

INTERNATIONAL DEVELOPMENT ACT 2002

EXPLANATORY NOTES

INTRODUCTION

1. These explanatory notes refer to the International Development Act 2002 which received Royal Assent on 26 February 2002. They have been prepared by the Department for International Development (DFID) in order to assist the reader in understanding the Act. They do not form part of the Act and have not been endorsed by Parliament.
2. The notes need to be read in conjunction with the Act. They are not, and are not meant to be, a comprehensive description of the Act. So where a section or part of a section does not seem to require any explanation or comment, none is given.

SUMMARY

3. In 1997 the Government published the White Paper on International Development: *"Eliminating World Poverty - A Challenge for the 21st Century"* (Command Number 3789). That White Paper set out the Government's contribution towards the elimination of global poverty, and committed the Government to consider the case for replacing the principal legislation in this area – the Overseas Development and Co-operation Act 1980 ("the 1980 Act").
4. The Act gives legislative form to the policies set out in the White Paper by authorising the Secretary of State to incur expenditure on assistance for certain specified purposes.
5. Under the Act the Secretary of State may provide any of the following:
 - development assistance to any country or territory outside the United Kingdom, if she is satisfied that the provision of the assistance is likely to contribute to a reduction in poverty;
 - development assistance to any British overseas territory;
 - assistance to alleviate the effects of a disaster or other emergency on the population of any country or territory outside the United Kingdom.
6. The Act defines "development assistance" as assistance given for the purpose of:
 - furthering sustainable development in one or more countries outside the United Kingdom, or
 - improving the welfare of the population of such countries.
7. The Act provides for the Secretary of State to take steps which enable her to prepare for, and will otherwise facilitate, the provision of assistance under the Act. It also allows the Secretary of State to support organisations which undertake activities which are likely to contribute to the reduction of world poverty.
8. The Act enables the Secretary of State to support activities that promote the awareness of and understanding of global poverty. Prior to the coming into force of the Act,

such activities will have been supported by the Secretary of State on the basis of the Appropriation Act.

9. The Act enables the use of a wider range of financial instruments in the provision of development assistance than have been available under the 1980 Act. The range includes share-holdings and convertible instruments, options and guarantees.
10. The Act enables named statutory bodies to engage on their own or with the Secretary of State in the provision of assistance overseas. It also contains provision requiring governmental consent to be given before such bodies can engage in such activity, and provision as to the terms upon which they can provide development assistance.
11. The Act provides for payments to be made to multilateral development banks, and contains provisions concerning the immunities and privileges of the International Bank for Reconstruction and Development, the International Finance Corporation and the International Development Association.
12. The Act provides for the continuance of the Commonwealth Scholarship Commission.

BACKGROUND

13. This Act repeals and replaces the 1980 Act. The main change relates to the purposes for which assistance can be provided. Section 1(1) of the 1980 Act set out the purposes for which financial, technical or assistance "of any other nature" could be furnished by the Secretary of State, namely:

"...promoting the development or maintaining the economy of a country or territory outside the United Kingdom, or the welfare of its people..."

The new purposes are described below.

14. The basis for the Government's contributions to European Community development programmes, with the exception of the European Development Fund, is the European Communities Act 1972. This is unaffected by the provisions of the new Act.

COMMENTARY ON SECTIONS

15. [Sections 1 to 4](#) set out the purposes for which the Secretary of State may incur expenditure on the provision of assistance.

Section 1

16. This section allows the Secretary of State to provide development assistance to countries and territories outside the United Kingdom if she is satisfied that such assistance is likely to contribute to a reduction in poverty. Reduction in poverty is thus established as the over-arching aim of development assistance given under section 1.
17. It is anticipated that the largest proportion of assistance given by the Secretary of State under the Act will be under the powers conferred by this section. In this sense, section 1 may be regarded as the core power of the Act.
18. The terms "poverty", "sustainable development" and "welfare" are not defined in the Act. To do so might reduce the United Kingdom's ability to offer assistance. Subsection (3) of section 1 ensures that the Secretary of State will not be bound to take a view of sustainable development that is exclusively or excessively economic on the one hand or exclusively or excessively environmental on the other.
19. Poverty is a complex phenomenon and the actions required to reduce it will necessarily be varied. The power in section 1 is designed to ensure that the Secretary of State will be able to support a wide range of activities and organisations.

