debate has yet to be arranged, you should routinely review the situation in a letter to the Chief Whip's Office at three monthly intervals to confirm the current position. All letters on the timing of debates should be copied as per paragraph [5.1.6](#),

Consultation with Back-benchers and Members of the European Committees

5.1.9 When the subject of the Community document is controversial, the Minister concerned might wish to consult the Chairman of the relevant back-bench subject group and possibly other Government back-benchers to seek their views. Given the absence of any formal whipping arrangements for the European Committees, the Minister might wish to canvass support for the Government's line in order to minimise the possibility of a defeat for the Government.

Debates in European Committees

5.2.1 The areas of responsibility of the three European Committees are:

Committee A. Energy and Climate Change; Environment, Food and Rural Affairs; Transport; Communities and Local Government; Forestry Commission; and analogous responsibilities of the Scotland, Wales and Northern Ireland Offices.

Committee B. HM Treasury (including HM Revenue and Customs); Work and Pensions; Foreign and Commonwealth Office; International Development; Home Office; Minister of Justice (excluding those responsibilities of the Scotland and Wales Offices which fall to European Committee A); together with any matters not otherwise allocated by this Order.

Committee C. Business, Innovations and Skills; Children, Schools and Families, Culture, Media and Sport; Health.

5.2.2 Only explicit debate recommendations are referred automatically to European Committee. When the Scrutiny Committee recommends a document as relevant to another debate, that document will be “tagged” (noted in italics below the motion as relevant – See [Annex P](#)).

Timing of Debates

5.2.3 Documents referred for debate in Committee will not necessarily be debated in the order in which they are recommended for debate; some documents may be urgent and will need to be promoted in the queue whereas others may sensibly be postponed. The volume of business to be debated puts pressure on timing of Committee debates and you should not assume you will have flexibility to choose your preferred date. This reinforces the need to state the required timing early. A European Committee to consider a document is formally summoned and the time and date chosen by the member of the Speaker’s Panel who will take the Chair. However, the Chairman will consult the Whips and so the Government can exercise control over the timing by deciding when to table a substantive motion for debate in the Committees or, if they decide to hold the debate on the Floor of the House, a procedural motion allowing debate on the Floor. Exceptionally, Committees may meet at relatively short notice. You should liaise closely with the Chief Whip’s Office over the timing of the tabling of the Motion for debate (or the de-referral Motion) and the preferred timing for the debate itself; the Chief Whip’s Office will arrange for the motion to be tabled after receiving final clearance from the Scrutiny Committee Clerk. (See paragraph [5.4.2](#)). Once a date for the debate has been confirmed, the Chief Whip’s Office will write to the lead Department and to the Clerk of European Committees (copied to individual Committee members and placed in the Library), giving two weeks’ notice of the debate wherever possible. **The dates of future debates should be treated as confidential until they are publicly announced.**

5.2.4 At the earliest possible opportunity, you should contact the Clerk of the Scrutiny Committee about the terms of the Motion which the Minister intends to move in the Committee and discuss reference to documents to be referred to in the Motion and the suitability of tagging documents to the debate (see [Annex P](#)). The Motion, prefaced by the words “That the Committee takes note of European Union Document(s) Nos” is vetted by the Clerk of the Scrutiny Committee but its physical tabling and appearance on the Notice Paper are dealt with by the Chief Whip’s Office and Public Bill Office. The notice of Motion is circulated on a separate (blue) sheet accompanying the Order Paper on the sitting day after tabling and often on the Monday following tabling. The Motion is the responsibility of the Minister in whose name it stands, so it should be checked when it first appears. It will be circulated again should an Amendment be tabled. If the debate is to be taken on the Floor, the Motion will appear in Remaining Orders. In either case, it is essential that the Vote Bundle is checked every day for any Amendments to the Government’s Motion on which Ministers may need

to be briefed. Amendments may be tabled up to the rising of the House the night before the debate. The European Community Documents list (published with the Vote Bundle every Monday) shows all documents recommended by the Scrutiny Committee for debate during the Session, which are awaiting debate, or upon which a European Committee or the House has come to a Resolution. The list of outstanding debates and details of debates held can be found on the Parliament website

(<http://www.publications.parliament.uk/pa/cm/cmeudoc/cmeudoc.htm>)

and now appears in the daily House of Commons Order Paper under the section headed "Future Business E". Transcripts of European Committee (in the section on General Committees) debates can be found at:

<http://www.parliament.uk/business/publications/hansard/commons/gc-debates/european-committee1/>

Provision of papers for the Committees

5.2.5 Responsibility for preparing the packs of papers ('the document pack') and for making the packs available on time for the debate rests with the lead Department, but is carried out in consultation with the Second Clerk of the European Scrutiny Committee. Details of this process can be found in [Annex P](#). Packs are now prepared electronically. At least two weeks before a debate you should first submit to the Second Clerk for checking a cover page listing the documents to be included; and example cover sheet is at Annex P. Once this is agreed, the final set of papers should be emailed as pdf documents, to the Second Clerk who will transmit the pack to the Vote Office for copying and circulation.

5.2.6 The following documents are **always** to be considered relevant if they relate to the debate:

- the Scrutiny Committee final (not uncorrected) report(s);
- the EU document(s) recommended by the Scrutiny Committee for debate; and
- associated EMs.

You may provide further material relevant to the debate, particularly if new documents have become available since the debate was recommended. If you intend to do this you should discuss this first with the Clerk of the Scrutiny Committee. Documents that might be provided include related depositable documents that have themselves not been recommended for debate or non-depositable papers, such as reports or resolutions from the European Parliament. No reference should be made to other EU documents unless they have been included in the document pack with the agreement of the Second Clerk. However, **documents which are covered by the Council's rules of confidentiality should not be provided**. This category includes material relating to the negotiations on legislation in the framework of the Council, particularly Council minutes and Council legal service

opinions. It also includes correspondence between a Community Institution and a member state unless it is clear that public disclosure has been authorised. If there is any doubt about the status of a particular document, the Cabinet Office should be consulted. **Failure to observe the procedures for the provision of papers and the inclusion of relevant material can give rise to difficult points of order for the Minister to address and possibly a motion to adjourn the debate.**

5.2.7 The Vote Office circulates copies of the document pack to the 13 members of the European Committee concerned, the Department (for the Minister), the Public Bill Office (for the Chairman and Committee Clerk), the Chief Whip's Office and the Opposition Whip's Office. It also makes copies available to any other Members who request them. Departments should not make copies themselves; centralising all copying within the Vote Office ensures that everyone concerned uses the same set of papers.

5.2.8 Documents should reach the Scrutiny Committee's Second Clerk as early as possible, **and not later than two weeks before the debate. Failure to do this may result in the Minister being criticised and/or a debate being adjourned.** If relevant papers are expected to become available (or emerge unexpectedly) later than this, you must forewarn the Second Clerk and ensure that papers are made available as soon as possible.

Operation of the Committees

5.2.9 The Committees' operating procedures may be summarised as follows:

- (i) Membership
Each Committee has a membership of 13, not including the Chairman. In nominating the Members of a European Committee, the Committee of Selection may appoint up to two members of the European Scrutiny and two members of the most appropriate departmental Select Committee (depending on the subject matter of the document(s) to be debated). Any MP may attend the meeting, speak and move amendments but only Committee members may move or vote on Motions.
- (ii) Lay-out of Committee Room
The lay-out is similar to that for Committees on Bills, ie with Government and Opposition MPs on benches facing each other and the Chairman and the Clerk seated at a table on the dais. The Minister occupies the usual position on the Government front bench throughout the meeting while his or her principal officials will be seated at the Chairman's table (there is usually only room for one or two at the table: others may be seated behind them or to the side of the room). During the

questioning session, the Minister(s) may sit closer to the end of the bench. Notes to the Minister should be passed via the PPS: officials must not enter that part of the room reserved for Committee members, or pass notes directly to the Minister.

(iii) Questioning Session

Each sitting may last for up to two and a half hours with up to one hour from the start of proceedings being set aside for the Committee to conduct a question and answer session of the Minister (though the Chairman has the discretion to extend this for up to a further half hour). The Chairman usually permits a member of the European Scrutiny Committee to begin proceedings by making a brief statement of no more than five minutes explaining the Committee's decision to refer the document(s) for debate. The lead Minister will then usually follow with a statement of **no more than 5 minutes** on the proposal, commenting on any relevant scrutiny points. Other Ministers may attend, make statements and take questions more relevant to their area of responsibility. Next the Minister will take questions, usually giving priority to the Opposition spokesman and members of the European Committee. The Chair will expect questions to be as brief as possible and will not normally allow either the question or answer to be interrupted. The Chair will seek to strike a balance between allowing a member to pursue a line of questioning similar to that which operates in Select Committee evidence sessions and allowing other members a proper chance to participate. Subject to this principle of allowing a single member to pursue a line of questioning before calling another Member, the Chairman will normally alternate in calling questioners from the Government and Opposition benches;

(iv) Debate

At the end of the period for questions, or sooner if there are no further questions, the Chair will ask the lead Minister to move the motion. The Debate then begins with the Minister making a speech. This should last just a few minutes and concentrate on those points not covered adequately during the questioning. In some cases it may be sufficient for the motion to be moved formally without an accompanying speech. The Minister may intervene during the course of the debate and will be invited to wind up at the end. If a Minister undertakes to respond in writing to points made during the debate, the letter should be copied to the Chair, members and Clerk of the European

Committee and to the Clerk of the Scrutiny Committee;

(v) Amendments to the motion

The normal practice is for amendments to the motion to be tabled before the rising of the House on the previous day. The Chair may use his or her discretion exceptionally to select manuscript amendments (ie, without notice). At the end of the debate the Chair will put the question on any selected amendment and then the main question or the main question as amended;

(vi) Resolution of the Committee

At the end of proceedings such questions as are necessary (taking account of (v) above) will be put by the Chair and the motion (as amended) or no resolution in the case of a negatived motion will be reported to the House (see paragraph 5.2.14 below).

5.2.10 In normal circumstances each two and a half-hour sitting of the Committees considers only one document (or set of documents which the Committee has agreed should be linked in a single debate).

5.2.11 Following the meeting, the Chair of the European Committee reports to the House any Resolution to which the Committee has come, or that the Committee has come to no Resolution. After each meeting of the European Committees, the relevant Department should immediately report the outcome of the Committee's proceedings to the Chief Whip's Office, (commenting particularly on any complaints or procedural difficulties that have arisen and which may be raised as points of order in the House), who will arrange for a motion to be tabled on the Floor of the House on the document(s) reported from the Committee.

The Government has undertaken (7 February 2008 col 1181) that the motion tabled will be the same as the one agreed by the Committee. If the Government does not then table any amendment this motion will be taken and, if necessary voted on, without debate, normally on the Monday following the Committee debate (but see paragraph 5.2.13 below). If the forthwith motion is needed more urgently to clear scrutiny, the Whips' Office must be advised as soon as this becomes clear. Scrutiny is not formally complete until the motion has been approved by the House. If the Government cannot accept the motion agreed in Committee, the Government will need to table amendments to it to enable a motion to be agreed with which it can proceed. Under the undertaking given by the Government, this provision would be made outside the requirements of the standing orders for this to be the subject of up to one and a half hours of debate on the Floor of the House with the motion as agreed by the Committee being voted on before the Government amendment.

5.2.12 If it is proposed to table amendments to the motion agreed by the Committee, Departments should first consult the Cabinet

Office and the Chief Whip's Office to discuss handling before making a recommendation to Ministers. The Minister should normally write to the Chairman and members of the European Committee with copies to the Chairman and Clerk of the Scrutiny Committee and to the Clerk of European Committees, to explain in some detail how the Government intends to proceed.

5.2.13 The European Committee's Resolution is reported immediately after the Committee rises. In normal circumstances the Forthwith motion will be tabled after the Official Report of the debate in the Committee has been published, usually several days after the debate. These reports can be found at <http://www.parliament.uk/business/publications/hansard/commons/gc-debates/european-committee1/>. But in cases of urgency (and these will normally be known in advance of the debate), the Chief Whip's Office can arrange for the motion to be tabled earlier. Further information on the arrangements for tabling motions and the procedures for tabling Government amendments to the motion can be obtained from the Chief Whip's Office.

Debates on the Floor of the House

5.3.1 Prime time may be provided for the most important debates. But generally, debates are held after the main business of the day (at 10 p.m. on a Monday or Tuesday, 7 p.m. on a Wednesday or 6 p.m. on a Thursday) and last for up to one and a half hours; occasionally that time may be extended. The Minister or Ministers responsible for the subject being debated open and wind up the debate. The Minister's opening speech should explain the contents of the documents and any relevant scrutiny points.

5.3.2 The Leader of the House will normally announce each forthcoming Floor debate its date and the documents to be taken in the Thursday Business Statement in the House in the week immediately prior to the debate or the week before that. The Motion will be tabled on the Remaining Orders. The documents and memoranda included in the motion may be referred to in the Business Statement but will more usually be printed in Hansard and not read out in the House. **It is your responsibility to ensure that copies of all these documents are available in the Vote Office by lunchtime on the day of the statement.** A document pack is produced subsequently in the same way as for European Committee debates (see paragraphs [5.2.5-8](#)).

Form of Government Motion and Amendments

5.4.1 Debates on EU documents are generally held on an expanded take note motion. Whilst it is desirable to indicate the Government's general position on proposals in motions for debate it may not necessarily be appropriate to seek to simplify the UK's attitude on all aspects of what might be a complex document (see [Annex P](#)).

5.4.2 The Motion should cite the relevant documents by their Council numbers (or refer to the department's unnumbered EM if no depositable text is available); and should also ensure that any relevant documents not recommended for debate (see paragraph [4.6.2](#)) are

'tagged' to the motion as being relevant to the debate. **Before approaching the Chief Whip's Office**, you should seek the advice of the staff of the Commons Scrutiny Committee on the description of the documents in the motion's wording and, if a debate after main business (see 5.3.1 above) is being sought, views on whether the motion as a whole falls within Standing Order No.16 (whose effect is that non-EC matters may not be included in the motion for debate). This is to ensure that all the relevant references to documents are correct before the motion is printed in the Order Paper. For all debates, the Chief Whip's Office should receive the agreed terms of the motion, at the latest by Tuesday evening preceding the Thursday deadline for circulation of papers (assuming a Wednesday debate in the following week – adjust according for debates planned for other days). The Chief Whip's Office will confirm with the Scrutiny Committee Clerk that the Department has cleared the terms of the motion with the Clerk and that it is correct. The motion is then tabled by the Chief Whip's Office. Later additions should only be made where they are unavoidable, particularly bearing in mind the timetable for approval described elsewhere.

Supplementary Explanatory Memoranda

5.4.3 You should consider whether Parliament has been given sufficient information on the latest state of Council discussions on the document. Any supplementary EM should be submitted in time to allow the Scrutiny Committee to consider and report further on the document, and at the very latest 48 hours before the debate. Ministers should always be prepared to bring the Committee or the House up to date on the latest developments.

Reference to new Documents

5.4.4 Exceptionally, the Minister might wish to include in the motion a document not seen or recommended for debate by the Scrutiny Committee, or to refer to a new document which has not been included in the motion; in such cases the Cabinet Office, Chief Whip's Office and the Clerk of the Scrutiny Committee should be consulted in advance.

Second Debates

5.5 Such debates are rare. Where they are recommended, you should endeavour to arrange them as rapidly as you would a first debate. Possible reasons for a second debate being recommended are:

- that the proposal has materially changed in a manner that could not reasonably have been foreseen at the time of the original debate; or
- a substantial lapse of time – generally several years had occurred since the original debate; or
- there has been a major change in relevant Government policy; or

- there has been a major change in relevant external political factors.

Debates in the Lords

5.6 Debates on EU documents in the House of Lords normally take place on the basis of either a 'take note' motion or a "question for short debate" referring to the relevant report of the Committee. Very occasionally, a debate may be linked to another motion on a related topic. When a date for the debate has been agreed, the motion is tabled for that day in House of Lords Business. When a document has been recommended for debate in the House of Lords, the Government's business managers need to be consulted only if particular problems are likely to arise. The motion is customarily moved by the Chairman of the relevant Sub-Committee and the task of the Government spokesman is to respond to points made in debate. The arrangements for these debates are not wholly in the hands of the Government but liaison between the Government Whip's Office and the Clerk of the Committee ensures that debates are arranged at a time of mutual convenience and most importantly at a time to ensure, if the scrutiny reserve resolution applies, that the debate takes place before any decisions on proposals need to be taken in the Council of Ministers. It is important that the Government's response is available no later than one week before any debate on a Lords report (see para [4.5.9](#)).

SECTION 6: UNCLEARED PROPOSALS: ACTION TO BE TAKEN

Introduction

6.0 This section:

- explains the undertaking given by the Government not to vote (or in some cases to abstain from voting on) proposals in the Council of Ministers which have not cleared scrutiny; and
- describes the action for Departments where uncleared proposals are likely to come before the Council for a vote.

