

ECONOMIC PERSPECTIVE 1

ECONOMIC DEVELOPMENT IN A UNITARY LOCAL GOVERNMENT SYSTEM

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Introduction

The 1989 Local Government and Housing Act gave local authorities in England and Wales a specific power to carry out economic development. At the time the legislation was going through Parliament it was said that more time was to be allowed for the formulation of separate proposals for Scotland (House of Commons Official Report, 1989, Column 837). It is now proposed that an economic development power will be introduced as part of the wholesale changes that Scottish local government reform will bring about from April 1996. Unfortunately most comment in the media has concentrated upon the proposed boundaries of the unitary authorities: in particular claims that these have been drawn so as to maximise the Conservatives' electoral advantage. This has overshadowed any discussion of the impact of the reform legislation upon service provision.

An earlier article in the Quarterly Economic Commentary (Hayton, 1992) considered the likely impact of reform upon local economic development. This was written at a time when the details of the economic development power were not known. The publication of the Reform Bill (Local Government etc (Scotland) Bill) in late 1993 means that the present article is able to look in greater detail at the power and compare it with the English and Welsh legislation. This enables its likely impact to be considered. The starting point is to look at the background to the legislation.

The Background To The Power's Introduction

In the mid-1980s the Conservative Government was increasingly concerned about the activities of a number of English local authorities. They were felt to be promoting local economic development policies on a large scale that were in direct conflict with the Government's political and economic philosophy. These authorities were typified by most of the metropolitan counties and the Greater London Council (GLC) which had set up enterprise boards. They were funded by the authorities using their discretionary powers and were attempting to

promote ambitious plans for the economic restructuring of their areas. This resulted in direct intervention in the local economies and attempts to influence the private sector at a time when Government policy stressed the role of the market and saw the public sector, in particular local government, as having a limited or non-existent role in the implementation of economic policy.

Despite the abolition of the metropolitan counties and the GLC in 1986 this did not lead to the enterprise boards being wound up. Most were able to continue with support from the district councils. Arguably the boards' success in surviving abolition resulted in the 1989 Act containing 2 specific economic development measures.

The first of these was the introduction of a specific economic development power, brought in under Section III of the Act. This caused 2 main problems for local government:-

- a) a specific economic development power meant that the discretionary powers to incur expenditure, chiefly under Section 137 of the 1972 Local Government Act (which had been used to fund the boards), could no longer be used for economic development purposes; and
- b) the legislation allowed the respective Secretaries of State in England and Wales to impose a wide variety of restrictions, through secondary legislation, upon the use to which the power could be put.

The outcome was that economic development could potentially be very tightly controlled by Central Government which now had the ability to legislate against individual authorities and particular activities if it so wished.

The second specific measure, introduced under Part V of the Act, was a range of controls aimed at restricting local government's involvement in companies. One interpretation is that this was an attempt to kill the enterprise boards once and for

all. Most of the boards took action to circumvent the legislation and most still remain, albeit that they have been restructured and generally operate on a smaller scale (Brayshaw, 1990). Those that were wound up were generally the victims of the inability of the district council funders to agree amongst themselves. Yet ironically this section of the Act has not been implemented largely, it would seem, because the legislation proved impossible to frame without affecting many other corporate bodies.

Whilst this legislation was being introduced in England and Wales there was little action in Scotland. In part this reflected the conservative nature of many Scottish local authorities whose economic development activities were neither high profile nor seen as a challenge to Central Government policy. The relatively harmonious nature of Scottish central-local government relations in the 1980s undoubtedly also played a part as did the fact that, at a time when Government policy was against direct economic intervention, Scotland had, in the Scottish Development Agency, an arm of Central Government whose remit was exactly that. These factors meant that economic development legislation was not a major issue in Scotland until recently when local government reform came to the fore.

The Justification For The Economic Development Power

The reform legislation is not merely about introducing unitary authorities. It is also an attempt to make changes in local government's powers and responsibilities. The economic development proposals are similar to those introduced in the 1989 Act. However the apparent justification is more difficult to discern largely as the messages coming out of the various Government publications are contradictory.

