

Devolution Guidance Note 1

Common Working Arrangements

SUMMARY

- **This guidance note sets out advice on working arrangements that should apply to officials in the UK Government.**

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Introduction

1. The UK Government, the Scottish Ministers, the Welsh Assembly Government and the Northern Ireland Executive have agreed a Memorandum of Understanding setting out the principles that underlie relations between them.¹ This note sets out common working arrangements aimed at promoting the efficient administration of Government business within the UK in relation to both devolved and non-devolved matters.² The guidance contained in it has been prepared in consultation with the devolved administrations.
2. Like all agreements under the Memorandum of Understanding, this note is not a binding agreement or contract, and does not give rise to legal obligations. It is intended to guide the work of the UK Government, in accordance with the principles set down in the Memorandum of Understanding.
3. The general principles and common working arrangements amplify some of the points of good practice summarised in the leaflet “Devolution in Practice: A Checklist for Officials”. Each of the administrations may propose amendments to this guidance note at any time in the light of experience in their operation.

Bilateral Relations

¹ The Memorandum of Understanding between the UK Government and the Devolved Administrations was originally published on 1 October 1999, and is revised periodically.

² The Acts of Parliament dealing with devolution – the Scotland Act 1998, the Government of Wales Acts 1998 and 2006 and the Northern Ireland Act 1998 – define the respective functions of the UK Government and the Devolved Administrations in different ways. Like the Memorandum of Understanding, this note uses the terms ‘devolved’ and ‘non devolved’. ‘Non-devolved’ means anything which the Scottish Parliament is prevented from modifying under Schedule 4 of the Scotland Act or any function reserved to the UK Government or Parliament under Schedule 5 of the Scotland Act which has not been transferred to the Scottish Ministers under other legislation; in the Welsh context, any function not transferred or conferred on the Assembly by Order or by primary legislation; and in the Northern Ireland context, any function which is an excepted or reserved matter under Schedules 2 and 3 of the Northern Ireland Act. ‘Devolved’ means everything else.

4. Good communications between administrations are essential. If one administration is planning action that impinges on the responsibilities of another, it should give adequate forewarning.
5. The principal channel of communication between administrations should be through bilateral links between the relevant departments of each administration, at official or Ministerial level. Most issues which affect the responsibilities of two or more administrations should be capable of resolution at this level. Working practices between individual departments of the administrations may be set out in concordats, internal guidance and working level documents.
6. Concordats are public documents. They are not intended to be legally binding, nor are they exhaustive descriptions of every aspect of bilateral relationships. They are intended as working documents, to guide officials. A note on the nature and purpose of concordats is provided in the attached annex.
7. There may be circumstances when it will be appropriate for two or more administrations to undertake activities in co-operation, or for certain activities to be undertaken by one administration on behalf of another through agency arrangements. Any such agency arrangements may be attached as an annex to the bilateral Concordats between departments.
8. Bilateral concordats may also describe working level agreements about the joint commissioning of research and, as appropriate, the sharing of research papers, although in certain cases agency agreements might also be appropriate. Bilateral concordats refer to the provisions of that agreement as appropriate.
9. The administrations expect to maintain existing administrative liaison and coordination. Existing arrangements for cost sharing will continue. Where new demands are made, where the costs to the providers change, or when

circumstances have changed, any party may propose changes to the cost sharing arrangements, consistent with the Statement of Funding Policy.³

10. Where disagreements or disputes arise between administrations, they may be referred to the machinery of the Joint Ministerial Committee (JMC) established by the Memorandum of Understanding with a view to settling the matter in line with the agreed procedures. Each bilateral concordat will include a reference to the process for triggering formal JMC intervention.

Correspondence

11. The four administrations are committed to providing a satisfactory level of service and accountability to the public. More detailed guidance for officials on the handling of correspondence under devolution has been prepared by the UK Government and can be found in **Devolution Guidance Note 2 *Handling Correspondence under Devolution***.

Freedom of Information

12. As was the case prior to devolution officials need to handle all correspondence in accordance with relevant legislation and guidance on Freedom of Information. Decisions on disclosure will also need to be taken in accordance with the Freedom of Information Act 2000, the Freedom of Information (Scotland) Act 2002 the Environmental Information Regulations 2004 and the Environmental Information Regulations (Scotland) 2004. Officials dealing with correspondence will also need to consider their replies in the light of this legislation and the codes of practice issued under them.

Parliamentary Business

³ The Statement of Funding can be found on HM Treasury's website.

13. The UK Government and devolved administrations have agreed to co-operate to enable each party to meet its obligations to its respective Parliament or Assembly, having regard to the principles set out in the Memorandum of Understanding.
14. It is for the authorities of each legislature to decide whether or not the subject of a Question or a proposed debate falls within the remit of that legislature, and how to treat Questions and proposed subjects for debate which concern both devolved and non-devolved matters, such as EU business on a devolved matter.