Section 2

20. This section provides a modified version of the power taken in section 1, to allow the United Kingdom to continue to provide support for the British overseas territories. The territories in question are the ones listed in Schedule 6 to the [British Nationality Act 1981 \(c.61\)](#). The modifications reflect the special position of the overseas territories and the United Kingdom's continuing responsibilities in relation to them. The Secretary of State may provide development assistance to British overseas territories, without having to be satisfied that the assistance is likely to contribute to a reduction in poverty.

Section 3

21. This section enables the Secretary of State to provide humanitarian assistance in response to disaster or other emergency. Natural or man-made disasters are covered. Assistance provided by the Secretary of State under this section can be for any purpose, and need not be development assistance within the meaning of the Act. Nor is there any requirement for the assistance to be likely to contribute to a reduction in poverty.

Section 4

22. This section provides (in subsection (1)) for the Secretary of State to undertake activities or enter into arrangements which, while they might not in themselves meet the tests set out in sections 1, 2 and 3, are preparatory to, or will facilitate the provision of, assistance under these sections. An example of such activity is the commissioning of research.
23. In subsection (2) of section 4, the Secretary of State is provided with the power to support organisations and activities that promote an awareness of global poverty, if doing so is likely to contribute to a reduction in poverty.

Section 5

24. This section defines the meaning of "assistance" for the purposes of the Act. It provides that assistance means assistance in any form and of any nature. This is stated to include financial and technical assistance and the supply of materials. "Technical assistance" is not defined, but is stated to include the provision of know-how and scholarships.

Section 6

25. This section sets out the kinds of financial assistance that may be provided under the Act. It allows the Secretary of State to provide a wider range of financial assistance than was possible under the 1980 Act.
26. The new ways in which the Secretary of State will be able to give financial assistance are by:
- acquiring securities (such as share-holdings and convertible instruments) and taking up options; and
 - offering guarantees.
27. The consent of the Treasury must be obtained before the Secretary of State can give these kinds of financial assistance (see section 7 of the Act).
28. It is not envisaged that the Secretary of State will make extensive use of these forms of financial assistance in preference to the power to make grants or loans.

Section 7

29. This section sets out the terms on which the Secretary of State may provide assistance. Treasury consent is required to all forms of financial assistance other than a grant.

Section 8

30. This section allows the Secretary of State to act through other persons and bodies, as well as directly.

Sections 9 and 10 and Schedule 1

31. **Section 9** gives the statutory bodies listed in Schedule 1 to the Act the power to enter into and carry out agreements for the purpose of:
- furthering sustainable development;
 - improving the welfare of the population; or
 - alleviating the effects of a disaster or emergency
- outside the United Kingdom. However, the statutory bodies are prohibited from giving financial assistance.
32. A statutory body may only enter into an agreement if it has the consent of the Secretary of State to do so. However, the devolution arrangements which are now in place mean that in some cases the giving of this consent needs to be subject to the approval of the devolved administrations.
33. As regards Scotland, international development is a reserved matter under the Scotland Act 1998. However, there is an exception to this reservation in the case of assistance given to Ministers in relation to international development by statutory bodies for which Scottish Ministers are responsible.
34. Subsection (4)(a) of section 9 therefore provides that the Secretary of State's approval for certain bodies to provide assistance may be given only with the consent of the Scottish Ministers. The bodies to which this requirement relates are determined in accordance with section 10(1) of the Act. These are:
- "Scottish bodies": those bodies whose functions are all exercisable in or as regards Scotland and do not relate to reserved matters under the Scotland Act 1998; and
 - "Cross-border bodies": those bodies which have some functions exercisable in or as regards Scotland which do not relate to reserved matters under the Scotland Act 1998.
35. As regards Wales, the Welsh Assembly has no direct interest in international development. However, a number of statutory bodies listed in Schedule 1 to the Act are responsible to the Assembly.
36. Subsection (4)(b) of section 9 therefore provides that the Secretary of State's approval for certain bodies to provide assistance may be given only with the consent of the Welsh Assembly. The bodies to which this requirement relates are determined in accordance with section 10(2) of the Act. These "Welsh bodies" are those bodies whose functions are exercisable only or mainly in or as regards Wales, unless the Secretary of State has made an order excluding a body from this requirement.
37. Under subsection (5) of section 9 an order may provide for a body to be added to or deleted from the list of bodies set out in Schedule 1 to the Act. Such an order is made:
- by the Scottish Parliament, if the body is a Scottish body;
 - by the Secretary of State with the consent of the Scottish Ministers, if the body is a cross-border body;
 - by the Welsh Assembly, if the body is a Welsh body;
 - by the Secretary of State, in any other case.