In the Second Consultation Paper on reform the possibility of introducing legislation was justified by reference to the creation of Scottish Enterprise and the Local Enterprise Companies (LECs). It was argued that they had very similar responsibilities to local government so that there was overlap and duplication in service provision. Legislation, it was claimed, would "help to delineate the respective responsibilities of local authorities and other publicly-funded organisations" (The Scottish Office, 1992, p. 62). Following this logic through would

imply that local authority activities such as business development and training would have been under threat, these being the LECs' main areas of interest. However when the White Paper appeared the overlap and duplication arguments seemed to have disappeared. The Paper stated that the power would cover all of the activities that local government was presently involved in (The Scottish Office, 1993a, p. 11). If this is accepted at face value then the justification for introducing the power seems rather obscure. One interpretation is that it is merely a measure of administrative tidiness: to bring Scottish authorities in line with those in England and Wales. However more cynical interpretations are possible.

The Economic Development Power

Unlike the English and Welsh legislation the economic development power is to be introduced as an amendment to existing legislation, the 1973 Scottish Local Government Act, with additional clauses 171A, B and C being inserted. The legislation is almost identical to that introduced under the 1989 Act with minor but potentially significant differences.

The power in both the Act and the Bill is very wide, allowing authorities to take "such steps as they may from time to time consider appropriate for promoting the economic development of their area". The important point to note is that the power is still discretionary, there being no requirement for authorities to provide an economic development service if they do not consider this to be appropriate. The power specifically allows authorities to provide financial and other assistance to set up or expand commercial, industrial or public undertakings which are in the authorities' areas or will increase employment opportunities for residents of these areas. Financial assistance is defined in some detail covering such things as grants, loans, guarantees and equity. The main differences in the wording between the Scottish and English and Welsh legislation seem to reflect attempts to tidy and tighten up the power rather than anything more substantive. For example the 1989 Act gives the Secretaries of State powers to impose restrictions upon the provision of financial assistance under Section 33. Section 34 contains additional wide ranging restrictive powers. There seems to be no need for such duplication and indeed it does not exist in the Scottish Bill where Section 171B contains a general power to allow restrictions to be imposed. Additional restrictions are not included in Section 171A which defines financial support.

The English and Welsh Economic Development Restrictions

The 1989 Act, like the Scottish Bill, allows the respective Secretaries of State to impose whatever restrictions they want upon the use of the power through secondary legislation. This has been a trend in recent years, with wide ranging powers being introduced through primary legislation which can then be restricted at a later date. A cynical interpretation might be that secondary legislation is likely to face less Parliamentary scrutiny. As such this approach gives the Government of the day the ability to be far more restrictive than might be the case if all the restrictions were included in the main act. This wide scope for imposing restrictions under the 1989 Act led many commentators to speculate that it would have a major impact upon economic development. In the event, when the regulations were published, the restrictions were relatively innocuous (Secretary of State for the Environment, et al, 1990). They fell into three categories, restrictions on :-

- a) involvement in certain activities such as newspaper publishing, trading in goods and services and manufacturing;
- b) authorities giving financial support to any individual company in excess of £10,000 a year unless they had above average unemployment levels or included within their boundaries areas eligible for Central Government support; and
- c) providing such financial support as wages subsidies.

However the impact of the restrictions was minimised by a variety of exemptions. For example trading and manufacturing was allowed if this was carried out as an adjunct to training, whilst wages subsidies could be given if they were to help the unemployed get back into work. Even the restriction upon financial support affected only 38% of authorities, most of which were in suburban areas in the south east of England where unemployment was not a major issue. The outcome was that the restrictions seem to have been rather a non-event. Certainly they have not had the detrimental impact upon local government's economic development service that was predicted. Despite this the potential still remains in the legislation for more draconian restrictions to be

introduced. It therefore may be a mistake to be too complacent and assume that the Scottish restrictions will be equally harmless.

The Scottish Economic Development Restrictions

What form the Scottish restrictions will take remains to be seen. However the White Paper indicated that these would be used for 2 purposes, both of which related more to the provision of information than restrictions as such (The Scottish Office, 1993a, p. 11). These were :-

- a) providing information to the Scottish Office, as required by European legislation, about financial support given to companies; and
- b) a requirement upon authorities to consult about their economic development plans.

Of the 2 the consultation requirement is potentially the most significant and is considered further below. Yet neither requirement seems particularly restrictive. However the Bill, following the 1989 Act, gives the Secretary of State very wide powers to impose restrictions. These could be aimed at individual authorities, particular types of assistance, the amount of money spent upon particular activities, total spending upon economic development or any combination of these. Potentially the Bill could be very restrictive and it may be that the financial limits that could be imposed under section 171B (3) could turn out to be the key restriction should the Scottish Office decide to impose it.

