

European and External Affairs Committee

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Ministerial Powers in relation to international development

Paratowyd y ddogfen hon gan gyfreithwyr Cynulliad Cenedlaethol Cymru er mwyn rhoi gwybodaeth a chyngor i Aelodau Cynulliad a'u cynorthwyr ynghylch materion dan ystyriaeth gan y Cynulliad a'i bwyllgorau ac nid at unrhyw ddiiben arall. Gwnaed pob ymdrech i sicrhau fod yr wybodaeth a'r cyngor a gynhwysir ynddi yn gywir, ond ni dderbynir cyfrifoldeb am unrhyw ddibyniaeth a roddir arnynt gan drydydd partion.

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Legal Advice Note

1. At its meeting on the 8th June 2010, the Committee received evidence in relation to international development issues from a number of witnesses, including Mr. Jon Townley who is the official responsible for international development issues in the Welsh Government. In the course of his evidence (pages 14-15 of the transcript) he referred to the different legal position of Welsh and Scottish ministers in relation to international development. The Committee requested a note to clarify the position.

2. Section 53 of the Scotland Act 1998 provides a general transfer of prerogative and other executive functions to Scottish Ministers, as well as those conferred on Ministers of the Crown under previous legislation, provided they come within devolved competence. Devolved competence in the case of Scotland is general in nature, subject to categories of exceptions set out in section 29 of the Scotland Act, of which the most relevant is reserved matters, which are set out in Schedule 5 to the Act.

3. The reservation in relation to Foreign Affairs is found at paragraph 7 of Part I of Schedule 5 and reads as follows-

"Foreign affairs etc

7(1) International relations, including relations with territories outside the United Kingdom, the European Communities (and their institutions) and other international organisations, regulation of international trade, and international development assistance and co-operation are reserved matters.

(2) Sub-paragraph (1) does not reserve—

- (a) observing and implementing international obligations, obligations under the Human Rights Convention and obligations under Community law,
- (b) assisting Ministers of the Crown in relation to any matter to which that sub-paragraph applies."

4. Mr. Townley referred to this in paragraph 91 of his evidence -

"The situation in Scotland is quite different. Under the Scotland Act 1998, for instance, the legal position is that international development is an entirely reserved matter except where the Scottish Executive assists the Secretary of State for International Development in exercising his duties. So it has a letter from the Secretary of State for International Development saying, 'Congratulations'."

The exception to the general reservation of international relations to which Mr. Townley referred is that contained in paragraph 7(2)(b) above.

5. Both Government of Wales Acts (section 58 of the 2006 Act), on the other hand, provide for the transfer of specific functions, initially to the National Assembly and now to Welsh Ministers. Accordingly, the general executive competence acquired by Scottish Ministers was not received by Welsh Ministers, so that in Wales, powers in specific enactments have to be relied upon for routine executive decisions for which no specific authority would be required in Scotland.

6. The most significant of these general powers is the power contained in section 60 of the Government of Wales Act 2006 -

"60 Promotion etc. of well-being

(1) The Welsh Ministers may do anything which they consider appropriate to achieve any one or more of the following objects—

- (a) the promotion or improvement of the economic well-being of Wales,
- (b) the promotion or improvement of the social well-being of Wales, and
- (c) the promotion or improvement of the environmental well-being of Wales.

(2) The power under subsection (1) may be exercised in relation to or for the benefit of—

- (a) the whole or any part of Wales, or
- (b) all or any persons resident or present in Wales.

(3) The power under subsection (1) includes power to do anything in relation to or for the benefit of any area outside Wales, or all or any persons resident or present anywhere outside Wales, if the Welsh Ministers consider that it is likely to achieve one or more of the objects in that subsection.

(4) The power under subsection (1) includes power—

- (a) to enter into arrangements or agreements with any person,
- (b) to co-operate with, or facilitate or co-ordinate the activities of, any person,
- (c) to exercise on behalf of any person any functions of that person, and
- (d) to provide staff, goods, services or accommodation to any person.”

7. The relevant provision here is sub-section (3) which provides the power to do anything for the benefit of an area (or persons resident) outside Wales provided Welsh Ministers consider it likely to promote the economic, social or environmental well-being of Wales. Thus if Welsh Ministers consider that the provision of support for international development (in ways such as the Committee heard about in evidence) is also likely to promote those aspects of well-being in Wales, they are acting within the powers conferred upon them by section 60.

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