Government Undertaking (Scrutiny Reserve Resolutions)

6.1.1 The Government undertaking is embodied in Resolutions of the House of Commons last updated on 17 November 1998 and the House of Lords of 16 March 2010. These Resolutions are the cornerstone of the scrutiny procedures and provide the assurance to Parliament that Ministers will not agree to measures in the Council of Ministers unless scrutiny has been completed (except in certain exceptional circumstances). The Resolutions cover:

- the stages of agreement to legislation under the ordinary legislative (agreement to the Council's position at first reading, second reading or to a joint text) or special legislative procedure (agreement to a Council position);
- the stage of political agreement reached in the Council of Ministers (a term referring to the adoption of a definitive position on a text after fulfilment of procedural preconditions for voting - delivery of the required opinions or consents as provided for by the legal basis concerned - but before its finalisation by the legal/linguistic experts);
- the stage of general approach (a term referring to a decision stating a position on a text or on part of a text before fulfilment of procedural preconditions for voting (e.g. receipt of the EP's opinion) and before finalisation of the text by legal/linguistic experts);
- certain pre-legislative documents or commitments by Ministers to a course of action for the EU e.g. where the Council reaching conclusions which are based on a document under scrutiny; and
- certain decisions taken by Heads of State at meetings of the European Council (eg, agreement in principle on legislative proposals or other

commitment to EU action which may be formally agreed at a subsequent sectoral Council).

The full text of both Resolutions (known as the **Scrutiny Reserve Resolutions**) are set out in Annexes [D](#) and [E](#).

6.1.2 In cases where unanimity applies, the Resolutions equate abstention to giving agreement. Where acts are adopted by majority vote, abstention is equivalent to voting against. Accordingly, references in the remainder of this section to “giving agreement” or “voting in favour”, include abstention in relation to an act whose adoption requires unanimity; references to “opposing” or “voting against” include abstention when the act in question is adopted by majority vote.

6.1.3 The terms of the Scrutiny Reserve undertaking have not been extended to the devolved administrations or legislatures. In other words, the UK Government has made no undertaking to withhold agreement to proposals pending the completion of Scrutiny by the devolved administrations or legislatures.

Action required on uncleared proposals

6.2.1 Whilst a **general approach** does not constitute a definitive point of agreement in the legislative process in the same way that other forms of agreement already captured by the Scrutiny Reserve resolution are, the Government does recognise that a substantive stage of consensus will have been reached with the agreement of a general approach and that it is a vital negotiating tool in the passage of legislation, and that consistent with the principles underpinning the scrutiny process as set out in the Resolution, the stage of general approach should be recognised as a significant step. If a general approach is reopened (normally by the European Parliament) even if the scrutiny process has previously been completed, the Committees must be informed. It may be necessary in such cases to reintroduce a parliamentary scrutiny reserve. In cases of doubt over handling you should contact the Cabinet Office for advice.

6.2.2 Scrutiny difficulties arise when Departments fail to identify soon enough that an uncleared proposal is reaching the decision stage. This is particularly important for proposals under the co-decision procedure, where the latter stages of the process can move quickly. **You must therefore monitor the progress of proposals closely and keep the clerks informed of any important developments**; draft Council agendas circulated at the beginning of each Presidency can help pick up potential difficulties at an early stage. Exceptionally, for instance during the Parliamentary Recess or when a proposal makes rapid progress, a proposal may come before the Council of Ministers for decision before the scrutiny procedures have been completed. The remainder of this section explains what should be done in those circumstances. It is therefore recommended that Ministers in each Department write to the Committees before the start of each Presidency to alert the Committees to the Presidency’s programme and pointing to priorities the Presidency might have to concluding a negotiation. These letters should set out the Government’s stance on each priority and the letters should be copied to the relevant Departmental Select Committee

in the House of Commons. It is also good practice for departments to review all outstanding items in the European Scrutiny Committee's Remaining Business document and the European Union Committee's Progress of Scrutiny document to identify any proposals that may move to a conclusion particularly during the long summer Parliamentary recess (see Annex V).

6.2.3 The first step is to examine whether the proposal, or the step to be taken, is covered by the Resolutions. Precisely what they cover is set out in paragraphs (1) and (2) of the Resolutions.

The second question is whether the Minister intends to agree. See 6.1.2 above for a description of how the scrutiny reserve resolution is engaged in case where QMV or unanimity applies. Voting against a proposal and abstaining on a proposal requiring qualified majority are accepted by the Committees as not breaching the Government's scrutiny obligations and no preparatory action is required but the Committees will expect to be informed of the Government's intended handling of uncleared proposals as far ahead of a Council as is possible so they make further representations to the Government before the Council. Ministers should also be prepared to write after the Council to report on the outcome. If in doubt whether a letter may be required please consult the clerks.

If the Resolutions apply and the Minister intends to agree, then the third question is whether either of the provisions of paragraph (3) applies. These provide that Ministerial agreement in the Council of Ministers may be given before the scrutiny process has been completed if:

- (a) the Minister considers that the proposal is confidential, routine or trivial in nature or is substantially the same as a proposal on which scrutiny has been completed; or
- (b) the Committees have indicated that agreement need not be withheld.

6.2.4 Although the terms of the Resolutions do not require Ministers to inform the Scrutiny Committees of decisions to approve uncleared measures in category (a) above, you should arrange for your Minister to write to the Committee Chairmen as far ahead of the decision to be taken as possible and in the case of confidential proposals e.g. financial proposals or CFSP restrictive measures proposals, you should write to the Committees to inform them of such decisions as far in advance of the Council as is possible and then follow up with the deposit of the proposal immediately after the decision is available publicly and an EM within the usual timescales thereafter.

Sub-paragraph (b) above allows the Committees to waive the scrutiny reserve. A request to do so must be made in advance by Ministerial letter, with reasons. This provision should be used sparingly and the reasons for seeking a waiver must be properly justified, not merely to obviate administrative failings (eg late submission of an EM or reply to Committee questions). Departments are advised to consult the Committees Clerk(s) before Ministers make a request and be aware

that such a waiver may only be granted by the ESC at a formal Committee meeting, whereas the EUC Chairman may issue a waiver on behalf of the EUC.

6.2.5 If paragraph (3) does not apply, the final step is to consider whether the Minister may wish to give agreement to the proposal nonetheless, in accordance with paragraph (4). If he or she may wish to do so, the following action must be taken to ensure that the Government's undertaking is not breached.

6.2.6 Where the United Kingdom spokesman is asked to indicate the UK's position on a proposal in COREPER or the Special Committee for Agriculture before it goes to Council for adoption or agreement (including political agreement or a general approach) on a proposal or common position, a Parliamentary Scrutiny reserve (in the sense used in the Council) must be placed on all uncleared proposals, including those that might be regarded as routine or trivial etc.

6.2.7 In such cases you should review the situation urgently, if necessary in consultation with Cabinet Office and the Clerk of the relevant Committee, and consider whether scrutiny clearance is likely to be obtained before the proposal goes to the Council, or whether the Minister could regard the proposal as routine or trivial etc. and should write to the Committee Chairman accordingly. The latter should certainly apply where a proposal has been the subject of correspondence with the Committees.

6.2.8 The effect of placing a scrutiny reserve (in the Council sense) should be to prevent the Presidency putting the item to the Council as an 'A' point. (A points on Council agendas are items on which political agreement has been reached at a previous Council meeting, or which have been agreed in advance at COREPER or the Special Committee on Agriculture (SCA), but require formal Council approval in their definitive form.) The Council's rules of procedure make it clear that only items for which approval is possible without discussion shall be included as 'A' points. (There have, however, been occasions when the Council Secretariat have put an item on the Council agenda despite the imposition of a scrutiny reserve in COREPER, in the expectation that it would have been lifted by the time of the Council. This is acceptable, but must be handled with considerable care and in close co-operation, through UKRep, with the Council Secretariat.) The Rules of Procedure do allow the Presidency to place an item on a Council agenda as a 'B' point. ('B' points are items that require substantive treatment by a Council.) However, insisting on a formal 'B' point because there is a parliamentary scrutiny reserve in place is not recommended. Doing so would be likely to irritate the Presidency or embarrass Ministers. Instead, it is far preferable to make every effort to complete parliamentary scrutiny in advance of the Council or to abstain in the vote on an 'A' point (if the vote is by qualified majority).

6.2.9 Where an uncleared proposal is expected to come before the Council itself as a 'B' point for agreement or for adoption, the responsible Minister must write to the Chairman of the Scrutiny Committee if he or she intends to vote in favour. (If it is put on the

agenda as an 'A' point we have the formal right to insist on its withdrawal). Under the Resolutions, a Minister may decide that **for 'special reasons'** agreement may be given to a proposal that has not cleared Scrutiny. In those cases where a Minister writes at the point of **political agreement or general approach** on a proposal, the Minister need not subsequently write to the Committee(s) again at the adoption/common position stage unless (for some unforeseen reason) the proposal has been amended substantively between political agreement and adoption/common position.

6.2.10 The Resolutions do not define 'special reasons'. The factors which could influence a Minister's decision in such circumstances include:

- i) the need to avoid a legal vacuum which might arise if an existing measure were to expire without agreement to an extension or adoption of a successor measure;
- ii) the wish that a measure of benefit to the UK should come into operation as soon as possible;
- iii) the difficulty, particularly if the negotiations in the Community have themselves been difficult or protracted, of putting a late reserve on a measure which is beneficial or neutral from the UK viewpoint;
- iv) to achieve an advantageous package deal with other measures;
- v) to prevent the adoption of a measure disadvantageous to the UK, ie in the case of a measure subject to majority voting, the risk that voting against would result in a less advantageous measure. The vote of other Member States would have to be secured in place of the UK's and this might require changes contrary to our interest;
- vi) to secure negotiated improvements in the measure;
- vii) to avoid the risk that the Presidency might override a Parliamentary Scrutiny reserve in order to avoid delay in transmission of a Council position to the European Parliament or to allow the Presidency to include the measure in their tally of achievements (see further paragraph 6.3.2 below). UKRep should be asked to advise on such risks;
- viii) where negotiations on a proposal under the ordinary legislative procedure have been concluded by the Conciliation Committee and an agreed joint text is expected to go to a Council quickly for formal adoption – see section 3.5.

This list is not exhaustive and gives an idea of some of the factors which might be considered. Whilst there may be “special reasons” for agreeing to items before the completion of scrutiny **the presumption must be that scrutiny should be completed before agreement is given in the Council of Ministers.** The Government reaffirmed, in the context of its responses to the reviews of scrutiny by both Committees in 2002, that it is committed to avoiding breaches of the Scrutiny Reserve Resolution. The Committees have made it clear that they will call Ministers to account for their actions if they are not satisfied by the accounts provided by Ministers for overriding the Scrutiny Reserve. It is therefore vital that the Cabinet Office is alerted at the earliest possibility of a potential scrutiny override so that handling options may be considered. The Government has also undertaken to provide a twice-yearly report to the Committees on the occasions during each six-month period that the Scrutiny Reserve Resolution has been breached.

6.2.11 The Resolutions require that, where a Minister decided that for ‘special reasons’ agreement should be given, they should explain the reasons to the Chairmen of the Scrutiny Committees **as soon as possible.** You should therefore arrange for a letter to be sent **as far as possible in advance of the relevant Council, describing fully the circumstances and justification for agreement.** The letter may include a request for waiver under paragraph 3(b): see paragraph 6.2.4 above.

6.2.12 If the Minister votes in favour of an uncleared proposal at any stage in the legislative process, either because it is unexpectedly put to the vote or because it is amended at the last minute to meet our objections, the Minister must write to the Chairmen of the Scrutiny Committees **as soon as possible** after the Council with an explanation. However, this situation should rarely arise. Items on Council agendas must be asterisked if they are to be put to the vote unless they are (by unanimous agreement) added to the agenda after the start of the meeting. As giving agreement in these circumstances may constitute a breach of the Resolutions, the Scrutiny Committee(s) may request the Minister to make either an oral or written statement to the House. The Minister’s letter should therefore offer such a statement. **Departments must alert the Cabinet Office at an early stage when a proposal may be agreed before the completion of scrutiny so that handling options can be considered. Neither Committee will not accept overrides where they could have been prevented by earlier action by the Department and in serious cases can result in the Minister being called before the Committee(s) to explain their departments’ handling of the override.**

6.2.13 If agreement is given to a proposal which is awaiting debate in the House of Commons, the Resolution requires the Minister to write to the Committee Chairman **and** make a statement to the House. The statement should include a reference to the scrutiny position, noting when the debate recommendation had been made, explaining the reasons why the Minister had decided not to withhold agreement and confirming the Government’s intention to arrange a debate within one month of agreement being given. An expression of regret at the impracticability of arranging a prior debate will normally be

appropriate. Departments should consult the Committee clerks on whether the Committee is likely to request that a statement be made.

6.2.14 Where agreement is given to any proposal on which a debate recommendation is outstanding in the Commons every effort should be made to arrange the debate within one month of agreement being given. Where a proposal is agreed before the Scrutiny Committee's assessment is complete and a debate is subsequently recommended, the Government will similarly try to arrange the debate within a month of the recommendation. Recess can be disregarded for the purposes of calculating this one month period.

6.2.15 The Undertaking also applies to situations where scrutiny has been re-activated by the provision of an EM on a formal Commission amendment to a proposal or a supplementary EM on a proposal which has been modified in discussion (see paragraphs [3.4.1](#) and [4.7](#)). If in such circumstances a Minister decides to give agreement before scrutiny procedures have been completed he should write to the Chairman of the Scrutiny Committees. The letter should refer to the proposal's scrutiny history, commenting on the significance of the changes and the extent to which they are in the UK's interests. If, as often happens, proposals are amended in the course of the final Council discussion, Ministers are not required either to place a reserve or write to the Chairman merely on the grounds that the Committee has not had the chance to consider such amendments. Parliament has recognised that such action would place an unacceptable constraint on Ministers' negotiating freedom. However, it is helpful for Ministers to write to advise the Committee on the final outcome and the reason for supporting final amendments. This should arise rarely; particularly if the Committees have been kept fully in touch with the Government's position during negotiations and what the Government would hope to achieve from the final Council discussions.

6.2.16 The key point in meeting the needs of Parliament is that you must take steps to arrange debates and clear scrutiny before Council consideration of a document reaches its final stages; adoption of a proposal, agreement to a general approach, agreement to a common position, or giving political agreement without the completion of scrutiny should be exceptional. On no account can agreement be given whilst maintaining a scrutiny reserve (in the Council sense): either a reserve is maintained and agreement is withheld or any reserve placed is lifted to pave the way for agreement.

Parliamentary Scrutiny Reserves

6.3.1 The expression "Parliamentary scrutiny reserve" has two meanings: the reserve embodied in the Resolutions of both Houses referred to above, and the reserve as used in the Council of Ministers. The former is in the control of the Scrutiny Committees. The latter is in the hands of the Government and is the subject of this section. You are responsible for ensuring that UKRep places a Parliamentary reserve on a document which has not completed the scrutiny procedures and subsequently for informing UKRep when the reserve can be lifted. This includes political agreement in the Council. At levels below the

Council, it is acceptable for the Government, if content with the document, to indicate general agreement subject to the Parliamentary reserve (see paragraph [6.2.5](#)).

6.3.2 The Parliamentary scrutiny reserve as such has no place in Community Law or procedure and its continued use is dependent upon the co-operation of other Member States and the Council Legal Services. In order to maintain its integrity, **you should consult UKRep and the Cabinet Office** (who will consult the Committee Clerks as necessary) before deciding whether to maintain a scrutiny reserve at a Council or to advise their Minister that a letter be sent to the Chairman of the Scrutiny Committee(s). UKRep will be able to advise on the risk of a reserve being overridden.

6.3.3 Where a scrutiny reserve is to be placed on a proposal, the Minister need not write to the Chairman of the Scrutiny Committee(s) unless it is later decided that the reserve should be lifted before scrutiny clearance.

6.3.4 The protocol on the role of national Parliaments agreed at Amsterdam and updated under the Lisbon Treaty requires that all consultation documents and legislative proposals be made available to national Parliaments (See [Annex F](#)). It also sets a minimum eight-week period between the tabling (in all languages) of a legislative proposal and its adoption (subject to exceptions on grounds of urgency). This is interpreted to mean original proposals emerging from the Commission or other initiator but not to any subsequent or revised proposals whether formal or informal. Our domestic scrutiny process will continue to be triggered either by the Cabinet Office or lead department in identifying documents which should be deposited as described by the Scrutiny Committees' standing orders.

6.3.5 Article 289(3) TFEU defines "legislative acts" as any act adopted by the ordinary or special legislative procedures. So these may be proposals from the Commission, initiatives from a group of member states, initiatives from the European Parliament, requests from the Court of Justice, recommendations from the European Central bank and requests from the European Investment Bank for the adoption of a legislative act. The common denominator is that they must be proposals which are subsequently adopted as acts jointly by the Council and European Parliament, or by one with the involvement of the other in the legislative process.

The protocol will not apply to e.g. CFSP instruments, as these do not constitute legislative acts. Nor will it apply to matters within exclusive competence of the EU (to which the principle of subsidiarity does not apply). It will clearly not apply to non-legislative documents e.g. Commission communications and reports.