At the moment much economic development spending is justified under Section 83 of the 1973 Scottish Local Government Act. There is therefore a limit upon total economic development spending under this Section. This will no longer apply when the Bill is enacted. Potentially more resources could be spent upon economic development if the unitary authorities see this as a priority. The arguments put forward about overlap and duplication by the Scottish Office in the course of the reform debate may mean that this would not be looked upon favourably. Accordingly it may be that restrictions will be imposed upon all authorities, limiting their economic development spending to a per capita sum somewhat below that which presently applies to Section 83. As such the financial freedom that the power potentially gives authorities to raise resources through Grant Related Expenditure may be more apparent than real.

Spending upon economic development under a specific power may therefore prove to be more constrained than is presently the case.

Consultation

In the 1989 Act local authorities who were providing an economic development service were obliged, under Section 35, to produce an economic development statement. In effect an economic development plan, it was to include :-

- a) the authority's economic development proposals;
- b) the financial implications of these; and
- c) the objectives that the proposals were intended to achieve.

The plan was then to be used as the basis for consultation with the local business and commercial community and other interested parties.

There seems likely to be a similar requirement in Scotland. However this will be set out in regulations rather than being defined in the primary legislation, with Section 171B (2) rather unusually indicating that this may be a specific requirement. As argued above, as secondary legislation may be subject to less scrutiny, this could mean that the Scottish consultation requirements could be made more onerous than those applicable in the rest of Great Britain. Yet until this legislation is published it is impossible to know how, if at all, the Scottish consultation requirements will differ from those introduced in England and Wales.

The consultation requirements could also result in a major anomaly in Scottish public sector funded economic development. The indication in the White Paper was that one of the key consultees would be the LECs (The Scottish Office, 1993a, p. 11). The local authorities, which according to one estimate spend £90 million annually on economic development (McQuaid, 1992), could be required to consult about their economic development expenditure plans and objectives. The LECs, which are essentially public bodies given that all their funds come from the state, will still be allowed to prepare their business plans in secrecy, having no need to discuss their contents with anyone outside of the Scottish Enterprise network. The network's 1994/5 budget is £452 million, making the anomaly even more glaring. This is however all part of the trend to give the network greater influence over

local government whilst itself being sheltered from public scrutiny both by claims of "commercial confidentiality" and the LECs' legal status as private companies. There are parallels with other local authority services. For example, the LECs are afforded a similar ability to influence the planning system, with The Scottish Office stating that LEC priorities may mean that local authorities need to consider alterations to existing plans (The Scottish Office, 1993b, p.13).

This could be interpreted as part of the gradual process of privatisation, with the private sector-led LECs being given greater control over some local authority services. A more realistic interpretation is that this represents centralisation. The Scottish Office is able to exert greater control over certain services which are effectively removed, either totally or in part, from local authorities and given to bodies such as the LECs which it directly funds and indirectly controls. The outcome is that an increasing number of decisions that were previously taken by local government are removed from public scrutiny. These decisions are then taken by people who are non-elected, either self appointed or appointed by the Secretary of State according to obscure criteria, and who are not answerable for their actions to those who are ultimately affected by them. Accordingly local government reform may see the formalisation of two parallel local states: unitary authorities that are expected to be open in their activities over and above the transparency that the democratic system has inherent in it; and bodies such as the LECs which are totally funded by The Scottish Office and yet are allowed to prepare and implement their plans without any need to consult, being answerable only to Central Government. The economic development power's consultation requirements seem to be a clear step on the way to formalising this dual system.

The Scope of the Legislation

The economic development power introduced in the 1989 Act affected only one other piece of legislation, Section 137 of the 1972 Local Government Act. As this can only be used to support activities for which no specific legislation exists it could no longer be used for economic development purposes. The same situation will apply in Scotland where Section 83 of the 1973 Scottish Local Government Act will not be able to be used to justify economic development funding.