Section 11

38. This section allows contributions to be made to multilateral development banks (including their concessional lending facilities), such as the World Bank and the Regional Development Banks, and requires that such commitments be made through an order made by the Secretary of State with the approval of the Treasury. Before an order is made a draft of it must be laid before the House of Commons for approval. This section replaces all the powers used under the 1980 Act relating to these banks.

Section 12

39. This section allows provision to be made by Order in Council giving effect to privileges and immunities which attach to various international financial institutions. Before an order is made a draft of it must be laid before Parliament and approved by resolution of each House.

Sections 13 and 14 and Schedule 2

40. These sections provide for the continued operation of the Commonwealth Scholarship Commission. They are a re-enactment with some modifications of the provisions in the 1980 Act. Schedule 2 sets out the detail of the operation of the Commission.

Section 15

41. This section is a technical one. It expressly repeals three provisions of the 1980 Act which do not have equivalents in the new Act. The repeal of the other provisions of the 1980 Act, for which there are equivalents in the new Act, does not need to be spelled out in the body of the new Act

Section 18

42. This section requires that any orders under the Act must be made by statutory instrument. With the exception of an order under section 11(4) (orders approving payments to multilateral development banks) and an order commencing the Act, any order made by the Secretary of State is to be subject to the negative resolution procedure. Orders made by Scottish Ministers under section 9(5) are subject to annulment by the Scottish Parliament.

COMMENCEMENT

43. The Act comes into force on a day appointed by the Secretary of State.

HANSARD REFERENCES

44. The following tables set out the dates and Hansard references for each stage of the Act's passage through Parliament.

| <i>Stage</i> | <i>Date</i> | <i>Hansard reference</i> |
|-------------------------|-----------------|--------------------------|
| House of Lords | | |
| Introduction | 21 June 2001 | Vol 626 Cols 25-26 |
| Second Reading | 2 July 2001 | Vol 626 Cols 699-749 |
| Committee | 16 July 2001 | Vol 626 Cols 1270-1349 |
| Report | 18 October 2001 | Vol 627 Cols 711-740 |
| Third Reading | 25 October 2001 | Vol 627 Cols 1105-1135 |
| House of Commons | | |

*These notes refer to the International Development Act 2002
(c.1) which received Royal Assent on 26 February 2002*

| <i>Stage</i> | <i>Date</i> | <i>Hansard reference</i> |
|---------------------|------------------------|---------------------------------|
| Introduction | 25 October 2001 | |
| Second Reading | 7 November 2001 | Vol 374 Cols 274-337 |
| Committee | 20, 22 and 27 November | Hansard Standing Committee D |
| Report | 23 January 2002 | Vol 378 Cols 913-960 |
| Third reading | 23 January 2002 | Vol 378 Cols 960-978 |
| Royal Assent | 26 February 2002 | |