6.3.6 The Government attaches importance to ensuring that this minimum scrutiny period is respected. When clearing business coming before COREPER and the Council (through the A & I point clearance procedure [– see separate [European & Global Issues Secretariat guidance](#) – this guidance provides background information about A & I points for Council and Coreper agendas and explains the procedure for]

clearance of such items before those meetings; clearance represents UK agreement that the text concerned is correct in substance and that Parliamentary scrutiny has been completed). UKRep will check with Departments whether the required eight-week period has elapsed and if not whether there are exceptional grounds for agreeing urgently. The eight-week period is counted from the date of receipt of the proposal by the Council Secretariat; this is given on the document issued by the Secretariat circulating the proposal. The eight-week period ends when the act is scheduled for formal adoption. For any case where the minimum scrutiny period is not being respected, Departments should inform the Cabinet Office of the details (copied to UKRep), propose whether we can or cannot accept the adoption of the point, and seek Cabinet Office agreement. The Scrutiny Committees will need to be kept informed if agreement is to be reached before scrutiny can be completed.

Statements to the House

6.4 As mentioned in paragraph [6.2.12](#), a statement to the House may be required under the reserve Resolutions if agreement is given to a proposal awaiting debate in either House. The Commons Scrutiny Committee may also request a statement on a proposal. Ministers have an obligation to accept such requests from the Committee. Subject to any wishes expressed by the Committee, statements may be either written or oral but are usually written. Where Ministers make a more general statement on the outcome of the Council concerned it may be appropriate to include a passage on scrutiny aspects even if the Committee have not had time to request a statement (see also paragraph [7.1.4](#)).

SECTION 7: PROCEDURE TO BE FOLLOWED DURING RECESSES AND BETWEEN PARLIAMENTS

Introduction

7.0 This Section describes:

- how the scrutiny procedures should be operated during Recesses; and
- comments on the period between two Parliaments.

Procedure during Recesses

7.1.1 In general the normal scrutiny rules apply during a Parliamentary Recess, although with the Committees not normally meeting there can be some relaxation in the timetable within which the Cabinet Office and Departments operate subject to agreement with the clerks. Over the summer, the Commons Committee meets in September; the Lords Sub-Committees may or may not meet but the practice has been for the Chairman to conduct occasional sifts. The Cabinet Office will advise Departments on a case by case basis where timetables may be relaxed following consultation with the Committees. You should note that the Commons and Lords recess dates rarely match precisely.

7.1.2 Documents will continue to be deposited in accordance with the procedures outlined in Section 2. EMs should continue to be prepared on deposited documents within ten working days if possible although the key point is that they should be submitted in good time before either House resumes. The Cabinet Office will advise of the deadline to be observed when writing to Departments requesting EMs. Where documents are deposited towards the end of the Recess (ie, within two weeks of the first day on which either House sits) the normal deadline for the submission of EMs will apply, adjusted accordingly for JHA opt-in decisions.

7.1.3 The Government is committed to not giving consent to proposals still under scrutiny unless special reasons apply. In assessing the feasibility of delaying the adoption of a measure, Ministers will need to bear in mind how long a delay might be when the House is in Recess and be guided accordingly. This is particularly important for proposals which either attract an opt-in decision or where subsidiarity concerns may arise and where Parliament has fixed periods under the Treaty in which to act. On the resumption of Parliament, Ministers should inform the Scrutiny Committees of any proposals agreed during the Recess which have not completed scrutiny and explain the reasons for agreement being given.

7.1.4 It is important that during Recesses, but particularly during the Summer Recess, Parliament is kept informed of important developments. During Recesses, Ministers cannot issue pre-or post-Council statements, so Ministers should write to each Chairman with this information. These letters should be copied to the Libraries of both Houses to ensure that information on Council meetings is accessible to

all members of both Houses (see also [Annex N](#)). This procedure should also apply during periods of dissolution between Parliaments (with letters addressed to “Dear Chairman”).

7.1.5 You should continue to liaise or correspond as normal with the Committee Clerks on day to day scrutiny matters.

7.1.6 You should consult the Cabinet Office if you are in any doubt about the procedures to be operated during a Recess.

Procedure to be followed between Parliaments

7.2.1 There can be no hard and fast rules on the procedures to be followed between Parliaments. The Cabinet Office will issue additional guidance on procedure as necessary when a General Election is called but the procedures below applied for the 2010 General Election and are reproduced here as a guide.

Dissolution of Parliament

7.2.2 **Normal scrutiny procedures should apply until the dissolution of Parliament.** When the date of the General Election is announced, Parliament can continue until 17 working days before the date of the Election when it will be formally dissolved (although it may be adjourned earlier). At this point the Scrutiny Committees will cease to exist and the following interim scrutiny arrangements will come into effect.

Deposit of Documents

7.2.3 EU documents cannot be formally deposited during the dissolution. But the FCO will continue to supply the Clerks of both Committees with documents as soon as they become available; the FCO will also arrange for other recipients to continue to receive their normal allocation of documents during the dissolution. The Cabinet Office will continue to notify Departments as normal of all documents made available to the Clerks with a request for Explanatory Memoranda (EMs) to be prepared on them (see paragraphs 7.2.5-7).

7.2.4 Documents distributed by the FCO during the dissolution will be formally deposited on the day of the State Opening of Parliament, accompanied by a special cover note.

Explanatory Memoranda

7.2.5 During the dissolution, **Departments should continue to prepare EMs as normal** except in two respects:

- i. the EM should not make any comments about policy implications i.e. The section dealing with policy implications should be left blank. Nor should the EM comment on any other policy consideration e.g. concerns about legal base or subsidiarity;
- ii. they should not be signed by a Minister.

These two elements of the EM should await the incoming Government before completion.

7.2.6 **These informal EMs should be prepared in accordance with the normal timetable as far as possible but instead of being submitted to Parliament, should be sent to the Clerks of both Scrutiny Committees and to the Cabinet Office.** They will be published as draft EMs on the Cabinet Office EMs website.

7.2.7 EMs for all documents received during the dissolution should be submitted in their final form with policy input and Ministerial signature **as soon as possible after the State Opening of Parliament, to coincide with the formal deposit of the documents.** They should be sent as normal to all regular recipients of EMs.

Adoption of Proposals before completion of Scrutiny

7.2.8 The Government's undertakings to both Houses of Parliament (Scrutiny Reserve Resolutions) will still apply during the Election/Dissolution Period. If a Minister decides for special reasons to give agreement to an item that has yet to complete scrutiny, the procedure described in the following paragraph must be observed. **Such occasions should be infrequent.** Planning ahead of recesses/dissolution can help to limit the number of scrutiny overrides. **The Cabinet Office should be consulted.**

7.2.9 If, following the dissolution, a Minister needs to give agreement to an item before the reappointment of the Scrutiny Committees, he/she should continue to **write to the Chairmen of the Committees in the usual way**, explaining why agreement is or was necessary. But until the names of the Committee Chairmen are known following reappointment of the Committees the letters should be addressed "Dear Chairman". The letter[s] should be **copied to the European & Global Issues Secretariat and to the Departmental scrutiny coordinator. A copy must also go to the Clerks of both Committees for information.** See section 4.12 for instructions on corresponding with the Committees. Where agreement is to be given to an item on which a debate is outstanding in the House of Commons, the letter to the Chairman should make clear the Minister's intention to make a statement to the House at the earliest opportunity and for the debate to be held within a month of when the debate recommendation has been reconfirmed by the new Committee. Where the document in question has yet to be considered by the Scrutiny Committees, the letter should explain the Minister's intention to write to the Committee Chairmen to inform them of developments and, for any document not considered to be confidential, routine or trivial, to offer to make statement to the House if that would be helpful.

7.2.10 It will be for the newly appointed committees to decide whether to continue with their predecessors' inquiries, and for the incoming administration to review the approach to reports on which responses are outstanding, including those where agreement may have been reached in the Council of Ministers. Departments should continue to liaise with the Clerks on handling such business.

Commencement of Committee Business

7.2.11 The following procedures apply for the reconstitution of the Scrutiny Committees:

Commons

- (i) The European Scrutiny Committee is appointed under Standing Order No. 143 of the House of Commons; **although it cannot meet until Members have been nominated by the House, which could take several weeks.** It is for the Committee to elect a Chairman from among its Members at its first meeting.
- (ii) The European Committees are appointed under Standing Order No. 119. The Committees will resume business once the newly appointed European Scrutiny Committee has reconfirmed any debate recommendations outstanding from the previous Parliament and has made any new recommendations (see also paragraph [7.2.8](#))

Lords

- (iii) The European Union Committee has to be reappointed in the new Parliament. **It cannot meet until its members have been nominated by the Committee of Selection and appointed by the House;**
- (iv) The Sub-Committees are appointed by the Select Committee, and any document currently under scrutiny by a Sub-Committee cannot be cleared until that Sub-Committee has met. If urgent clearance is needed for a document sifted to a Sub-Committee, Departments should contact the Sub-Committee Clerk to request that the document is placed on the agenda for the first meeting.

7.2.12 The European & Global Issues Secretariat will advise Departments of the date of the first meetings of both Scrutiny Committees, the names of the Committee Chairmen once appointed, and details of the full membership of both Committees as soon as this information is known. Until the Commons Committee Chairman is elected, Ministers should continue to address letters on an impersonal basis (i.e. Dear Chairman) and copy them in the usual way.

7.2.13 Incoming Ministers will have to be prepared to report, as appropriate, on documents adopted since the dissolution of Parliament, if necessary making a statement to the House (see paragraph [7.2.9](#)).

Debate recommendations carried over from previous Parliament

7.2.14 The newly appointed Commons European Scrutiny Committee will reconsider all debate recommendations carried over from

the previous Parliament. The presumption must be that they will confirm the recommendation of the previous Committee. Any reports presented for debate by the Lords European Union Committee in the last Parliament will stand to be debated in the new Parliament.

7.2.15 Departments should continue to provide written information to the Clerks of of both Scrutiny Committees about **business coming forward to meetings of the Council of Ministers** during the period of the dissolution.

7.2.16 The arrangements for **reporting on the outcome of Councils** should follow those adopted for recesses. For the House of Commons European Scrutiny Committee, Ministers should write to the Chairman to report on Council business during the dissolution and up to the point at which the new Parliament starts when statements can be published in the usual way. The Commons Committee will publish this correspondence for the information of the House in a report from the Committee (See [Annex N](#)).

Change of Government

7.2.17 If the present Government is returned to office, it is assumed that the current scrutiny procedures will continue to apply. If a new Government is returned, it will be necessary to obtain Ministerial agreement to the procedures to be followed at the start of the new Parliament. Departments will be notified of the outcome of the consultations when they have been completed.

7.2.18 It is, however, unlikely that the basic mechanics of preparing and submitting EMs will change. Departments should therefore make every effort to ensure that the submission of EMs is not unduly delayed in the early days of the new Parliament.

STANDING ORDER 143: THE HOUSE OF COMMONS EUROPEAN SCRUTINY COMMITTEE

1. There shall be a select committee, to be called the European Scrutiny Committee, to examine European Union documents and -
 - (a) to report its opinion on the legal and political importance of each such document and, where it considers appropriate, to report also on the reasons for its opinion and on any matters of principle, policy or law which may be affected;
 - (b) to make recommendations for the further consideration of any such document pursuant to Standing Order No. 119 (European Committees); and
 - (c) to consider any issue arising upon any such document or group of documents, or related matters.

The expression 'European Union document' in this order and in Standing Orders No. 16 (Proceedings under an Act or on European Union documents), No. 89 (Procedure in standing committees) and No. 119 (European Committees) means -

- (i) any proposal under the Community Treaties for legislation by the Council or the Council acting jointly with the European Parliament;
 - (i) 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 of the Treaty on European Union which is prepared for submission to the Council;
 - (iv) any proposal for a common position, framework decision, decision or a convention under Title VI 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.
2. The committee shall consist of sixteen members.
3. The committee and any sub-committee appointed by it shall have the assistance of the Counsel to the Speaker.

4. The committee shall have power to appoint specialist advisers either to supply information which is not readily available or to elucidate matters of complexity within the committee's order of reference.
5. The committee shall have power to send for persons, papers and records, to sit notwithstanding any adjournment of the House, to adjourn from place to place, and to report from time to time.
6. The quorum of the committee shall be five.
7. The committee shall have power to appoint sub-committees and to refer to such sub-committees any of the matters referred to the committee.
8. Every such sub-committee shall have power to send for persons, papers and records, to sit notwithstanding any adjournment of the House, to adjourn from place to place, and to report to the committee from time to time.
9. The committee shall have power to report from time to time the evidence taken before such sub-committees.
10. The quorum of every such sub-committee shall be two.
11. The committee shall have power to seek from any committee specified in paragraph 12 of this order its opinion on any European Union document, and to require a reply to such a request within such time as it may specify.
12. The committees specified for the purposes of this order are those appointed under Standing Order No. 152 (Select committees related to government Departments) including any sub-committees of such committees, the Select Committee on Public Administration, the Committee of Public Accounts, and the Environmental Audit Committee.
13. Unless the House otherwise orders, each Member nominated to the committee shall continue to be a member of it for the remainder of the Parliament.

HOUSE OF LORDS EUROPEAN UNION COMMITTEE: TERMS OF REFERENCE AND SUB-COMMITTEES

Terms of Reference (as at 16 March 2010)

(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) a document submitted by an institution of the European Union to another institution and put by either into the public domain;

(b) a draft legislative act or a proposal for amendment of such an act; and

(c) a draft decision relating to the Common Foreign and Security Policy of the European Union under Title V of the Treaty on European Union.

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 as appropriate in inter-parliamentary cooperation within the European Union.

STANDING ORDER NO 119: HOUSE OF COMMONS EUROPEAN COMMITTEES

1. There shall be three general committees, called European Committees, to which shall stand referred for consideration on motion, unless the House otherwise orders, such European Union documents as defined in Standing Order No. 143 (European Scrutiny Committee) as may be recommended by the European Scrutiny Committee for further consideration.
2. If a motion that specified European Union documents as aforesaid shall not stand referred to a European Committee is made by a Minister of the Crown at the commencement of public business, the question thereon shall be put forthwith.
3. Each European Committee shall consist of thirteen Members nominated by the Committee of Selection in respect of any European Union document which stands referred to it, and the Committee of Selection may nominate the same membership in respect of several documents.
4. In nominating the members of a European Committee, the Committee of Selection shall have regard to the qualifications of the Members nominated and to the composition of the House; and where practicable it shall nominate at least two members of the European Scrutiny Committee and at least two members of the select committee appointed under Standing Order No. 152 whose responsibilities most closely relate to the subject matter of the document or documents.
5. The quorum of a European Committee shall be three, excluding the chairman.
6. Any Member, though not nominated to a European Committee, may take part in the committee's proceedings and may move amendments to any motion made as provided in paragraphs (9) and (10) below, but such Member shall not make any motion, vote or be counted in the quorum; provided that a Minister of the Crown who is a Member of this House but not nominated to the committee may make a motion as provided in paragraphs (9) and (10) below.
7. The European Committees, and the principal subject matter of the European Union documents to be referred to each, shall be as set out below; and in making recommendations for further consideration, the European Scrutiny Committee shall specify the committee to which in its opinion the documents ought to be referred; and subject to paragraph (2) of this order, the documents shall be referred to that committee accordingly.

European
Committees

Principal subject
matter

Matters within the responsibility of the
following Departments -

- A Energy and Climate Change, Environment,
Food and Rural Affairs; Transport,
Communities and Local Government;
Forestry Commission; and analogous
responsibilities of Scotland, Wales and
Northern Ireland Offices
- B HM Treasury (including HM Revenue &
Customs); Work and Pensions; Foreign and
Commonwealth Office; International
Development; Home Office; Ministry of
Justice (excluding those responsibilities of
the Scotland and Wales Offices which fall to
European Committee A); together with any
matters not otherwise allocated by this Order
- C Business, Innovation and Skills; Children,
Schools and Families; Culture,
Media and Sport; Health

8. The chairman may permit a member of the European Scrutiny Committee appointed to the committee under paragraph (4) above to make a brief statement of no more than five minutes, at the beginning of the sitting, explaining that committee's decision to refer the document or documents to a European Committee.

9. The chairman may permit Ministers of the Crown to make statements and to answer questions thereon put by Members, in respect of each motion relative to a European Union document or documents referred to a European Committee of which a Minister shall have given notice; but no question shall be taken after the expiry of a period of one hour from the commencement of the first such statement:

Provided that the chairman may, if he sees fit, allow questions to be taken for a further period of not more than half an hour after the expiry of that period.

10. Following the conclusion of the proceedings under the previous paragraph, the motion referred to therein may be made, to which amendments may be moved; and, if proceedings thereon have not been previously concluded, the chairman shall interrupt the consideration of such motion and amendments when the committee shall have sat for a period of two and a half hours, and shall then put forthwith successively:

(a) the question on any amendment already proposed from the chair; and

(b) the main question (or the main question, as amended).

The chairman shall thereupon report to the House any resolution to which the committee has come, or that it has come to no resolution, without any further question being put.

11. If any motion is made in the House in relation to any European Union document in respect of which a report has been made to the House in accordance with paragraph (8) of this order, the Speaker shall forthwith put successively -

(a) the question on any amendment selected by her which may be moved;

(b) the main question (or the main question, as amended);

and proceedings in pursuance of this paragraph, though opposed, may be decided after the expiration of the time for opposed business.