Debates and inquiries

15. Where the UK Parliament is to debate or consider issues which touch on devolved matters, the relevant devolved administration will provide such information to the UK Government as appears appropriate and practicable to enable the UK Government to meet its responsibilities to Parliament. If the UK Parliament approaches a devolved administration direct with a view to the provision of information or the submission of evidence, the devolved administration will normally keep the UK Government informed of any such approaches and about the submission of evidence.
16. Where a devolved legislature is to debate or consider issues which touch on non-devolved matters, or is seeking information in respect of the activities of the UK Government to inform its own deliberations, the UK Government will provide such information to the devolved administrations as appears appropriate and practicable to enable the devolved executive to meet its responsibilities to the devolved legislature. If any devolved legislature approaches the UK Government direct with a view to the provision of information or the submission of evidence, the UK Government undertakes to keep the relevant devolved administration informed of any such approaches and about the submission of evidence.
17. Each administration will aim to provide any information that may be reasonably requested by another administration to enable it to carry out its responsibilities effectively, provided that (a) this is practicable, (b) it would not involve

disproportionate cost, and (c) the information is available in reasonable accessible form. The administrations will in all circumstances comply with Freedom of Information legislation.

18. More detailed guidance for officials on the attendance of UK Ministers and officials at committees of the Devolved Legislatures' can be found in **Devolution Guidance Note 12**.

Parliamentary Questions

19. As a general principle, the UK Government will normally answer UK Parliamentary Questions purely on devolved matters of fact by making it clear that such questions should be addressed to the relevant devolved administration. Similarly, the devolved administrations should make it clear in answer to parliamentary or assembly questions in relation to non-devolved matters of fact that such questions should be addressed to the UK Government unless the administration concerned has executive responsibility in the relevant area.
20. The form of the question may make this difficult: for example, if a Minister is asked what representations he had made on an issue to his counterpart in one of the other administrations. In some cases, a clear distinction between respective responsibilities may not be possible. This applies for example in relation to those matters that are the subject of executive devolution in Scotland, where policy responsibility remains with the UK Government while the devolved administration is responsible for implementation. In such cases consultation between administrations will be necessary to determine handling and proposed draft answers should be shared between the UK Government and devolved administration. However, answers should, whenever possible, adhere to those principles.
21. In all cases a copy of the question and answer should be sent promptly for information to the appropriate administration.

Other Parliamentary business

22. The same principles as set out above apply to direct representations, requests for meetings, etc between Ministers (or their counterparts) and members of legislatures. Where the Private Offices of UK Government receive a request for a meeting from ministers of the devolved legislatures, these requests should be treated with all due priority. Conversely, where the Private Offices of ministers of the devolved legislatures receive a request for a meeting from a minister of the UK Government, these requests should be treated with all due priority.

Legislation

23. In accordance with the general principles set out in the MoU, the administrations will normally consult each other from an early stage on the development of relevant legislative proposals, in confidence where necessary. **Devolution Guidance Notes 8, 9 and 10 *Post-Devolution Primary Legislation affecting Northern Ireland, Wales and Scotland (respectively)*** provide further guidance on this matter.

24. The UK Government will proceed in accordance with the convention that the UK Parliament would not normally legislate with regard to devolved matters except with the agreement of the devolved legislature. The devolved administrations will be responsible for seeking such agreement as may be required for this purpose on an approach from the UK Government. **Devolution Guidance Notes 8, 9 and 10 *Post-Devolution Primary Legislation affecting Northern Ireland, Wales and Scotland (respectively)*** provide further guidance on this matter.

25. The UK Government will also alert the relevant devolved administration(s) to proposals for UK legislation on non-devolved matters in policy fields which may impinge on devolved matters. Each devolved administration will alert the UK Government to all legislative proposals and the other administrations to legislative proposals in policy fields that fall within their competence.

26. When primary legislation is prepared by Whitehall Departments, consideration will always be given to the arrangements for the Devolved Administrations. It is therefore

particularly important for lawyers and policy makers in those Departments to consult colleagues in the Territorial Offices and those advising the Devolved Governments about all relevant proposals for primary legislation for which there is UK Government collective consideration of the policy content unless there are considerations relating to the legislation which make such consultation inappropriate. This will allow Parliamentary Counsel to be instructed on any devolved aspects.

27. The devolution legislation contains various powers for the Secretary of State to intervene in devolved matters. It also contains powers for the Law Officers to refer questions of *vires* to the Supreme Court. The Memorandum of Understanding makes clear that the UK Government sees these powers as a matter of last resort. The UK Government and the administration concerned will therefore aim to resolve any difficulties through discussion so as to avoid any action or omission by the devolved administration having an adverse impact on non-devolved matters. If formal intervention should become necessary, the UK Government will whenever practicable inform the devolved administration of its intentions in sufficient time to enable that administration to make any representations it wishes, or take any remedial action.

28. Legislative proposals will normally have been subject to advance notification and consultation, in accordance with paragraph 25. However, in order to enable UK Departments and the UK Law Officers to decide whether they need to activate the relevant procedures, the devolved administrations will notify legislative measures to the relevant UK Departments and Law Officers both when they are published and when they are adopted, whether or not there has been consultation at an earlier stage.