The English Act did not affect any other legislation. This meant that it might have been possible for

other Acts to have been used for economic development purposes which would have not fallen within the scope of the restrictions (Hayton, 1991, p. 34). This apparent loophole appears to have been plugged in the Scottish Bill. The Section 171A power and the Section 171B restrictions, whatever form they eventually take, will affect 3 other pieces of legislation:-

- a) Section 7 of the 1964 Local Government (Development and Finance) (Scotland) Act, which is a power to provide finance for building construction;
- b) Sections 102 and 109 of the 1972 Town and Country Planning (Scotland) Act which allow authorities to purchase land compulsorily and by agreement in connection with development, redevelopment and improvement for planning purposes; and
- c) Sections 70, 74 and 78 of the 1973 Local Government (Scotland) Act which give powers for land acquisition and disposal and building construction.

This means that potentially the restrictions, be they upon the amount of money spent or upon types of activities, could affect activities that have no relevance to economic development. For example under Section 102 of the Town and Country Planning Act money might be spent on land purchase to provide replacement open space in pursuit of environmental and town planning objectives. Such activity would however, if the Bill is enacted in its present form, now fall within the scope of the economic development legislation. If, as has been argued above, this had a financial limit attached to it then, regardless of departmental budget allocations, it might be that planning activities would be restricted because money was already committed up to the limit on activities that had economic development objectives. Given this, whilst the Scottish legislation may be attempting to remove some of the anomalies apparent in the 1989 Act, it may be creating a totally new area where there is considerable potential for confusion and inter-departmental conflict.

Restrictions Upon Local Authority Involvement In Companies

Arguably one of the main justifications for the English and Welsh economic development legislation was to restrict local authority

involvement in companies, especially the enterprise boards. At the time of writing (March 1994) the Bill contains nothing about controls upon companies in which local authorities have interests. English experience indicates that such controls are very difficult to frame without infringing the Companies Acts and affecting many activities, such as partnership ventures, which have been encouraged by Central Government. Despite this it has been suggested that the Bill be amended so that council-owned companies could be more easily monitored (The Herald, 1994, p.10). This move has been provoked by claims that companies controlled by Monklands District Council have made losses of £6 million over 3 years. Regardless of the validity of such claims English experience shows that translating political objectives into legislation when this affects company law is very difficult to do. As such it seems unlikely that, even if amendments are made, they stand much chance of being implemented.

Conclusions

In the earlier article upon this subject it was argued that economic development was one of the few areas in local government where authorities could still exercise innovation and initiative (Hayton, 1992, p.60). This, it was claimed, was because the service was not tightly defined by statute and had been able to develop using open ended legislation, in particular Section 83. This lack of a specific legislative base is set to change. Whether this results in a less effective economic development service remains to be seen. Optimists can look to England and Wales and see that a similar power does not seem to have had any great impact. Pessimists would no doubt argue that there are considerable differences between England and Wales and Scotland. In particular the Training and Enterprise Councils (TECs) have a more restricted role than the LECs. The latter have a specific economic development remit and therefore can be seen as directly duplicating some of the activities that local government is involved in. Indeed in any speculation about the impact of the power it needs to be borne in mind that TECs are not LECs. As such, comparisons with experience elsewhere may be of limited validity.

This comes back to the original claims in the Second Consultation Paper about the delineation of the responsibilities of the various economic development "actors" through the introduction of economic development legislation. Such delineation could only be realistically done by restricting local

government's activities. If such restrictions are not now to be imposed than it is difficult to see the reason for introducing the power. In England and Wales there was a legitimate political concern that local authorities' economic development activities were contrary to Central Government's policies. No such concerns have been voiced in Scotland. As such the power must be either a piece of legislative tidying up, as indicated above, or an attempt to control local authorities' economic development activities.

Indications in the White Paper point to the former interpretation. Yet it is hard to accept this. Why go to the trouble and eventual expense of introducing legislation merely to bring Scotland into line with English and Welsh practice? Given this, the message from this article is to advise caution and not to accept the White Paper's comments about the scope of the restrictions at face value. There should be no surprise when the secondary legislation finally appears, at a time when the unitary system is in the throes of establishing itself and the fate of a minor service such as economic development is not of any great public concern, if it is far more restrictive than the White Paper indicated. This would be but one more step on the road towards greater centralisation as local government's role as a service provider is restricted in favour of the less open and far less accountable LECs. The introduction of a specific economic development power may therefore coincide with a diminution of the local authority economic development service. Such a change may be perfectly justified. However it is being carried out without any public examination of strengths and weaknesses of the existing system and certainly little open debate about the system that may be introduced by stealth to replace it. In this the changes proposed to economic development are a microcosm of the whole Scottish local government reform process.

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