12. With the modifications provided in this order, the following Standing Orders shall apply to European Committees:

No. 85 (Chairmen of general committees);

No. 88 (Meetings of general committees);

No. 89 (Procedure in general committees).

**HOUSE OF COMMONS SCRUTINY RESERVE RESOLUTION OF 17
NOVEMBER 1998**

(1) No Minister of the Crown should give agreement in the Council or in the European 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 Scrutiny Committee has not completed its scrutiny) or
- (b) which is awaiting consideration by the House (that is, which has been recommended by the European Scrutiny Committee for consideration pursuant to Standing order No. 119 (European Committees) but in respect of which the House has not come to a Resolution).

(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 of Rome (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 of Rome (co-operation), agreement to a common position.

(3) The Minister concerned may, however, give agreement –

- (a) to a proposal which is still subject to scrutiny if he considers that it is confidential, routine, trivial or is substantially the same as a proposal on which scrutiny has been completed;
- (b) to a proposal which is awaiting consideration by the House if the European Scrutiny Committee has indicated that agreement need not be withheld pending consideration.

(4) The Minister concerned may also give agreement to a proposal which is still subject to scrutiny or awaiting consideration by 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 Scrutiny Committee at the first opportunity after reaching his decision; and
- (b) in the case of a proposal awaiting consideration by the House, to the House at the first opportunity after giving agreement.

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

**HOUSE OF LORDS SCRUTINY RESERVE RESOLUTION OF 16
MARCH 2010**

(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 whether or not a formal vote is taken, and includes in particular—

(a) agreement to a programme, plan or recommendation for European Union legislation;

(b) political agreement;

(c) agreement to a general approach;

(d) in the case of a proposal on which the Council acts in accordance with the procedure referred to in Article 289(1) of the Treaty on the Functioning of the European Union (the ordinary legislative procedure), agreement to the Council's position at first reading, to its position at second reading, or to a joint text; and

(e) in the case of a proposal on which the Council acts in accordance with Article 289(2) of the Treaty on the Functioning of the European Union (a special legislative procedure), agreement to a Council position.

(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.

PROTOCOL (No 1)

ON THE ROLE OF NATIONAL PARLIAMENTS IN THE EUROPEAN UNION

THE HIGH CONTRACTING PARTIES,

RECALLING that the way in which national Parliaments scrutinise their governments in relation to the activities of the Union is a matter for the particular constitutional organisation and practice of each Member State,

DESIRING to encourage greater involvement of national Parliaments in the activities of the European Union and to enhance their ability to express their views on draft legislative acts of the Union as well as on other matters which may be of particular interest to them,

HAVE AGREED UPON the following provisions, which shall be annexed to the Treaty on European Union, to the Treaty on the Functioning of the European Union and to the Treaty establishing the European Atomic Energy Community:

TITLE I

INFORMATION FOR NATIONAL PARLIAMENTS

Article 1

Commission consultation documents (green and white papers and communications) shall be forwarded directly by the Commission to national Parliaments upon publication. The Commission shall also forward the annual legislative programme as well as any other instrument of legislative planning or policy to national Parliaments, at the same time as to the European Parliament and the Council.

Article 2

Draft legislative acts sent to the European Parliament and to the Council shall be forwarded to national Parliaments.

For the purposes of this Protocol, "draft legislative acts" shall mean proposals from the Commission, initiatives from a group of Member States, initiatives from the European Parliament, requests from the Court of Justice, recommendations from the European Central Bank and requests from the European Investment Bank for the adoption of a legislative act.

Draft legislative acts originating from the Commission shall be forwarded to national Parliaments directly by the Commission, at the same time as to the European Parliament and the Council.

Draft legislative acts originating from the European Parliament shall be forwarded to national Parliaments directly by the European Parliament.

Draft legislative acts originating from a group of Member States, the Court of Justice, the European Central Bank or the European Investment Bank shall be forwarded to national Parliaments by the Council.

Article 3

National Parliaments may send to the Presidents of the European Parliament, the Council and the Commission a reasoned opinion on whether a draft legislative act complies with the principle of subsidiarity, in accordance with the procedure laid down in the Protocol on the application of the principles of subsidiarity and proportionality.

If the draft legislative act originates from a group of Member States, the President of the Council shall forward the reasoned opinion or opinions to the governments of those Member States.

If the draft legislative act originates from the Court of Justice, the European Central Bank or the European Investment Bank, the President of the Council shall forward the reasoned opinion or opinions to the institution or body concerned.

Article 4

An eight-week period shall elapse between a draft legislative act being made available to national Parliaments in the official languages of the Union and the date when it is placed on a provisional agenda for the Council for its adoption or for adoption of a position under a legislative procedure. Exceptions shall be possible in cases of urgency, the reasons for which shall be stated in the act or position of the Council. Save in urgent cases for which due reasons have been given, no agreement may be reached on a draft legislative act during those eight weeks. Save in urgent cases for which due reasons have been given, a ten-day period shall elapse between the placing of a draft legislative act on the provisional agenda for the Council and the adoption of a position.

Article 5

The agendas for and the outcome of meetings of the Council, including the minutes of meetings where the Council is deliberating on draft legislative acts, shall be forwarded directly to national Parliaments, at the same time as to Member States' governments.

Article 6

When the European Council intends to make use of the first or second subparagraphs of Article 48(7) of the Treaty on European Union, national Parliaments shall be informed of the initiative of the European Council at least six months before any decision is adopted.

Article 7

The Court of Auditors shall forward its annual report to national Parliaments, for information, at the same time as to the European Parliament and to the Council.

Article 8

Where the national Parliamentary system is not unicameral, Articles 1 to 7 shall apply to the component chambers.

TITLE II

INTERPARLIAMENTARY COOPERATION

Article 9

The European Parliament and national Parliaments shall together determine the organisation and promotion of effective and regular interparliamentary cooperation within the Union.

Article 10

A conference of Parliamentary Committees for Union Affairs may submit any contribution it deems appropriate for the attention of the European Parliament, the Council and the Commission. That conference shall in addition promote the exchange of information and best practice between national Parliaments and the European Parliament, including their special committees. It may also organise interparliamentary conferences on specific topics, in particular to debate matters of common foreign and security policy, including common security and defence policy. Contributions from the conference shall not bind national Parliaments and shall not prejudice their positions.

**STANDARD FORM OF EXPLANATORY MEMORANDUM FOR
EUROPEAN UNION LEGISLATION AND DOCUMENTS**

[Council number*]
[COM or SEC number]
[Other identifying reference]

[Title of document]

Submitted by [insert Department name here] on
[date/month/year]

GENERAL DRAFTING NOTES

- There is no set length for an EM.
- The EM should contain analysis as well as narrative; it is quality over quantity!
- The better the quality and detail in the EM, the better the chance of clearance or reduced follow up from the Committees with questions that could have been avoided had more detail been included in the EM
- The EM should be free-standing and should provide enough detail to avoid the need to refer to previous EMs or other documents.

SUBJECT MATTER

1. First line should explain in simple terms what the document does. This section of the EM sets the scene: the background, what the Commission [or other Institution if appropriate] is proposing (if appropriate in some detail). The description of the subject matter should be sufficient to enable all recipients to understand broadly what is proposed, and why, without reference to the Commission document. This is also important from the point of view of the Minister who will sign the EM, as the submission of the EM is often the first time Ministers see any information on a new proposal. The description should be made as clear and simple as possible: prior knowledge of the subject area should not be assumed.

2. The description should give a summary of the Commission document, and should not cut and paste text from it. You may find that you wish to include additional information that is not mentioned in the Commission's document; this can be very helpful, but such text should be clearly identified as being supplementary to the information contained in the Commission document in order to avoid causing any confusion or procedural difficulties in the formatting of the Committees' briefing or draft report. Please also note that:

- *Abbreviations / acronyms should be spelt out in full, at the first mention, with the abbreviation in brackets*
- *Technical terms, jargon and names of relevant bodies should be explained clearly*
- *Write in plain English*

- *Reference to Euros must be accompanied by a conversion into sterling (using the monthly exchange rate set by Cabinet Office, available from [insert Departmental contact here])*

3. *Bear in mind that the ‘subject matter’ and the ‘policy implications’ sections of the EM should relate to one another.*

SCRUTINY HISTORY

4. *Include details of any past consideration of the proposal or closely-related proposals by the Committees, including dates, sift numbers (Lords), which Lords EUC Sub-Committee(s) have scrutinised a proposal, report/ session numbers (Commons) and the outcome (i.e. cleared/not cleared/ further information requested etc). It is also helpful to quote the Commons agenda nos attached to each scrutiny item which can be found in their reports. This information can be obtained from Departmental contact here or the Cabinet Office].*

MINISTERIAL RESPONSIBILITY

5. *State which Departmental Minister is primarily responsible for a proposal. This is usually the Minister in charge of the Department even if another of the Department’s Ministers signs the EM. Any other Minister who may have a Departmental interest should also be mentioned, along the lines of: “The Secretary of State for [Department] has an interest/responsibility ...stating what the particular interest is”. Reference to any responsibilities of the devolved bodies is recorded in a separate section below.*

INTEREST OF THE DEVOLVED ADMINISTRATIONS

6. *You should include reference here to any responsibilities of the devolved bodies – i.e. where the subject matter of the EM relates either to a devolved matter, or to matters that are likely to impact upon devolved matters (it is also useful to include something here if the matter is reserved but is still likely to be of interest to the devolved administrations and if they would be likely to be consulted/contribute to the Government line). The devolved administrations must be consulted about the terms of any EM on a proposal touching on devolved matters. Whenever an EM indicates that a Minister from one or more devolved administrations “has an interest” in the subject matter, text along the lines of the following should be included:*

‘Scottish Government Ministers/Welsh Government Ministers/Northern Ireland Executive Ministers [include/delete as appropriate] have an interest [highlight particular issues here if applicable] and the devolved administrations have been consulted in the preparation of this EM’.

7. *Where there is no devolved administration interest the EM should say something along the lines of:*

“[insert topic here] is a reserved matter under the UK’s devolution settlements and no devolved administration interests arise. The devolved administrations have therefore not been

consulted in the preparation of this EM.” (But this should of course be confirmed in consultation with policy colleagues in the devolved administrations.)

8. *The Scrutiny Committees pay attention to the coverage of devolved interests in EMs, and may challenge the assessment, so your assessment needs to be precise.*

9. *The Cabinet Office copies all EM commissioning letters to the DAs so they are aware which department has the lead on an issue and they can use this information to make early representations to the lead department about their interest. Please note that current Scottish policy is to respond to **every** EM request, even if only to give a ‘nil return’. Northern Ireland tends to do this as well.*

10. *Draft EMs should be sent to:*

- *for **Scotland**: [insert Departmental contact here], and generic email address EM.scotexec@scotland.gsi.gov.uk ;*
- *for **Northern Ireland**: info.europe@ofmdfmni.gov.uk as well as the relevant policy contact (if known);*
- *and for **Wales**: correspondence.european@wales.gsi.gov.uk.) as well as the relevant policy contact (if known).*

Cabinet Office scrutiny guidance on reference to the devolved ((07) 26 & 37) can be found at: http://www.cabinet-office.gsi.gov.uk/euro/adhoc_guidance_for_scrutiny.htm

LEGAL AND PROCEDURAL ISSUES

11. *These will normally relate to the Treaty Article cited in the preamble. Consult Legal if you are in any doubt – and ensure that the draft EM is copied to Legal for comments. EMs on EU documents which do not contain legislative proposals may not have to include the next five sub-headings, but it is best to note in the EM that no such issues arise. A suggested wording is “There are no legal or procedural issues. This is not a proposal for legislation.”*

- Legal basis
(normally the Treaty Article cited in the preamble). This section should also include an assessment of whether the proposal is clearly within the boundaries of the article to address Parliamentary concerns about competence creep.*
- European Parliament Procedure
(whether the **Ordinary Legislative Procedure, or Special Legislative Procedure** is applicable. This can be found by consulting the text of the Article on which the proposal is based)*
- Voting procedure
(the voting procedure in the Council e.g. qualified majority voting, or unanimity)*
- Impact on United Kingdom Law*

(if there is an impact on UK law, please give as much detail as possible of the existing provisions or the area of existing law likely to be affected, and whether or not new or amending legislation will be required. Where the position differs in different parts of the UK, this should be explained. If there is no impact on UK law, or if the instrument is unlikely to have any implication in this country, it is sufficient to state just that, with a brief explanation)

- v. Application to Gibraltar
(The UK, as the Member State responsible for Gibraltar's external relations, is responsible for ensuring Gibraltar's compliance with EU requirements. A simple statement of applicability or non-applicability may be enough here, but if there is any further information that can be usefully added you should include it. Some Committee members take a strong interest in Gibraltar, so you could save yourself some time later on by providing a bit more detail in this section. Further guidance can be seen [here](#). If, having read the guidance, you think the legislation might pose a problem for Gibraltar in any way, please contact [insert contact here])

- vi. Fundamental rights analysis
(an analysis of the compliance with fundamental rights as described in the Treaty on the European Union. This information is normally supplied by Lawyers. The EM should explain which provisions of the EU proposal may engage fundamental rights, what rights are potentially engaged, and whether (in the opinion of the Minister) they are respected. If no issues arise then this should be stated in the EM. If it looks as though an EM will be delayed because it will take longer than the usual 10 days to consider the implications, please notify [insert Scrutiny contact here] as soon as possible). Further guidance is at:

COELA Guidance

<http://www.lion.gsi.gov.uk/LION/areapres.nsf/0/697DA155C68D8DF48025733F0046F432?OpenDocument>

EGIS Guidance (08)21)

http://www.cabinet-office.gsi.gov.uk/euro/adhoc_guidance_for_scrutiny.htm

APPLICATION TO THE EUROPEAN ECONOMIC AREA

12. *The EEA Agreement extends the principles of the EC Single Market to three of the four European Free Trade Association (EFTA) countries (Norway, Iceland and Liechtenstein – Switzerland rejected membership of the EEA in 1992). If the measure will be applicable to the EEA, the proposal will normally say so.*

SUBSIDIARITY

Drafting Note:

- Given that Parliament has 8 weeks in which to deliver a Reasoned Opinion on a Commission proposal that one or both Houses of Parliament believe do not pass the subsidiarity test, it is imperative that EMs where there are such concerns are provided promptly otherwise late deposit can compromise the Parliament's ability to deliver a reasoned Opinion. If the Government has subsidiarity concerns and these need to be developed further, the initial EM should include as detailed an assessment as possible and comment on the factors being considered further to reach a full analysis.
- Whilst a subsidiarity commentary is not required for non-legislative acts, it is helpful nonetheless to say why it is appropriate for the EU to act and also for consultative documents eg Commission green or white papers and some Communications it can be helpful to give advance views on whether the Government has any concerns about future legislation in a particular area which will need to be looked at carefully.

13. *This section should provide a concise assessment of whether the Government believes that the proposal in question is justified in accordance with the principle of subsidiarity as set out in Article 5 of the EC Treaty. This must be included even if the justification seems obvious. This is particularly important given the role the Committees have in considering whether a Reasoned Opinion should be considered/ delivered by their respective House. The proposal should contain the Commission's own assessment, and where the Government reaches the same conclusion as the Commission, it will normally be sufficient in the EM to add an appropriate comment from the UK perspective. In making this assessment, it may be useful to consider:*

- *Is action by the EU needed to achieve the objective? Can the objective of the proposed action only be achieved, or only achieved to a sufficient extent, at EU level?*
- *Would the objective be better achieved at EU level – i.e. would action at EU level provide greater benefits than action by the Member States?*
- *Is action proportionate?*
- *Can Member States solve the problem by acting individually? Can Member States, acting individually, fulfil the objectives of the Treaties? Would action by Member States damage the collective interest?*

14. *In cases where the Government disagrees with the Commission's conclusions, particular care should be taken to ensure that the Government's position is objectively justified. If a proposal falls within an area of exclusive EU competence subsidiarity does not apply and the EM should state this.*

Guidance can be found at:

FCO Guidance: <http://www.civilpages.gsi.gov.uk/display/egis/home>

POLICY IMPLICATIONS

15. *In general terms, the 'Policy Implications' section gives the view of the Government on the document as described in the 'Subject Matter' section, and should not usually comment on aspects of the proposal that have not been identified under 'Subject Matter'.*

16. *What will this proposal mean in practice? This section of the EM should present a clear account of the principal issues from a Government viewpoint, including possible impact on business costs and employment (an Impact Assessment or IA Checklist should be attached as appropriate or sent as an update as soon as it has been produced). UK concerns about the proposal should be briefly set out.*

17. *Check that your text doesn't beg any questions that could be easily answered at this stage, such as saying something like "six Member States have already done x" without mentioning whether the UK is one of them. The Committees will pick up on anything like this.*

18. *You should bear in mind that EMs are public documents, so caution should be used if you are disclosing aspects of our negotiating position and you should take care not to commit Ministers to anything that they might find it difficult to draw back from at a later date. If you have any concerns about informing Parliament properly without revealing our negotiating position, please consult your departmental scrutiny contact or cabinet Office. It can also be helpful to touch base with the Committee Clerks/Advisers for any help they might offer in how the EM might be drafted to cover this in a way which will help manage expectations on what the Government can offer and by when.*

19. *If you are going to question the proposed Treaty basis of a draft instrument, this should be indicated and cross-referenced under legal basis. You should include an adequate explanation in this section of the UK Government's concerns.*

20. *If there are no policy implications, it is better to avoid a bare negative. Instead, you should explain why this is so, even at the risk of being obvious.*

21. *This section should be used to comment on the factors the Government will take into account when considering whether or not to **opt-in to a JHA proposal**, and should also be used to provide a clear commentary on the Government's view on powers to be conferred on the Commission **Delegated or Implementing Acts**.*

CONSULTATION

22. *This section should cover any consultation past, current or planned by the Government with outside bodies. There may be occasions, however, when the information is covered elsewhere in the*

EM and simply sign-posted under this heading. This section of the EM should not normally refer to routine consultation with other Government Departments; however, where applicable, it would be very helpful to give an indication of what consultation has been made of the Devolved Administrations, if it has been indicated in the EM that they have an interest.

