

Mr Miller

Copy to: Mr Rogers
Mr Burgess, CG
Mr Sinclair, CG, Sols

1. Mr Miller
2. Mr D. [unclear]
3. 5/10/13
(22)

INTERNATIONAL CRIMINAL COURT

1. I refer to your minute of 14 December.
2. I have very little to add to the comments made by Mr Rogers.
3. It seems likely that everything that is required of us by the Statute will fall within devolved competence. However, I have not looked at the Statute in detail and I suppose it is just possible that there might be something there that impinges on a reserved area. You might therefore want to substitute the first sentence of paragraph 7 of the draft submission, with something along the following lines:-

“In the circumstances, we suggest that the Secretary of State may wish to remind the Foreign Secretary of the fact that the subject matter of the necessary legislation would appear to fall entirely within the competence of the Scottish Parliament, insofar as it relates to Scotland;”

4. It might be worthwhile emphasising the fact that, assuming that the Scottish Executive were agreeable to legislation to enable the Statute to be ratified, the question of whether or not the obligations relating to Scotland are included in a Westminster Bill or an ASP should not in practice hold up the ratification of the Statute. Wherever the provisions eventually appear, the same work will require to be carried out to enable the necessary legislation to be drafted.

Alison Coull

Solicitor's Office
Division 2
G-B10
Victoria Quay
☎: 40567
Fax: 0591

15 December 1998

Mr C Miller, HD

Copy to: Miss Coull, Sols
Mr Burgess, CG
Mr Sinclair, CG-Sols

cc
[Handwritten scribbles]

Mr Walford
Another one.

Mr Rogers
Many thanks.
JD
15/12

DM
15/12

23

INTERNATIONAL CRIMINAL COURT

1. Thank you for your minute of 14 December.
2. While I agree with the substance of the analysis in your draft submission, I think that it needs to make the point a bit more strongly. I suggest that both the submission and the draft letter should refer to the fact that the Government has announced to Parliament that it expects a convention to be established under which Westminster will not normally legislate about devolved matters in Scotland without the consent of the Scottish Parliament. In the penultimate sentence of the draft letter, for example, I suggest that the final two sentences might be replaced with something like the following:

“However, we have announced to Parliament that we expect a convention to be established whereby Westminster will not normally legislate about devolved matters in Scotland without the consent of the Scottish Parliament. The decision about whether there should be separate Scottish legislation or whether to agree to a UK-wide Bill at Westminster must therefore await the establishment of the Parliament and the appointment of the Scottish Ministers.”
3. While what you say in the present second sentence of that paragraph may well be the case, I do not think that it is necessary to make that particular point, and it might risk making the Secretary of State un-cooperative.
4. I should note that there has been quite a bit of thinking recently here about how and when the consent of the Scottish Parliament should be sought for UK-wide legislation. The thinking is summarised in Mr Walford’s minute of *11/11* November, which I am copying separately to you and Miss Coull.
5. One other minor point: in paragraph 5 of the submission and the second paragraph of the draft letter, it would be more accurate to say that the observation and implementation of international obligations is devolved so far as the obligations relate to devolved matters.

DAVID ROGERS
Constitution Group
G-H93
Victoria Quay
Ext 45534
15 December 1998

205

From: David Rogers
Constitution Group - Functions
7 December, 1998

Mr Beaton, SCA

Copy to: Mr Walford, CG
Mr Ewing, CG
Mrs Brannan, HD
Mr Ferguson, Liaison Division
Mr Mason, EID
Mr Jamieson, CG
Ms Hibbert, CG

1. Mr D

2 5/2/13

PRIVATE MEMBERS' BILLS: VIENNA SALES CONVENTION

1. I refer to your submission of 2 December seeking clearance for a handout Bill to be introduced at Westminster which will partially cover devolved matters in Scotland.

2. The Government announced in the summer that it expects a convention to be established whereby Westminster will not normally legislate about devolved matters without the consent of the Scottish Parliament. There has been quite a bit of thinking recently about the circumstances this should happen, how the Scottish Parliament's consent should be obtained, and in particular the arrangements which need to be made for those Bills which may be going through Parliament at the time when the Scottish Parliament assumes its powers. We are drafting guidance on the point. Rather than going on at length about the conclusions which have been reached, I am sending you the relevant correspondence with the hard copy of this minute. Mr Walford's minute of 19 November summarises the CG and Liaison Division thinking.

3. You will see from the annex to Mr Ferguson's minute of 11 November that there are a number of Westminster Bills making provision about devolved matters in Scotland which may still be before Parliament when the Scottish Parliament takes up its powers.

4. It is obviously for you to judge whether the advantages of UK-wide implementation of the 1980 Convention this year outweigh the awkwardness of asking Westminster to legislate about a devolved matter. The degree of awkwardness would of course depend on the timing of the Bill. If it is done and dusted before the purdah period before the Scottish elections, ie before the end of March, then there would not be a problem. It would look particularly odd, on the other hand, for the Government to support the introduction of such legislation during the purdah period before the Scottish Parliamentary election, and doing so might be difficult to defend that as consistent with the impending devolution of primary legislative competence to the Scottish Parliament. And introduction after the Scottish

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15 December 1998

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Parliament is in place would be even more awkward unless its consent is to be sought.

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7 December 1998