Scotland

29. The Scottish Executive will send a copy of every Bill when it is first published to the office of the Advocate General, to the office of the Secretary of State for Scotland, and to the Department(s) in Whitehall which have a policy interest. A further copy will

be sent immediately on the passing of a Bill. If a Bill is reconsidered by the Parliament after it has been passed, a copy of the amended Bill will be sent immediately to the same Departments.

30. In the same way, the Scottish Executive will also send a copy of any draft secondary legislation that is affirmative in nature, or on which it proposes to consult interested parties, when it is first published to the office of the Advocate General, Scotland Office and to the Department(s) in Whitehall which have a policy interest.

31. The Scottish Executive will send a copy of all primary legislation when it has received Royal Assent and secondary legislation when it is made to the office of the Advocate General, to the office of the Secretary of State for Scotland and to the Department(s) in Whitehall which have a policy interest.

Wales

32. The Assembly will make copies of proposed legislation which is in progress available on its website at <http://www.assemblywales.org/bus-home/bus-third-assembly/bus-legislation-third-assembly.htm>. The Clerk of the Assembly will write to the Secretary of State for Wales and Attorney General to formally advise them that legislation has been passed by the Assembly.

Northern Ireland

33. In some cases, Bills require consent from the Secretary of State for Northern Ireland before they may be considered or proceeded with by the Assembly. The Secretary of State also has certain powers to revoke secondary legislation. This makes it particularly desirable that, so far as possible, questions which might engage these powers are resolved before the introduction of a Bill or the making of subordinate legislation. These consent requirements are additional to the power of intervention by

the Secretary of State and *vires* control mechanism described in paragraph 27 above.

34. When a Bill which has required consent from the Secretary of State is introduced in the Assembly, the relevant Northern Ireland Department should send a copy to the Northern Ireland Office and to the Department(s) in Whitehall which have a policy interest, even if the draft has already been sent to the Secretary of State at an earlier stage. If a Bill is reconsidered by the Assembly after it has been passed, a copy of the amended Bill will be sent immediately to the same Departments.

35. The relevant Northern Ireland Department should send a copy of all primary legislation which has required consent from the Secretary of State when it is made to the Northern Ireland Office and to the Department(s) in Whitehall which have a policy interest, even if they have already received a copy in draft.

Cabinet Office

(Last updated – November 2011)

Annex

Concordats

Purpose

- I. The aim and purpose of concordats is to preserve existing good working relationships and ensure that the business of government is conducted smoothly and efficiently under devolution. Their purpose is **not** to create legal obligations or restrictions on any party; rather, they will set the ground rules for administrative cooperation and exchange of information.
- II. Concordats are not necessarily the only way to regulate these relationships in future. Other, less formal, arrangements will be appropriate in many cases, and in others there will be no need for any standing arrangements at all.

General approach

- III. The need for a concordat should arise from the particular circumstances of the policy area, which will also largely drive the nature of any agreement. In general, concordats should set out the principles on which working relationships are based rather than prescribe the details of what those relationships should be. They should set down common processes and the main features of good working relationships, rather than specify substantive outcomes. They will need to meet two key aims:
 - a) to provide the Department of the UK Government and the devolved administration with the confidence that working relationships will be conducted properly and in accordance with agreed processes such as adequate consultation.
 - b) to avoid constraining the devolved administrations or Whitehall Departments in their actions within their fields of competence.

Common provisions

- IV. A number of topics are common to many concordats. This list is not prescriptive and it is a matter for the UK Government and the devolved administrations to decide what should be covered by the agreements. To date, common topics have included:
- a) consultation arrangements in relation to proposals for legislation and executive action, including advance notification: the aim on both sides should so far as possible be “no surprises”;
 - b) exchange of information, including policy papers, analysis and statistics;
 - c) joint working, including participation in working groups, official committees and so on;
 - d) confidentiality within these arrangements;
 - e) arrangements for liaison on EU and international matters;
 - f) any financial arrangements;
 - g) access to research, research budgets and specialist advice;
 - h) liaison between chief professional officers;
 - i) consultation about appointments including those to UK/GB public bodies; the exercise of Ministerial functions relating to such bodies, such as giving directions or approving corporate plans; and the relevant mechanisms of accountability and financial arrangements (it may be necessary to have a separate memorandum of understanding for each body);
 - j) operation of agency arrangements whereby matters are administered by the UK

Government on behalf of a devolved administration on an agency basis or vice versa.

- k) arrangements for resolving disagreements about any matters related to the concordat;
- l) arrangements for renewal and review of the agreement.

Review

- V. Bilateral concordats should set out procedures for the review of their terms and conditions and for consideration of the functioning of bilateral relations generally. The form of review will vary according to business needs, but as a minimum it is expected that the parties to the concordat should review the concordat a year after it has been signed.