23. *The timetable for any planned public consultation should be given if possible, and if consultation has already taken place you should include a summary of the views expressed, including views that were opposed to the proposal.*

IMPACT ASSESSMENT

24. *If an Impact Assessment/Checklist is being produced, it should be mentioned here, and if not an explanation should be given. EMs on proposals which will impose a burden, or benefit, on business or the Third Sector, should incorporate an assessment of the likely risks, costs and benefits. Where necessary, the EM may contain an initial assessment of risks, costs and benefits – but must make it clear that a more comprehensive IA will follow. This would normally follow under cover of a supplementary EM but can be sent under a Ministerial letter to include updates on other aspects of the proposal.*

25. *If the Commission has produced its own Impact Assessment, it would be helpful to refer to it here and give the Government's views.*

Guidance on Impact Assessments and Checklists (dated 4 August and 26 October 2011 can be found at:

<http://www.civilpages.gsi.gov.uk/display/EGIS/Ad+Hoc+Scrutiny+Guidance+Letters>

FINANCIAL IMPLICATIONS

26. *This should cover financial implications for the EU and the UK, if this can be done without prejudicing our negotiating position. Where relevant information has been made available by the Commission, this should be given. If there is uncertainty about the Commission's figures it should be noted that the estimates may be subject to revision. Reference to Euros must always be accompanied by a conversion to sterling; the appropriate rate of exchange must also be shown. The rate to be used for converting euros into sterling for EMs is set on a monthly basis; the latest rate is available from [insert contact here] on request. As with policy implications above, if no policy implications arise the EM should say briefly why this is the case.*

TIMETABLE

27. *Be as specific as possible on the likely progress of negotiations in the Council (particularly for any form of agreement by Ministers, such as general approach, political agreement or conclusions) and in the European Parliament. If this is completely unknown, it is useful to give any indication we can of how long we expect it to remain unknown, e.g. "The proposal is not expected to be included in a Council agenda during the current Presidency, but may be taken forward under the next*

Presidency”).) *The JHA opt-in and subsidiarity reasoned opinion timetables should also be referred to where known.*

OTHER OBSERVATIONS (if appropriate) [this heading may be deleted if not needed] this can include other useful information that does not fit into the EM template – e.g. links to UK domestic policy, country information etc.

[leave enough space for the Minister’s signature here] EMs must be signed personally by a Minister – electronic signatures should not be used

[insert name of Minister]
[insert title of Minister]
[insert name of Department]

[leave enough space for the Minister’s signature here] EMs must be signed personally by a Minister – electronic signatures should not be used

[insert name of Minister]
[insert title of Minister]
[insert name of Department]

- * For an unnumbered Explanatory Memorandum substitute “Official text not yet received, or “Official text not available” as appropriate.
- ** For Explanatory Memoranda on documents not containing proposals for legislation substitute the word ‘DOCUMENT’ for ‘LEGISLATION’. Separate titles are used for CFSP and JHA business.
- *** Reference should be made to whether the assent, co-decision, consultation or co-operation procedure applies.
- **** Reference need not be made to consultation within Government as this will be implied by the information under Ministerial responsibility. This section should be used to describe consultation with external organisations.

The standard format above should be adopted as far as possible (modifications to the format above have been agreed with the Committees to cover CFSP and JHA documents). However, in certain circumstances (eg, EMs on non-legislative documents/supplementary EMs) it may be appropriate to omit some of the standard headings as appropriate. (See paragraph [3.2.1](#))

Some additional points to remember when preparing EMs:

- The date of submission to Parliament must always be shown.
- Scrutiny history (where appropriate) should always be shown; this should normally be included in the section on 'Subject Matter' or alternatively may feature as a footnote to the EM or as an Annex as appropriate. (See paragraph [3.2.2](#) and [Annex G](#)).
- Reference to Euros must always be accompanied by a conversion into sterling. (See paragraph [3.2.7](#)).

**EXAMPLE FORMAT FOR A CORRIGENDUM/ADDENDUM TO
AN EXPLANATORY MEMORANDUM**

CORRIGENDUM/ADDENDUM*

[document reference]

**EXPLANATORY MEMORANDUM ON EUROPEAN UNION
DOCUMENTS/LEGISLATION***

[Title of document]

[EM submitted on date]

[Scrutiny history: add a passage about consideration of the original EM
by both Committees (if appropriate)]

[details of amendment]

[Department]

[Date]

* delete as appropriate

Note

It is important that all the information given above is included in each addendum or corrigendum submitted. The above is simply an example and need not be followed exactly; a number of Departments have developed different styles of Corrigenda/Addenda which are acceptable to the Scrutiny Committees.

EXAMPLE FORMAT FOR REFERENCE TO SCRUTINY HISTORY IN EMs

Explanatory Memorandum [number] of [date] was considered by the European Legislation/European Scrutiny Committee on [date] under Committee reference no [add ref]. The Committee recommended [eg legal and or political importance/cleared/further consideration by the House] [Report number and Session] [If debated refer to date and venue of debate].

The House of Lords European Union Committee [eg cleared the EM/ referred the EM to Sub-Committee X who subsequently cleared the EM/produced a report for information/debate [reference number of report]] the EM was debated on [date] [Progress of Scrutiny dated].

(If the proposal had been the subject of Correspondence with Ministers the appropriate details should be given).

Note

It is important that as much detail is given when referring to previous scrutiny history. The above is simply an example and need not be followed exactly; it is more appropriate to use this approach in the main body of the EM when only one previous document is being summarised. But a number of Departments have developed different approaches to the presentation of scrutiny histories that are acceptable to the Scrutiny Committees e.g. tabular form. If the scrutiny history is lengthy or involves more than one previous document it may be more appropriate to include it in an Annex to the EM. The Committees have indicated that they like to receive the information in a tabular form. But format is not as important as ensuring the history is included to assist the Committees with their scrutiny.

CIRCULATION LIST FOR EXPLANATORY
MEMORANDAEmail Address

HANDLING NOTE

For all email circulation a PDF version of the signed EM should be sent.

For those recipients underlined below a word version should be also sent together with the details of the departmental policy lead official who can be contacted if there are initial follow up questions from the Committees.

Vote Office, House of Commons,

euvoteoffice@parliament.uk

European Union Committee

euclords@parliament.uk

Mrs E Lawrence Cabinet Office, European and Global issues Secretariat

Ellen.lawrence@cabinet-office.gsi.gov.uk

House of Commons Library

hcliads@parliament.uk

European Scrutiny Committee

escom@parliament.uk

Ms D Malloy Scottish Executive

em.scotexec@scotland.gsi.gov.uk

Department for Constitutional Affairs
Crown Dependencies Jersey,
Guernsey
Isle of Man

international@gov.je

dca.docs@gov.im

FCO Gibraltar Desk

GibraltarEMs@fco.gov.uk

Ms L Connolly, National Assembly For Wales

Correspondence.european@wales.gsi.gov.uk

Damien Montgomery, Economic Policy Unit,
ofmdfm, Northern Ireland Executive,

Info.europe@ofmdfmni.gov.uk

*Commission of the European Communities,

Jeffrey.LAMB@ec.europa.eu

CIRCULATION LIST FOR EXPLANATORY MEMORANDA**Email Address**

Political Affairs Unit, 8 Storey's Gate, London
SW1P 3AT

*Ian McGill Director, Advisory Council,
Liverpool and District Scientific and Research
Library

stb.central.library@liverpool.gov.uk

Bruce Hunt, Senior Parliamentary Affairs
Office, Parliamentary Agency to the City of

Bruce.hunt@cityoflondon.gov.uk

Serafin Pazos-Videl –Convention of Scottish
Local Authorities

Serafin@cosla.gov.uk

Rachael Donaldson- Local government
Association

Rachael.donaldson@local.gov.uk

Note:

Asterisked copy recipients receive numbered EMs, OTNA EMs and amended EMs (with the numbers inserted, ie: they do not receive OTNYR EMs when they are initially circulated)

All Government EMs are published on the Cabinet office EMs website at: <http://europeanmemoranda.cabinetoffice.gov.uk/>

BLANK

ANNEX K

PROTOCOL (No 2)

**ON THE APPLICATION OF THE PRINCIPLES OF SUBSIDIARITY
AND PROPORTIONALITY**

THE HIGH CONTRACTING PARTIES,

WISHING to ensure that decisions are taken as closely as possible to the citizens of the Union,

RESOLVED to establish the conditions for the application of the principles of subsidiarity and proportionality, as laid down in Article 5 of the Treaty on European Union, and to establish a system for monitoring the application of those principles,

HAVE AGREED UPON the following provisions, which shall be annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union:

Article 1

Each institution shall ensure constant respect for the principles of subsidiarity and proportionality, as laid down in Article 5 of the Treaty on European Union.

Article 2

Before proposing legislative acts, the Commission shall consult widely. Such consultations shall, where appropriate, take into account the regional and local dimension of the action envisaged. In cases of exceptional urgency, the Commission shall not conduct such consultations. It shall give reasons for its decision in its proposal.

Article 3

For the purposes of this Protocol, "draft legislative acts" shall mean proposals from the Commission, initiatives from a group of Member States, initiatives from the European Parliament, requests from the Court of Justice, recommendations from the European Central Bank and requests from the European Investment Bank for the adoption of a legislative act.

Article 4

The Commission shall forward its draft legislative acts and its amended drafts to national Parliaments at the same time as to the Union legislator.

The European Parliament shall forward its draft legislative acts and its amended drafts to national Parliaments.

The Council shall forward draft legislative acts originating from a group of Member States, the Court of Justice, the European Central Bank or the European Investment Bank and amended drafts to national Parliaments.

Upon adoption, legislative resolutions of the European Parliament and positions of the Council shall be forwarded by them to national Parliaments.

Article 5

Draft legislative acts shall be justified with regard to the principles of subsidiarity and proportionality. Any draft legislative act should contain a detailed statement making it possible to appraise compliance with the principles of subsidiarity and proportionality. This statement should contain some assessment of the proposal's financial impact and, in the case of a directive, of its implications for the rules to be put in place by Member States, including, where necessary, the regional legislation. The reasons for concluding that a Union objective can be better achieved at Union level shall be substantiated by qualitative and, wherever possible, quantitative indicators. Draft legislative acts shall take account of the need for any burden, whether financial or administrative, falling upon the Union, national governments, regional or local authorities, economic operators and citizens, to be minimised and commensurate with the objective to be achieved.

Article 6

Any national Parliament or any chamber of a national Parliament may, within eight weeks from the date of transmission of a draft legislative act, in the official languages of the Union, send to the Presidents of the European Parliament, the Council and the Commission a reasoned opinion stating why it considers that the draft in question does not comply with the principle of subsidiarity. It will be for each national Parliament or each chamber of a national Parliament to consult, where appropriate, regional parliaments with legislative powers.

If the draft legislative act originates from a group of Member States, the President of the Council shall forward the opinion to the governments of those Member States.

If the draft legislative act originates from the Court of Justice, the European Central Bank or the European Investment Bank, the President of the Council shall forward the opinion to the institution or body concerned.

Article 7

1. The European Parliament, the Council and the Commission, and, where appropriate, the group of Member States, the Court of Justice, the European Central Bank or the European Investment Bank, if the draft legislative act originates from them, shall take account of the reasoned opinions issued by national Parliaments or by a chamber of a national Parliament.

Each national Parliament shall have two votes, shared out on the basis of the national Parliamentary system. In the case of a bicameral Parliamentary system, each of the two chambers shall have one vote.

2. Where reasoned opinions on a draft legislative act's non-compliance with the principle of subsidiarity represent at least one third of all the votes allocated to the national Parliaments in accordance with the second subparagraph of paragraph 1, the draft must be reviewed. This threshold shall be a quarter in the case of a draft legislative act submitted on the basis of Article 76 of the Treaty on the Functioning of the European Union on the area of freedom, security and justice.

After such review, the Commission or, where appropriate, the group of Member States, the European Parliament, the Court of Justice, the European Central Bank or the European Investment Bank, if the draft legislative act originates from them, may decide to maintain, amend or withdraw the draft. Reasons must be given for this decision.

3. Furthermore, under the ordinary legislative procedure, where reasoned opinions on the non-compliance of a proposal for a legislative act with the principle of subsidiarity represent at least a simple majority of the votes allocated to the national Parliaments in accordance with the second subparagraph of paragraph 1, the proposal must be reviewed. After such review, the Commission may decide to maintain, amend or withdraw the proposal.

If it chooses to maintain the proposal, the Commission will have, in a reasoned opinion, to justify why it considers that the proposal complies with the principle of subsidiarity. This reasoned opinion, as well as the reasoned opinions of the national Parliaments, will have to be submitted to the Union legislator, for consideration in the procedure:

- (a) before concluding the first reading, the legislator (the European Parliament and the Council) shall consider whether the legislative proposal is compatible with the principle of subsidiarity, taking particular account of the reasons expressed and shared by the majority of national Parliaments as well as the reasoned opinion of the Commission;
- (b) if, by a majority of 55 % of the members of the Council or a majority of the votes cast in the European Parliament, the legislator is of the opinion that the proposal is not compatible with the principle of subsidiarity, the legislative proposal shall not be given further consideration.

Article 8

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.

In accordance with the rules laid down in the said Article, the Committee of the Regions may also bring such actions against legislative acts for the adoption of which the Treaty on the Functioning of the European Union provides that it be consulted.

Article 9

The Commission shall submit each year to the European Council, the European Parliament, the Council and national Parliaments a report on the application of Article 5 of the Treaty on European Union. This annual report shall also be forwarded to the Economic and Social Committee and the Committee of the Regions.

WHEN TO ENGAGE THE EUROPEAN SCRUTINY COMMITTEES DURING THE OLP (CODECISION) PROCESS

During the course of your draft proposal, it is essential to keep the European Scrutiny Committees fully informed of progress through the stages of co-decision. The below table highlights when you formally / informally engage the Committees. These commitments correspond to responses given by the Government to the House of Lords 2009 report on scrutiny of codecided proposals.

Informing the Committees occurs:

- Through the deposit of the original proposal and submission of an initial EM
- Through the deposit of further documents/EMs or updates in Ministerial letters or at official level at specific points in the process
- Through providing details of amendments with policy implications made or proposed in the Council, Coreper, Council working group or trilogue meetings
- When Coreper agrees to send a letter from the Presidency to the EP indicating the Council's agreement to a text or amendments to be proposed by the EP
- Where either Committee requests further information or an update. However the Government should be proactive. If no update has been provided for some time, consideration should be given to updating the Committees without waiting for a specific request from the Committees.

Note: It is important that when you update the Committees at Ministerial or official level you provide texts to support the update where these are available; if the only text you have is a limited text not in the public domain it can be provided under the arrangements we have agreed with the Committees for sharing these texts in confidence.

EU Stage	Held under scrutiny	Cleared scrutiny	Action
Commission proposal			Commission proposal deposited. EM provided in the usual way. Whilst drafting EM consider whether draft proposal will be subject to First Reading Deal. If so, please state under 'timetable'.
<u>EP 1st Reading Deal</u> ¹	✓	✓	As soon as known,

¹ No need to send a Ministerial letter prior to EP Reading if stated in original EM

EU Stage	Held under scrutiny	Cleared scrutiny	Action
			update Committees via a Ministerial letter
Pre EP 1st Reading	✓		A Ministerial letter must be sent to the Committees in advance of the EP's vote outlining the direction of the proposal; the Govt's position; the likelihood of a 'deal' being agreed. You should consider sharing, in confidence with the committees, the latest text or trilogue document to support the letter
Post EP 1st Reading / amendments	✓	✓	A Ministerial letter is required on the outcome of EP's 1 st Reading (if applicable) the prospects of amendments being accepted in Council. EP report should be attached to the letter, unless the Clerks advise that the report should be deposited
Commission opinion	✓	✓	On occasion, the Commission may revise its proposal. If so, this may warrant a new EM. Check with Clerks who will advise whether or not to deposit document in the House.
Council agreed Common Position text	Scrutiny override	✓	A Ministerial letter is required when a common position has been reached with a copy of the text.
Commission opinion on common position	✓	✓	Send to Clerks for information
EP 2nd Reading Deal	✓	✓	As soon as known, update Committees via a Ministerial letter with copy of available text.

