



Climate Change – The Legal Challenge

Waste

The impact of devolution

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The United Kingdom – a quasi-federal state (since 1999)

- Scotland Act 1998
- Government of Wales Act 1998 (now superseded by the Government of Wales Act 2006)
- Northern Ireland Act 1998



SCOTLAND

North
Atlantic
Ocean

North
Sea

ENGLAND

IRELAND

WALES

• London

English Channel



Legislative competence

- The United Kingdom Parliament legislates for all parts of the UK in relation to non-devolved matters and in relation to all matters in relation to England
- The power to legislate in relation to other parts of the UK (Scotland, Wales, Northern Ireland) has been transferred to local legislatures in relation to certain matters
- In relation to Scotland and Northern Ireland the transfer has taken place for those matters *en bloc*
- In relation to Wales a transfer of legislative competence is taking place incrementally



Executive functions (subordinate legislation, granting of licences / consents, giving financial support etc.)

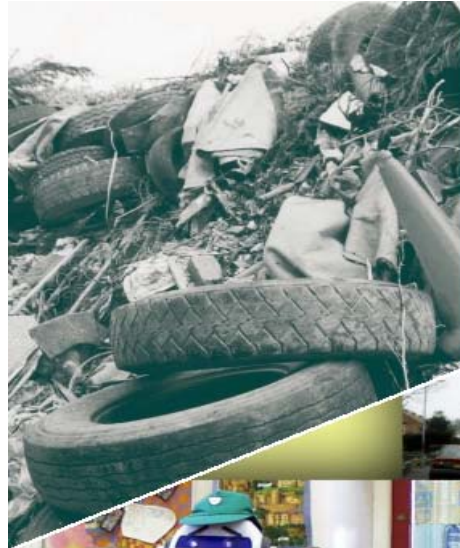
- UK Ministers exercise executive functions in relation to England and in relation to non-devolved matters in Scotland, Wales and Northern Ireland
- The respective devolved governments, nominated by and answerable to the devolved legislatures, exercise executive functions in relation to devolved matters in Scotland, Wales and Northern Ireland



The environment

generally a devolved matter in relation to all three territories

e.g. most governmental functions under the Environmental Protection Act 1990 have been transferred, in relation to Wales, from UK Ministers to the Welsh Ministers, including those under Part II – Waste on Land, so that, for example, the duty which the Act placed on “the Secretary of State” (i.e. the UK Government) to prepare a national (sic.) waste strategy for England and Wales is now a duty on the Secretary of State to prepare a national waste strategy for England and a separate duty for the Welsh Ministers to prepare a national waste strategy for Wales.



Wise about Waste:
The National Waste Strategy
for Wales

Part One

June 2002



The Welsh Ministers can be designated under section 2(2) of the European Communities Act 1972 to make subordinate legislation implementing EU directives including in relation to:

- Measures relating to the prevention, reduction and elimination of pollution caused by waste and the management of packaging and packaging waste
- The prevention and recovery of waste electrical and electronic equipment.
- The prevention and remedying of land contamination
- Persistent organic pollutants, dangerous substances, preparations and chemicals
- Measures relating to the regulation and control of the use of sewage sludge in agriculture.



- However, devolved institutions have no direct relationship with the European Institutions – this being at present the exclusive domain of the United Kingdom government – although it is possible (but extremely rare) for Ministers from devolved administrations to participate in Council meetings as part of the UK delegation.
- Similarly, any infraction proceedings arising from a failure of devolved institutions to implement EU law effectively are brought against the UK although any financial penalties imposed by the Court would be reimbursed to HM Treasury by the devolved institution



- Since its inception in 1999 the National Assembly for Wales has given a high priority to environmental issues, including renewable energy, control of pollution and waste disposal
- The first in-depth inquiry carried out by an the Assembly's then Environment Planning and Transport Committee was into the operation of the Nantygwyddon land-fill site



Cynulliad Cenedlaethol Cymru
The National Assembly for Wales



Environment, Planning and
Transport Committee

Committee Report

Independent Investigation: Nantygwyddon Landfill Site



1999 to 2006: - growth in the role of devolved government in Wales in waste management planning, including under the Waste and Emissions Trading Act 2003 –

- a separate limit for biodegradable waste sent to landfill in Wales
- a separate strategy for reducing such waste going to landfill in Wales
- powers to require local authorities in Wales to prepare municipal waste management strategies
- powers to require local authorities to provide wide information about the handling of waste in their areas



Since May 2007– the ability to acquire quasi-primary legislative powers in devolved fields including the field of Environment



The Proposed National Assembly for Wales (Legislative Competence) (No.2) Order 2007 (Relating to Environmental Protection and Waste Management) would enable the Assembly to legislate on:

“Collection, management, treatment and disposal of waste” and

“Environmental protection, including pollution, nuisances and hazardous substances.”

However, although this Proposed Order was laid before the Assembly on the 19th June 2007 and an Assembly Committee reported favourably on it on the 29th November 2007 it has not yet been referred by the Secretary of State to the Welsh Affairs Committee of the House of Commons for scrutiny. Its future therefore remains uncertain, although it clearly indicates a clear ambition on the part of Welsh Ministers that legislative competence over environmental matters including waste management should be devolved and significant movement in this direction is inevitable.