EU Stage	Held under scrutiny	Cleared scrutiny	Action
Pre EP 2 nd Reading	✓		A Ministerial letter must be sent to the Committees in advance of the EP's vote outlining the direction of the proposal and the Government's position and the likelihood of a 'deal' being agreed with available text.
EP 2 nd Reading approves/rejects Council common position	✓	✓	Inform Committees' Clerks immediately via email copying the European & Global Issues Secretariat, Cabinet Office
Post EP 2 nd Reading amendments	✓	✓	Consult the Clerks on handling who will usually agree that a Ministerial letter is required on the outcome of the EP's 2nd Reading; (if applicable) the prospects of amendments being accepted in Council or whether Conciliation is likely to take place plus differences in substance between Council's and EP's positions. Note: EP amended text should be sent with the letter. If Clerks want text deposited then an EM will be required.
Commission opinion	✓	✓	On occasion, the Commission may revise its proposal. This may warrant a new EM. Check with Clerks who will advise whether or not to deposit document in the House.
Council 2 nd Reading, approval	Scrutiny override	✓	Ministerial letter unless clerks advise that previous updates have been sufficient and no further update required
Council 2 nd Reading,	✓	✓	Issue referred to the

EU Stage	Held under scrutiny	Cleared scrutiny	Action
rejected			<i>Conciliation Committee.</i> Inform Committees' Clerks immediately via email and copying the European & Global Issues Secretariat, Cabinet Office.
Conciliation Committee approves joint text	✓	✓	Ministerial letter is required outlining the results and the Government's view on the agreed text. This should be done before it is formally adopted by the Council. The letter should also offer to deposit a copy of the Joint Text.
Conciliation Committee rejects	✓	✓	Inform the Committees' Clerks immediately via email copying the European & Global Issues Secretariat, Cabinet Office. The Clerks will advise on any further action.

PRE AND POST-COUNCIL SCRUTINY

Background

As part of the Government's continuing efforts to improve the Parliamentary scrutiny and transparency of EU business, arrangements are in place for the provision of information before and after Council meetings. This includes the provision of detailed information to the Scrutiny Committees which allows the Committees to have a regular dialogue with Departments on forthcoming Council business; to track the progress of business during each Presidency; and to enable issues to be identified at an early stage on which it would be appropriate for the Committees to seek further information either by written or oral evidence. The essential elements of the system are:

- 1* provision of information (up to 3 weeks before a Council) to the Committees focussing on the scrutiny position of items on the agenda of forthcoming Councils – see proforma below.
- 2* liaison between the Committee staff and Departments on agenda details which may result in a request for further information, including calling the lead Minister to give evidence to the Committee on a particular issue.
- 3* a written Ministerial statement in both Houses shortly (no later than a day) before each formal Council meeting setting out why the items are on the agenda and the Government's general position on the items.
- 4* provision of detailed post-Council reports in the form of written Ministerial statements in both Houses setting out what happened at the meeting and what role the UK played. The statements should also record any votes taken. Similar statements should be made after informal Councils but these should be general in nature and not provide details of Member States' positions.
- 5* the possibility that Ministers may be called to give further evidence after a Council meeting.
- 6* During recesses, Ministerial letters to the Chairmen of the Committees in place of written Ministerial statements. These letters should be copied in the usual way (see Section 4.12) plus be copied to the Libraries of both Houses to ensure that information on Council meetings is accessible to all members of both Houses.

Items on forthcoming Council agendas

The Committees should be informed three weeks before a forthcoming Council of items expected to appear on the Agenda. The Committee Clerks understand that it may be difficult to provide this information with any certainty at this point and are happy to be contacted informally to discuss provisional business. As soon as the agenda becomes clearer, Departments should provide a detailed assessment of the main agenda items using the annotated agenda pro-forma below. This should include detail of previous relevant scrutiny by both Scrutiny Committees. If Departments are uncertain of the details of previous scrutiny they should consult the reports published weekly by the European Scrutiny Committee and the “Progress of Scrutiny” document published fortnightly by the Lords European Union Committee, or the European & Global Issues Secretariat who can provide details. Significant changes to the agenda should be notified to the relevant Clerk/Adviser in the Commons and Sub-Committee Clerk in the Lords immediately so that the Clerk/Adviser or Lords Sub-Committee Clerk can indicate whether further information is required in writing. Copies of annotated agenda should also be placed in the House libraries.

A day or two before the Council a written Ministerial statement should be provided to both Houses confirming the final Council agenda, the reason why each item is on the agenda and the Government’s general position on each item. These statements should be sent to the Chairmen and Clerks of both Committees, to Mr L Saunders in the European & Global Issues Secretariat of the Cabinet Office and to the Departmental scrutiny co-ordinator.

Liaison

The Committee Clerks (Sub-Committee Clerks in the Lords) will keep in regular touch with Departments to identify as far ahead as possible, issues on which each Committee might want to consider taking further evidence. This could be by providing further written evidence or could involve officials and/or Ministers appearing before the Committee. The Clerks will contact Departments at the earliest moment that the Committee has identified an issue on which it wishes further information to discuss handling and timing. Formal invitations to give evidence will be sent to Ministers.

Post-Council Reporting

Written Ministerial statements **should be provided within 5 working days of both formal and informal Councils unless Parliament has gone into recess** – see below. For formal Councils the statements should give a full account of business taken at the Council and what stance the UK took in discussions. But when reporting on informal Councils the reports should be more general in nature and should not record the positions taken by individual Member States. When reporting to Parliament the statements should be circulated in the same way as pre-Council statements.

Post Council Evidence

The Committees may call Ministers to give evidence after Council Meetings to follow up particular items of business. Departments should consider therefore whether a reporting letter, in addition to the statements and containing greater detail, might be useful in appraising the Committees more fully of the outcome of a Council, and so possibly avoiding the need for an oral evidence session. This may be important for items that have been the subject of particular Committee interest.

Recesses

During recesses, Ministers should provide pre- and post-Council statements in the form of letters to the Chairmen of both Committees. These letters should follow the instructions for corresponding with the Committees (section 4.12) and also be copied to the Libraries in each House.

Contact Details

If it is unclear which Sub-Committee in the Lords is dealing with a particular Council, the Documents Officer can be asked for advice. Copies of all agendas/proformas/letters for the Clerks should be emailed to escom@parliament.uk for the Commons, and to euclords@parliament.uk for the Lords.

[TITLE OF COUNCIL AND DATE]: ANNOTATED AGENDA – See also attached Agenda			
Document Ref:	Subject	Scrutiny History	Comment
As shown on Agenda	As shown on Agenda	To include details of previous documents/ Ministerial correspondence considered by Committee, including reference to any points of concern raised by Committee etc. Should also include reference to Lords Scrutiny position.	To note latest developments in negotiations and prospects for the Council, with particular emphasis on concerns expressed by the Committee previously, or outstanding problems for the UK, eg on points of substance, legal base etc.

Presidency Updates

Departments should also consider sending letters to each Committee at the start of each Presidency, highlighting Presidency priorities and looking forward to Councils at which decisions may be taken. This is particularly important when looking at Presidencies beginning in July as the House will be in recess for a long period over each Summer.

Blank

ANNEX O

(1) Provision of Papers for European Debates in Committee and on the Floor and Examples of Motions

The key steps in the process are:

1. The Department draws up as soon as possible a list of the documents to be included in the document pack for the debate. This can be done well in advance of the debate, but not later than the time when the debate is being set up and the motion prepared: see [5.4.1](#) and 5.4.2 above).

2. The Department assembles a cover sheet listing those papers it intends to include in the debate pack. As soon as possible, and in any event ***not later than two weeks*** before the debate is to take place, the Department sends to the ESC Second Clerk a draft contents sheet listing all the documents and including a hyperlink for each where one is available. **The Department is responsible for ensuring that all the papers required for the Debate are included in the document pack and that the pack is made available to the ESC Second Clerk on time so that it can be distributed to recipients via the Vote Office (see below).** The papers should be listed under three headings:

- Motion Documents: documents recommended by the European Scrutiny Committee for debate
- Other Relevant Documents: document(s) considered by the European Scrutiny Committee as relevant to the debate (i.e. tagged)
- Other Relevant Documents: document(s) considered by the Department as relevant to the debate

The papers should be in the following order:

- (a) ESC report extract. This should be the published version, not the uncorrected electronic version sent to Departments immediately after the ESC meeting: the correct version of the Report can be supplied by the ESC if still unpublished at the time of debate. The hyperlink should go to the html chapter of the Report on the ESC website; the electronic copy included in the pack should be an extract of the pdf report. **Do not attach the entire pdf Report.;**
- (b) EU document (this should be the text as deposited and not an advance electronic copy);
- (c) EU document addenda;
- (d) Explanatory memorandum (signed and dated);
- (e) Any other documents ‘tagged’ by the Committee, such as a relevant Report chapter on another document;
- (f) Any other document(s) regarded by the Department as relevant (drafts should not be used); when considering what to add, the aim is to supply sufficient material to

inform the debate but not overwhelm MPs with unnecessary additional paperwork.

3. Appendices/Addenda to European documents will now not be included in printed copies of the pack but should be listed, with hyperlinks given. The Second Clerk will check that the links work when the original draft document list is emailed to the Committee.

4. Once these papers have been agreed, save the pdfs with helpful titles. The title should start with the order the document will be in followed by a short descriptor (eg. 1. Extract from 3rd Report; 2. EU doc 1556/13) The order number is critical as it tells the Vote Office what order to compile the papers in. The final set of papers, together with contents sheet, should be emailed as pdf documents (in a zip file if lengthy) to the ESC's Second Clerk for approval. When agreed, ESC staff will send the papers to the Vote Office. They will consolidate the documents and page number them. They will then distribute them electronically and ensure hard copies are available on request.

5. The Vote Office compiles the papers electronically, page numbers them and sends copies to:

The 13 members of the European Committee concerned;

The Department (for the Minister – these will be sent to the official in the Department who sent the pack of papers to the ESC Second Clerk unless otherwise named);

The Public Bill Office (two copies);

The Chief Whip's Office

The Opposition Whip's Office; and

The ESC Second Clerk.

The Vote Office will make hardcopies available to those Members who request them.

6. No papers should be copied or circulated other than by the Vote Office. Only the original set sent to the Vote Office should be further copied. Departments should not send copies to Members or to the Clerk of European Committees themselves.

7. Papers should be added only if they become available after the original circulation. If it is necessary to add papers, they should be dealt with in the same way, passing via the ESC Second Clerk to the Vote Office. A new contents sheet should be provided for the additional documents, marked "Addendum".

Example document list:

**FINANCIAL SERVICES: RESIDENTIAL MORTGAGES
DEBATE IN EUROPEAN COMMITTEE B
(DATE AND TIME)**

Any Member wishing to receive document packs for European debates in electronic format, please contact the Vote Office on x 3631

	Motion documents	Page No.
1.	Extract from the Committee's First Report, HC 86-i, Chapter 2 http://www.publications.parliament.uk/pa/cm201213/cmselect/cmeuleg/86i/8604.htm	
2.	EU Document No.8680/11: Financial Services: Residential mortgages http://register.consilium.europa.eu/pdf/en/11/st08/st08680.en11.pdf	
3.	EU Document 8680/11, ADD 1: http://register.consilium.europa.eu/pdf/en/11/st08/st08680-ad01.en11.pdf	Available on request from the Vote Office
4.	EU Document No. 8680/11, ADD 2: http://register.consilium.europa.eu/pdf/en/11/st08/st08680-ad02.en11.pdf	Available on request from Vote Office
5.	EU Document No. 8680/11, ADD 3: http://register.consilium.europa.eu/pdf/en/11/st08/st08680-ad03.en11.pdf	Available on request from Vote Office
6.	EU Document No. 8680/11, ADD 4 http://register.consilium.europa.eu/pdf/en/11/st08/st08680-ad04.en11.pdf	Available on request from Vote Office
7.	Explanatory Memorandum from Mark Hoban, Financial Secretary to the Treasury dated 30 April: http://europeanmemorandum.cabinetoffice.gov.uk/files/Numbered_EMs_11/12001-13000/12891-11 - PDF	
	Documents tagged by the Committee	
8.	EU Document x or Extract from the Committee's report Y (The title and a weblink would be inserted if there were a tagged document)	If tagged – Available on request from the Vote Office
	Other documents: documents the department considers relevant to the debate	
9.	Letter from the Rt Hon Joe Bloggs to the Chairman of the European Scrutiny Committee dated 6 June 2012 (the department would need to insert the necessary weblink at this point – if available)	

Website addresses to locate documents.

European Documents can be located through the Consilium website:

http://register.consilium.europa.eu/servlet/driver?page=Advanced&typ=&lang=EN&fc=REGAISEN&srm=25&md=100&ssf=DATE_DOCUMENT+DESC&cmsid=639

Explanatory Memoranda through the Cabinet Office website:

<http://europeanmemoranda.cabinetoffice.gov.uk/>

If an EM has not been uploaded please contact the Cabinet Office European & Global Issues Secretariat who will ensure that the EM is uploaded to the EMs website with associated documents and Ministerial letters so that the appropriate link can be added to the Document Pack.

Committee Reports through the ESC website:

<http://www.parliament.uk/business/committees/committees-a-z/commons-select/european-scrutiny-committee/publications/>

(2) Motions for European Committees

1. Only the documents recommended for debate by the ESC should be included.
2. Documents should be given their Council Number (e.g. No. 6580/02) and description (e.g. draft Directive on tobacco advertising). 'A proposal for' should be changed to 'draft'. The title should match the way in which the document is listed in European Business.
3. Where a debate covers more than one document, numbers and descriptions should be given for each.
4. For unnumbered EMs (OTNAs and OTNYRs), a debate takes place on the unnumbered Explanatory Memorandum; the motion should indicate the Department that submitted it and the date of the submission. If an official text becomes available before the debate, consult the ESC Clerks on how to handle reference to this.
5. It is normal for the motion to give an indication of the Government's view of the document.
6. When the ESC has indicated that a document is relevant to the debate, i.e. that it should be tagged, that document does not appear in the motion itself but in an italic note underneath it. Examples of motions and tags are shown below.

Example Motions

For debate in European Committee A, B or C: That the Committee takes note

For debate on the floor of the House: That this House takes note

1. *Single Document*

That the Committee takes note of European Union Document No. 8680/11 and Addenda 1 to 4, relating to a draft Directive of the European Parliament and of the Council on credit agreements relating to residential property; notes the success that the UK has achieved against its key negotiating priorities in Council negotiations on this Directive; further notes that the Government recognises the importance of a sustainable mortgage market to support a stable housing market; and supports the

Government's view that the proposed Directive should recognise differences that exist between national mortgage markets.

1. *More than one Document*

That the Committee takes note of European Union Documents No. 17322/12 and Addenda 1 to 2, a draft Regulation adjusting with effect from 1 July 2012 the remuneration and pensions of the officials and other servants of the European Union and the correction coefficients applied thereto, No. 17360/12 and Addendum, a draft Regulation adjusting from 1 July 2012, the rate of contribution to the pension scheme of officials and other servants of the European Union, No. 11964/12, Opinion No. 5/2012 of the European Court of Auditors on the draft Regulation amending the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Union, No. 13327/12, Commission Report on the Exception Clause (Article 10 of Annex XI of the Staff regulations), and No. 13270/12, Special Report No. 10/2012 of the European Court of Auditors: The effectiveness of staff development in the European Commission; questions the European Commission's conclusion that recent and challenging economic conditions do no warrant the application of the Exception Clause; regrets that the Commission has not modified the salary adjustment method this year; stresses that consequent increases in EU staff pay, proposed by the Commission, are completely unacceptable; welcomes the findings and recommendation of the two reports from the European Court of Auditors; encourages the Commission to act upon these reports; rejects the Commission's proposals on salary and pension adjustments and pension contribution rates; and emphasises the continuing need for genuine reform both to the Salary Adjustment Method and to the Staff regulations in general in the context of the UK's overarching goal to achieve real budgetary restraint in the EU institutions.

3. *Documents and a Tag or Tags*

That the Committee takes note of European Union Document No. 8552/12, a Commission Communication on the External Dimension of European Union Social Security Co-ordination; supports the Government's view that the organisation and financing of national social security systems is exclusively the competence of Member States; and shares the Government's concerns that the extension of European Union competence in the area of social security co-ordination, through developing case law and regulations, will further undermine Member States' ability to protect their social security systems.

For a Committee debate:

11th Report of Session 2012_13, HC 86-xi, Chapter 28

Or

For a Floor debate:

The Thirty-fifth Report of Session 2012-13 from the European Scrutiny Committee, HC 86-xxxiii, and the First Report of Session 2013-14 from the European Scrutiny Committee, HC 83-i.

4. *Unnumbered EM*

Commission Communication

That the Committee takes note of Unnumbered Explanatory Memorandum dated 15 August 2012, submitted by the Foreign and Commonwealth Office, XXXX; supports the Government's view that XXXX; and shares the Government's XXX.

5. *Opt-in debates*

Title V opt-in or Schengen Opt-out Protocols

Lidington debates (where the Government has committed to giving an indication of their intention to opt-in or not)

To opt in

That the Committee takes note of European Union Documents No. 11720/12, a draft Council Decision concerning the signing of the Agreement between the European Union and Turkey on the readmission of persons residing without authorisation, and No. 11743/12, a draft Council Decision concerning the conclusion of the Agreement between the European Union and Turkey on the readmission of persons residing without authorisation; and supports the Government's recommendation to opt in to the draft Council Decision on conclusion.

Not to opt out

That this Committee takes note of European Union Documents No. 5754/6/12, an amended draft Regulation of the European Parliament and of the Council on the establishment of an evaluation and monitoring mechanism to verify the application of the Schengen acquis, and No. 11846/11, a draft Council Regulation on the establishment of an evaluation mechanism to verify the application of the Schengen acquis; and supports the Government's intention not to opt out of the draft Council Regulation under Protocol (No. 19) of the Treaty on the Functioning of the European Union.

Not to opt in at this stage (but may opt-in later)

That this House takes note of European Union Document No. 7641/12 and Addenda 1 and 2, a draft Directive of the European Parliament and of the Council on the freezing and confiscation of proceeds of crime in the European Union; and supports the Government's intention to not opt-in under Protocol (No. 21) to the European Union Treaties at this stage.

Ashton - opt-in debate

When the government doesn't want to show its hand (for negotiating purposes)

That this Committee takes note of European Union Documents No. 10610/11 and Addenda 1 and 2, the Draft Directive establishing minimum standards on the rights, support and protection of victims of crime, No. 10613/11 and Addenda 1 and 2 relating to the Draft Regulation on mutual recognition of protection measures in civil matters, No. 10612/11 and Addenda 1 and 2, a Commission Communication — strengthening victims' rights in the EU, and the unnumbered Explanatory Memorandum dated 16 May 2011 relating to a Council Resolution on a Roadmap for strengthening the rights and protection of victims, in particular in criminal

proceedings; and welcomes the opportunity to consider views on whether the UK should opt in to the draft Directive establishing minimum standards on the rights, support and protection of victims and the Draft Regulation on mutual recognition of protection measures in civil matters.

6. Debate on a draft Reasoned Opinion

Reasoned Opinion

That this House considers that the draft Directive of the European Parliament and of the Council on improving the gender balance among non-executive directors of companies listed on stock exchanges and related measures (European Union Document No. 16433/12 and Addenda 1 to 3) does not comply with the principle of subsidiarity for the reasons set out in Chapter 1 of the Twenty-third Report of the European Scrutiny Committee (HC 86-xxiii); and, in accordance with Article 6 of Protocol No. 2 of the Treaty on the Functioning of the European Union on the application of the principles of subsidiarity and proportionality, instructs the Clerk of the House to forward this reasoned opinion to the Presidents of the European Institutions.

ANNEX Q

Blank

BLANK

ANNEX R

Code of Practice on Scrutiny of Opt-In and Schengen Opt-Out Decisions in Justice and Home Affairs Matters (JHA)

Following Implementation of the Lisbon Treaty on 1 December 2009 and further enhanced during 2011 and 2012.

This Annex outlines the actions Government Departments will take to ensure opt-in and Schengen opt-out decisions take into account the views of Parliament. Its publication emphasises Departments' commitment to existing Cabinet Office scrutiny guidelines and to the scrutiny procedures on the opt-in first outlined on 9 June 2008 by Baroness Ashton and further enhanced by the undertakings set out in the Written Ministerial Statement (WMS) to Parliament made by David Lidington, the Minister for Europe (MfE) on 20 January 2011, and following the first Lidington debates in 2012. Departments must continue to follow standard procedures for consulting Business Managers on all Government decisions which are taken as part of the scrutiny process.

1. Article 3(1) of Protocol 21 to the EU Treaties on the position of the United Kingdom and Ireland allows the Government three months to decide whether to opt in to a proposed measure falling within Title V of Part Three of the Treaty on the Functioning of the European Union – Justice and Home Affairs (JHA) matters. The Government has undertaken to give special treatment to legislation requiring an opt-in decision (see the Statement by Baroness Ashton of Upholland, the Resolution of the House of Lords and the MfE's WMS, appended). The original Statement undertook that details would be in a Code of Practice setting out the Government's commitment to effective scrutiny. This Code also incorporates the enhancements to the consideration of JHA opt-in decisions outlined during 2011. Schengen opt-out decisions are treated in the same way.

Timetable for Submission of Explanatory Memoranda (EMs), linked to the opt-in timetable

2. The period for submitting an EM runs not from the date of deposit of the document, but from the date of its publication as a Council document in English. The undertaking given by Baroness Ashton is that Departments will submit EMs "as soon as possible," and no longer than ten working days from the date of the document's publication (as defined here). Departments should be aware that the Cabinet Office guidance requires the completion of further EMs as a dossier progresses.

Content of Explanatory Memoranda

3. The EM will state the date of publication of the proposal, and the date for the Committees to express their opinions on the Government's opt-in or Schengen opt-out decision. This date is eight weeks from the date of publication of the last language version of the proposal and should, where known, be included in the EM. The date by which the UK must notify its opt-in decision will also be three months from the date on the last language version of the proposal. This date should be ascertained by the Government Department from the General Secretariat of the Council. If not all language versions are available at the point of the EM submission, the date must be provided to the Committees as soon as possible thereafter.
4. The EM will set out the main features of the proposal and the Government's views on it. Additionally it will provide an indication, to the extent possible, of the Government's views as to whether or not it would opt in and the factors likely to influence the Government's decision, but bearing in mind the undertaking not to reach a final decision for at least eight weeks to enable the Government to take into account the opinions of the Committees.

Debates in Government Time

5. If the Government considers that a proposal is likely to attract particularly strong Parliamentary interest sufficient to warrant the offer of a debate in Government time, this offer will be made in the EM whilst recognising that in the House of Lords decisions on debates will rest with the House as provided for under pre-existing arrangements. This is also without prejudice to the right of the House of Commons to call a debate under the usual scrutiny arrangements. The decision on whether an offer should be made will fall to the lead Government Department in light of the process set out in paragraph 6. The Commission Work Programme, the Presidency forward look, pre- and post-Council Statements and the opt-in website will all be used to inform the offer. Departments should liaise with Business Managers via their Parliamentary Teams at the earliest opportunity to request they schedule a Commons debate.
6. An indicative list of opt-in decisions to be made during the year will be provided every six months to both Committees as part of the process set out in paragraph 17. The Government will make an indicative offer of those to be debated in Government time every six months by WMS to both Houses following consultations with the Committees.
7. All debates concerning the Government's opt-in decision should usually take place in the four weeks that follow the initial eight-week period of consideration after the publication of a proposal. Where Parliamentary time cannot be found for an opt-in debate to be held on a Government motion (for example recess), debates could be held on a take note motion

early in the three month window. Where the Government offers a debate in Government time, the Business Managers should be informed at the same time as the offer is made to the Committees. The motion for debate should, wherever possible, be notified in advance to allow the Committee discussion time.

8. Decisions on the signing or conclusion of international agreements which concern JHA matters or which the Government considers are subject to the UK's opt-in Protocol because they include JHA obligations, usually state that the agreement is annexed to the draft Decision. Departments will ensure that they include with the EM the text of the agreement in the form in which it is to be signed or concluded, in accordance with Cabinet Office guidance on negotiating mandates and external agreements. These arrangements apply to the Council Decisions to sign and conclude international agreements which concern JHA matters or include JHA obligations but not the negotiating mandates which are classified. The Committees will be informed of the existence of a negotiating mandate in writing.

The opt-in period

9. During the 3-month period for opting in, Departments will keep the Committees informed of the progress of any negotiations and of any substantial shift in their position on a dossier, in particular on the question of opting in.
10. If the Government decides to opt in, the Minister will write to inform the Committees that it has done so as soon as the Presidency has been notified. If the Government decides not to opt in, the Minister will write to inform the Committees of its decision as soon as it has been reached. The Government will report opt-in and Schengen opt-out decisions and the reasons why they believe their decisions to be in the national interest to both Houses of Parliament as a Written or, where appropriate, Oral Ministerial Statement (WMS/OMS) with a Ministerial letter sent during recess. No undertakings should be given to make an Oral Statement to the House until agreement has been sought as currently required (outlined in chapter 9 of the Ministerial Code). Officials should contact the Clerk/Clerk Adviser to the Scrutiny Committees in advance of publication so that they can inform the Committee Chairmen.

Early opt-in decisions

11. Where the Presidency wishes to put a proposal on the Council agenda for approval or adoption less than 8 weeks after publication and the Government has decided whether or not it wishes to opt in, the Business

Managers and Committees will be informed immediately of the decision and the reasons for it.

12. The Lords' Resolution further provides that, in the case of an early opt-in to a proposal awaiting debate in the House, the Minister must give reasons to the House at the opening of the debate.
13. An early opt-in counts as a "scrutiny override" unless cleared by the Committees, and should be an exceptional occurrence. A Minister who has overridden scrutiny must write to the relevant European Scrutiny Committee(s) setting out the reasons why she or he failed to respect the eight-week scrutiny period.

Schengen opt-outs

14. In the case of measures building on the Schengen acquis ("Schengen-building measures") the Schengen Protocol (No 19) takes precedence over the Opt-In Protocol (No 21). The result is that Schengen-building measures which can apply to the UK (broadly, those dealing with police and judicial cooperation) will apply automatically unless within 3 months the UK exercises an opt-out. The WMS made by the Europe Minister indicates that the enhanced scrutiny arrangements will also apply to decisions under the Schengen Protocol.

Post-Adoption Opt-Ins

15. Where the Government decides to opt in after a measure has been adopted it will inform the Committees of its intentions. The Committees will normally have a similar eight-week period in which to offer their views; however, the Government will need a degree of flexibility in cases where an earlier opt-in is considered in the national interest. As with a pre-adoption opt-in the Government will consider whether to offer a debate on Government time where the proposal attracts particularly strong Parliamentary interest.

Debates on Committee reports

16. Where the Lords Committee has adopted a report on the issue of opting in and has recommended that the report should be debated, the Government has undertaken that its business managers in the Lords will, through the Usual Channels, use their best endeavours to arrange a debate before the Government formally notifies its opt-in decision to the Council.
17. Where the Commons Committee has recommended a debate on the Government's opt-in decision in European Committee or on the Floor of the House, the Government has undertaken that its business managers in the

Commons will, through the Usual Channels, use their best endeavours to arrange a debate before the Government finally notifies its opt-in decision to the Council.

Annual Report

18. The Government has undertaken to report each year on the scrutiny of opt-ins. This report will include a review of the Government's application of the Protocol and its adherence to the enhanced scrutiny commitments, as well as opt-in decisions expected in the following year. A table annexed to the Report will show, for each dossier, the date of publication, date of deposit, date of Explanatory Memorandum and, where the Government decided to opt in, the date on which this was done. An update to the table and list of forthcoming opt-in decisions will be provided to the Business Managers and Committees at the mid-year point.

19. In addition, a public [JHA opt-in webpage](#) has been established. This lists opt-in and Schengen opt-out decisions taken by all Government Departments as well as active and forthcoming decisions. It is updated by the Home Office and Ministry of Justice.

Recess

20. The lead Government Department will write to the Committees well in advance of each recess (where relevant) notifying them of forthcoming opt-in decisions. In the House of Commons, the use of policy (take note) debates referred to at paragraph 7, will be considered where the only time available is early in the opt-in process, on the understanding that further Committee scrutiny may be necessary over recess. In the House of Lords, debates will continue to be on the basis of an amendable motion.

STATEMENT ON JHA OPT-INS BY THE RT HON THE BARONESS ASHTON OF UPHOLLAND, LEADER OF THE HOUSE OF LORDS, ON 9 JUNE 2008

[numbering added]

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 Parliaments views are fully considered.

HOUSE OF LORDS RESOLUTION OF 30 MARCH 2010

European Union Proposals: Scrutiny of Opt-in Decisions

Baroness Royall of Blaisdon moved to resolve that, 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:

(1) No Minister of the Crown may authorise such notification within 8 weeks after the proposal or initiative has been presented to the Council.

(2) A Minister may however authorise such notification sooner than provided by paragraph (1) if he decides that for special reasons this is essential; but he should explain his reasons-

(a) in every such case, to the European Union Committee at the first opportunity after giving that authorisation; and

(b) in the case of a proposal awaiting debate in the House, to the House at the opening of the debate.

(3) Where the European Union Committee is scrutinising the question of notification independently of the substance of the measure to which it relates, scrutiny of the substance of the measure will continue to be governed by the Resolution of the House of 30 March 2010, as amended.

The motion was agreed to.

Written Ministerial Statement

20 January 2011

Enhancing Parliamentary Scrutiny of European Union Business

Minister of State for Europe (David Lidington): The imminent annual report on EU Justice and Home Affairs has provided a useful point of reflection on current arrangements for Parliamentary scrutiny over Justice and Home Affairs decisions. The Government has come to the view that the current arrangements are not adequate and the Parliament has too small a role.

I am therefore pleased to announce that the Government has agreed an important package of measures to strengthen Parliamentary scrutiny of EU business, including in the important area of Justice and Home Affairs, to be elaborated and implemented in close consultation with the Business Managers and the relevant Parliamentary Committees. This Government is committed to upholding the right of Parliament to hold the Government to account on EU issues and this package will provide Parliament with further tools to enable it to do this job effectively.

The Treaty of Lisbon provides for a five-year transitional period after which the infringement powers of the European Commission and the jurisdiction of the European Court of Justice (ECJ) will apply to all unamended police and criminal justice instruments adopted under the pre-Lisbon 'third pillar' arrangements. The transitional period began on 1 December 2009 and will end on 30 November 2014. The UK has until 31 May 2014 to choose whether to accept the application of the Commission's infringement powers and jurisdiction of the ECJ over this body of instruments or to opt out of them entirely, in which case they will cease to apply to the UK on 1 December 2014.

Parliament should have the right to give its view on a decision of such importance. The Government therefore commits to a vote in both Houses of Parliament before it makes a formal decision on whether it wishes to opt out. The Government will conduct further consultations on the arrangements for this vote, in particular with the European Scrutiny Committees, and the Commons and Lords Home Affairs and Justice Select Committees and a further announcement will be made in due course.

The Government is fully committed to rigorous Parliamentary scrutiny of opt-in and Schengen opt-out decisions in relation to new proposals from the

Commission. The Government will continue to honour the arrangements that are currently in place following the undertakings of the then Government Minister, Baroness Ashton, for enhanced Parliamentary scrutiny of JHA opt-in decisions. The Government will also undertake to extend scrutiny of opt-in decisions with the following commitments.

Firstly, following the existing process of Parliamentary scrutiny of all JHA measures under Title V of the Treaty on the Functioning of the European Union (TFEU), the Government commits to make a written statement to Parliament on each opt-in decision to ensure that Parliament is fully informed of the Government's decision and of the reasons why it believes its decision is in the national interest. Where appropriate and necessary, this statement may be made orally to Parliament.

Secondly, the Government urges the Committees to take full advantage of their existing right to call a debate on an amendable motion on any opt-in decision and expresses its willingness to participate in these debates to ensure full transparency and accountability of opt-in decisions.

Thirdly, in circumstances where there is particularly strong Parliamentary interest in the Government's decision on whether or not to opt in to such a measure, the Government expresses its willingness to set aside Government time for a debate in both Houses on the basis of a motion on the Government's recommended approach on the opt-in. The precise details of these arrangements to allow such debates and the circumstances in which Government time would be set aside will be the subject of further consultation with the European Scrutiny Committees, Business Managers and the Commons and Lords Home Affairs and Justice Select Committees. These discussions will also need to determine how arrangements would operate during periods of parliamentary recess and dissolution of Parliament. However, the Government believes that as a general rule, it would be appropriate to do so in circumstances where it proposes to opt in to a measure which would have a substantial impact on the United Kingdom's criminal or civil law, our national security, civil liberties or immigration policy. The Government will also put in place analogous arrangements for parliamentary scrutiny of decisions to opt-out of measures under the Schengen Protocol.

As currently, the Government will not override the scrutiny process unless an earlier opt-in decision is essential. Where the Government considers an early opt-in to be necessary, it will explain its reasons to Parliament through the statement set out above. In these circumstances, it would usually be appropriate for the statement to be made orally.

The Government is committed to strengthening its engagement with Parliament on all European Union business as part of our wider work to reduce the democratic deficit over EU matters. It will review the

arrangements for engagement on EU issues in consultation with Parliament, and make a further announcement in due course.

These measures will significantly strengthen Parliament's oversight of EU Justice and Home Affairs matters and make the Government more accountable for the decisions it makes in the EU.

I have discussed the terms of this statement with the Home Secretary and the Justice Secretary who agree with its contents.

Blank

ANNEX T

SCRUTINY OF EU PROPOSALS: GOVERNMENT UNDERTAKINGS

Issue	Undertaking	Guidance/Handling/Key Messages
Pre-legislative scrutiny	To consult the staff of the Scrutiny Committees on the interest of the Committees in Commission consultations (on line consultations) in which the Government is involved i.e. intends to respond to	<ul style="list-style-type: none"> • Government commitment given during the Parliamentary debate in the House of Commons in February 2008 on reform of scrutiny procedures. • Departments should consider in consultation with the Committee clerks whether the Committee would want to be told about consultations (not subject to formal scrutiny following the deposit of a formal document); this would normally be taken to mean consultations the Government intended to respond to or is following closely..

<p>Depositing Documents</p>	<p>Deposit within 2 days of document being circulated by the Council Secretariat</p>	<ul style="list-style-type: none"> • Cabinet Office leads; sifts Council Secretariat Extranet for depositable documents. • Docs identified for deposit must be public documents - this excludes the deposit of Limité documents (see below) or classified documents. • Docs identified are deposited by FCO. • Departments also need to be vigilant to ensure that if Cabinet Office miss a document then department provides back-up and consults Cabinet Office on whether a document should be deposited. • FCO will lead on identifying Council decisions on sanctions/CFSP measures as most will be sensitive texts and not in the public domain; most will be dealt with as unnumbered EMs. • Treasury leads on identifying EU budget documents and other sensitive texts on which the Council takes decisions. • Documents which are consultative in nature e.g green and white paper and some Commission communications should also be sent by the lead department to the Clerk of the appropriate Departmental Select Committee for information. This follows a commitment to do so given by the Government in a response to a request from the European Scrutiny Committee in 2007. <p>The Government has reached agreement with the Committees not to routinely deposit some categories of documents, but to consult on a case by case basis for approval not to deposit. Documents include:</p> <ul style="list-style-type: none"> • Community positions on rules of procedure for various Councils and Committees, including those
------------------------------------	---	---

<p>Submitting Explanatory Memoranda (EM)</p>	<p>Submission by no later than 10 working days from deposit of a document (or 10 working days from circulation by the Council Secretariat of a JHA opt-in proposal by the Council Secretariat)</p>	<ul style="list-style-type: none"> • Committees have made it clear they are unlikely to grant extensions to the deadline for submitting EMs on proposals for legislation where the National Parliaments' Subsidiarity Protocol (Reasoned Opinion procedure) and/or the undertakings given to Parliament on Title V opt-in scrutiny apply. Both commitments provide a window of 8 weeks in which the Committees have to conduct their scrutiny processes. • Standard EM template should be used for each EM. • EM should be written in a way to enable the content to be understood by anyone and should not rely on the reader having extensive knowledge of the subject covered. • EM should stand alone and not rely heavily on extensive references to the deposited document or any other documents. • The devolved administrations (DAs) should be consulted on all EMs on issues where there is a direct or indirect interest for the DAs. The fact that the DAs have an interest and they have been consulted in the preparation of the EM must be clearly noted in the EM. Where a department records that an EM is on a reserved matter the EM should make this clear and say if the DAs have been consulted; if there is any doubt the DAs should be consulted. • Robust Government assessments of the principle of subsidiarity should be included in all EMs and not just those legislative proposals where the Lisbon Subsidiarity Protocol/Reasoned Opinion procedures apply. • If Article 352 (formerly Art 308) is the only article
---	---	--

<p>Scrutiny of proposals under the ordinary legislative procedure (formerly codecision)</p>	<p>Range of commitments given by the Government in response to a report from the House of Lords Scrutiny Committee in 2009</p>	<ul style="list-style-type: none"> • Scrutiny clearance has to be obtained before decisions are taken in the Council to agree first reading, second reading or joint texts emerging from the conciliation process. • Departments must use their discretion to decide points in the negotiation process to update the Committees on significant progress towards agreement, i.e. those developments which have policy implications. This includes deciding when to share trilogue or other texts with the Committees on an “in confidence” basis if the texts are marked limité (see below). • The Committees should be informed when Coreper agrees to send a letter from the Presidency to the EP indicating the Council’s agreement to amendments to be proposed by the EP. • The system provides flexibility for departments to agree with the committee clerks whether certain texts emerging in the process (e.g. EP outcomes, Commission opinions) are deposited with an EM or covered by a Ministerial letter. The Cabinet Office will draw these texts to the attention of departments requesting they consult the committee clerks on handling.
--	---	--

<p>Correspondence with the Committees/Responding to Committee reports/Reviewing Lords “Progress of Scrutiny” and Commons “Remaining Business” documents</p>	<p>Prompt responses to correspondence and requests for further information including</p> <ul style="list-style-type: none"> • Within 10 working days to Lords EUC Chairman’s letters if stated in the Chairman’s letter • Within 2 months to Lords EUC inquiry reports 	<ul style="list-style-type: none"> • All letters and reports from both Committees require a substantive reply unless otherwise stated. • If deadlines for response are likely to be breached it is important to consult the Committee clerks to agree when a response should be sent. If new deadlines are agreed and responses are received by the agreed dates the Committees will not treat the responses as late. • Departments must have systems in place to regularly review the “Progress of Scrutiny” and “Remaining Business” documents. Departments should pay particular attention to those outstanding items which may be the subject of progress over the long summer parliamentary recess when the Committees will not be sitting. • Correspondence with the Committees should be sent in hard copy to the Chairmen as appropriate and sent electronically both in PDF and Word formats. • Letters should: <ul style="list-style-type: none"> ○ state clearly the subject matter ○ contain relevant document reference (s) under scrutiny ○ Be copied to the standard circulation list including to departmental scrutiny coordinator and to the Cabinet Office. • Both Committees should be treated with equal importance. If the Government is providing new information relevant to both Committees then individually addressed letters to each Chairman should be sent. If a response is being sent to one of the Committees it is appropriate to copy the response to the other Committee.
--	---	---

<p>Sharing Limité documents with the Committees</p>	<p>Agreement to share these texts with the Committees with certain handling conditions</p>	<ul style="list-style-type: none"> • Limité documents can be shared with the Scrutiny Committees and are made available on the Government's authority. • They cannot be deposited and subject to an Explanatory Memorandum as this makes their content public . • The Committees cannot publish or comment directly on any limité document shared with the Committees in a way that puts the detail into the public domain but they will use the information to inform their overall scrutiny of a proposal. • It is for each department to ensure that this handling caveat is clear in any correspondence with the Committee when using a limité text to inform the committees of developments. The following short statement is an example of standard text that can be used when sending a Limité text to the Committees: <ul style="list-style-type: none"> ○ "The attached document [add description] is being provided to the Committee under the Government's authority and arrangements agreed between the Government and the Committee for the sharing of EU documents carrying a limité marking. It cannot be published, nor can it be reported on in any way which would bring detail contained in the document into the public domain." • These principles apply equally whether sending limité documents to the clerks at official level or to the Committees formally.
--	---	---

<p>Responding to Debate requests</p>	<p>Government is committed to holding debate well in advance of when a decision is needed in the Council of Ministers; and where a debate has been recommended on a Title V opt-in proposal to use its best endeavours to ensure that the debate can be held before the Government notifies the Council of its opt-in decision</p>	<ul style="list-style-type: none"> • For Commons Scrutiny Committee recommendations it is important that contact is made as soon as possible with the Chief Whip's Office to consider timing and handling issues including arranging for a letter to go the CWO to set out proposed handling for the debate. • If a floor debate recommendation is not be taken up the lead department should arrange for a letter to go the Chairman of the Scrutiny Committee to set out the Government's reasons and proposed handling intentions. • The lead departments should clear the text of the proposed motion for debate with the Committee's second clerk to ensure the motion includes accurate references to the documents listed in the motion. • The document pack provided to the Vote Office for circulation to Members of the European Committee debating the issue should follow the prescribed format.
---	---	--

<p>Observing the Scrutiny Reserve Resolutions</p>	<p>Government is committed to avoiding the need for scrutiny overrides</p>	<ul style="list-style-type: none"> • The scrutiny Reserve applies to texts reaching the stage of: <ul style="list-style-type: none"> ○ Final adoption ○ Positions under the ordinary legislative procedure at first reading, second reading, or to joint texts emerging from conciliation; ○ Political agreement: a term relating to a decision stating a position on a text or part of a text before fulfilment of procedural preconditions for voting (delivery of the required opinions or consents as provided for by the legal base concerned) but before its finalisation by legal/linguistic experts; ○ General Approach: a decision stating a position on a text or part of a text before fulfilment of procedural preconditions for voting and before its finalisation by legal/linguistic experts ○ Certain pre-legislative documents; eg where substantive conclusions are adopted and based on a Commission communication under scrutiny which sets a policy framework, direction or travel for the EU or is a pre-cursor to an EU legislative proposal; ○ Political endorsement of documents or proposals at a European Council where formal decisions will be taken at a subsequent Council • Where this is any doubt about handling situations where a scrutiny override may result, Departments should consult the Cabinet Office /UKRep on handling e.g. it may be possible to arrange for an item to be deferred to a later Council to allow for the
--	---	---

<p>Pre and Post-Council statements and information provided to the Committee clerks</p>	<p>Government has committed to providing Ministerial Written Statements no later than 1 day before a formal EU Council, and no later than 5 days after each formal and informal Council.</p> <p>Government has also committed to providing the Committee clerks with an annotated agenda before each formal Council meeting setting out the implications for scrutiny of items on the agenda</p>	<ul style="list-style-type: none"> • Written Ministerial Statements should set out why the items are on the agenda and the Government's position on them and in reporting after each Council the Statement should include what position the UK took on items discussed. • Statements after informal Councils should be general in nature and not provide details of positions taken by Member States in informal discussions. • During Parliamentary Recesses when Statements cannot be tabled, Ministers should write to the Chairmen of the two Committees and arrange for copies of the correspondence to be copied to the Libraries of each House.
<p>Informing the Committees about Presidency Priorities</p>	<p>Not a formal undertaking, but since the UK's EU Presidency in 2005 the practice has been for letters to be sent to the Committees.</p>	<ul style="list-style-type: none"> • These letters should be sent as early as possible in the Presidency and preferably before the start of the presidency and should ideally set out: <ul style="list-style-type: none"> ○ The Council timetable in the lead department's area of business ○ Expected progress on items under scrutiny by the Committees ○ New proposals or initiatives expected under the Presidency ○ The Government's policy stance on items to be progressed under the presidency ○ Copy of the Presidency programme where available

BEST PRACTICE TIPS FOR SUCCESSFUL SCRUTINY

Forward planning

1. Familiarise yourself with forthcoming Presidency priorities – Work closely with UKRep to identify which proposals will need to go through the Parliamentary Scrutiny process.
2. Send detailed Presidency letters to the Committees to forewarn them of upcoming proposals that may require scrutiny clearance and include an assessment of the position the UK will take on these matters.
3. Be aware of the timing of proposals (publication by the Commission/consideration at Council/EP Readings - UKRep should be able to help with this).

EMs process

1. Meet deadlines set. If you need more time for an EM then discuss a revised timetable with the Clerks and the Cabinet Office. The Clerks will usually agree extensions as long as the window of opportunity for the Committee to engage before decision points are reached is not compromised. If a new deadline date is agreed and the EM is submitted by that date the Committees will not consider the EM as submitted late and therefore won't be recorded as failing to meet the Government's commitment to Parliament.
2. Ensure that the document summary is as clear as possible. The reader should be able to gain all the relevant facts without referring to the original document. The first sentence should explain what the document does in simple terms.
3. Ensure the EM is as clear and concise as possible when explaining the Government's position and the policy implications of the document for the UK. It is important that where appropriate, an EM contains a robust assessment by the Government of compliance with subsidiarity in view of Parliament's role in delivering Reasoned Opinions
4. Ensure the EM is as clear as possible about the timetable for Council discussion or agreement, including where a document may lead to Council conclusions; this will help the Committees promote an EM up the line for consideration at the earliest possibility and give you a better chance of clearance
5. Give Ministers' Private Office's as much prior warning as possible that an EM will be submitted for clearance, checking that the relevant Minister will be available to sign the EM within the time available.
6. It may help to send an advance copy of an EM to the clerks ahead of signature if you are confident that the content of the EM will not be changed significantly by the Minister; this is helpful when timing is tight. Check with Ministers' offices that they are happy for you to do this.

Engagement with the Committees

1. Speak to the Clerks – They are always willing to help and keeping them informed early on can often avoid problems further down the line. Encourage desk officers to do the same.
2. Annotate the ‘Remaining Business’ and ‘Progress of Scrutiny’ and share this with the Clerks so they are kept up to date on the position of documents
3. Pass on feedback from Committee Clerks to policy leads (both good and constructive criticism).
4. Be creative – think of customer friendly ways to provide the Committees with information. For example, provide advice on people they could take evidence from, offer meetings with officials and Ministers, consider using video-conferences to allow the Committees to speak to officials in Brussels.

Avoiding overrides

1. Make sure you are aware of the timings of Councils and when proposals will be reaching General Approach/Political Agreement or any other stage of agreement including Council conclusions on documents
2. Ensure policy leads are aware of the necessity to clear proposals before they are reach agreement at Council, writing ahead as afar as possible to alert the Committees to the Government’s intentions for the Council. Investigate whether it is possible to delay agreement in Brussels if you haven’t cleared scrutiny.
3. Exemplary engagement and constant contact with the clerks may help your arguments to use a waiver to avoid an override.

Managing and tracking business

1. Keep a record of all EM’s and correspondence sent to each Committee
2. Check ‘Remaining Business’ and ‘Progress of Scrutiny’ documents produced by the Committees regularly for accuracy. Inform Clerks if you spot any discrepancies.
3. Carry out a “quality control” role in ensuring that correspondence with the committees is correctly addressed, contains attachments where these are referred to, that document references are included in the title of letters to help the clerks identify the scrutiny item, that “word” versions of letters accompany PDF copies, and that information is provided about policy officials who can be contacted if there are points the clerks need to follow up.
4. Write to the Committees before Recess to alert them to any issues that might require an override, or their urgent attention when they return.

Liaising with the devolved

1. Involve colleagues from the Devolved Administrations at the earliest opportunity so they are aware they may need to provide comments at short notice.

Clearance of A&I point

1. Check whether A/I point is still subject to scrutiny.

2. Send A/I point form to policy lead for completion ensuring they are aware of the tight deadline.
3. When returned, ensure summary of A/I point is included

Use of Extranet

1. If you are aware that a document is due to be published check to see if this is available on the Commission website or on the Council Secretariat Extranet. This could give you a couple of extra days to produce the EM prior to it being deposited in Parliament

DRAFTING INSTRUCTIONS FOR WRITING LETTERS TO THE EUROPEAN SCRUTINY COMMITTEES

Both Committees must be treated with **equal importance** when corresponding at Ministerial level.

When responding to correspondence from either Committee, it is usually sufficient to copy the response to the other Committee rather than send separate letters.

Please note that the Chairman of the House of Lords European Union Committee will always indicate in his letter when a reply is expected from the Government, where for more urgent information a reply is usually requested within 10 working days. The Government has given a commitment to reply within this deadline; where this may not be possible you should consider a holding reply or an extension to the deadline, consulting the relevant sub-committee clerk to discuss handling. The same principles should apply to responding to European Scrutiny Committee reports.

When the Department takes the initiative to write on an issue relevant to both Committees, it is important that separate letters are sent to both Chairmen and not addressed to one and copied to the other.

When Ministers write to the Chairmen of the European Scrutiny Committees, the letter must state clearly:

- The subject matter and relevant Council document number in a title;
- Where appropriate, reference to correspondence or reports from either Committee being responded to or relevant to the update; it is helpful to the Commons Committee if the letter also refers to the Committee's reference number which they will quote in their correspondence or which can be found from their reports (e.g. (12345))
- Where appropriate, the name of the Lords sub-committee that has considered an earlier document
- Ensure that attachments referred to in the letter are enclosed
- If a *limité* document is being attached the letter should make it clear that it is being provided in confidence to ensure that the Committees handle the information accordingly and do not publish the text
- Standard last paragraph must read: *"I am writing in similar terms/copying this letter to William Cash MP / Lord Boswell and am copying this letter to the Clerks of both Committees [Sarah Davies (Commons)/Jake Vaughan (Lords)], to Les Saunders, Cabinet Office European & Global Issues Secretariat, and [name], departmental scrutiny co-ordinator."*

Despatch

Letters to the Chairmen of both European Scrutiny Committees should be signed personally by a Minister.

A 'pdf' copy along with a word version of the letter should also be e-mailed to both Committees. The Committees will use the word version for compiling their reports, to reduce errors in transcript. When emailing the correspondence it is helpful to the Committees to include the name and contact details of departmental officials that can be contacted if the Clerks need to follow up on issues arising from the correspondence; this can be the departmental scrutiny coordinator or a lead policy official.

Commons

William Cash, MP
Chairman
House of Commons European Scrutiny Committee
Room 270
7 Millbank
London SW1P 3JA
Tel Contact: 020 7219 3296/3292
Fax: 020 7219 2509

PDF/Word copies of letters should be emailed to the Committee's generic email address escom@parliament.uk

Lords

The EUC does not require hard copies of letters only electronic versions as below.

Tel Contact: 020 7219 5791
Fax: 020 7219 6715

PDF/Word copies of letters should be emailed to euclords@parliament.uk

Email address for Les Saunders: les.saunders@cabinet-office.gsi.gov.uk

Postal address if necessary:

European & Global Issues Secretariat,
Cabinet Office, Room 421,
70 Whitehall,
London SW1A 2AS

KEEP\Parliamentary Scrutiny Guidance