

## **Devolution Guidance Note 12**

### **Attendance of UK Ministers and Officials at Committees of the Devolved Legislatures**

#### **SUMMARY**

- **This note provides guidance to UK Ministers and civil servants on how to deal with invitations to attend Committees of devolved legislatures. It does not provide guidance on the giving of evidence to these Committees beyond that already available for giving evidence to Committees at Westminster.**
  
- **This guidance note covers:**
  - 1. Introduction Paragraphs 1-2**
  - 2. Invitations to Ministers 3-6**
  - 3. Invitations to Civil Servants 7-9**
  - 4. General 10-11**
  - 5. ANNEX A – the Legal Position in Relation to Each Legislature**

## Introduction

1. This note provides guidance to UK Ministers and civil servants on how to deal with invitations to attend Committees of devolved legislatures. It does not provide guidance on the giving of evidence to these Committees, beyond that which is already available for giving evidence to Westminster committees.
2. It is open to any of the UK legislatures (the UK Parliament, the Scottish Parliament, the National Assembly for Wales and the Northern Ireland Assembly) to invite Ministers and civil servants from the UK Government or the devolved administrations to attend and to give evidence to a Committee. This guidance note covers only the situation where a Minister or civil servant of the UK Government has received such an invitation from one of the devolved legislatures. The Devolution team within the Cabinet Office should be notified of all such invitations.

## Invitations to Ministers

3. The devolution legislation contains certain powers **to require by law** the attendance of individuals at a particular Committee meeting. There are rare circumstances in which a UK Minister might be so required to attend a committee of the Scottish Parliament or the Northern Ireland Assembly. It is not expected that these circumstances will arise very often and in most cases a Minister will be invited to attend (as they are invited to Westminster Select Committees). In all cases, therefore, the invitation will fall into one of two categories:
  - a. the Minister is **required** to attend and give evidence;
  - b. the Minister is **invited** (i.e. **not required**) to attend and give evidence. The difference in respect of the three devolved legislatures is set out in the respective legislation as follows: section 23 of the *Scotland Act 1998*; section 44 of the *Northern Ireland Act 1998*.

It may not always be easy to determine whether the UK Minister may be required to attend a committee of the Scottish Parliament or the Northern Ireland Assembly and legal advice may be required on interpretation. Annex A gives an outline of the legal position but in all cases of doubt legal advice should be sought.

4. The National Assembly for Wales does not have power to require a UK Minister or person serving in his/her department to attend a committee but may still invite a Minister or official to do so. Annex A outlines the powers of the National Assembly to require individuals, other than a UK Minister and his/her staff, to attend its committees.
5. While UK Ministers' over-riding responsibility is to the Parliament at Westminster, any request for a Minister to attend a Committee of a devolved legislature should be treated with as much care and courtesy as an invitation to attend a Commons or Lords Select Committee. If the assessment of the legal position is that a Minister could be **required** to attend a meeting then sending a representative will not usually be acceptable and every endeavour should be made to attend when and as required by the devolved legislature.

6. If Ministers are invited to attend in circumstances where they cannot be required to do so then it is a matter for them as to whether they attend or not. Ministers will wish to consider each case on its merits taking into account the following considerations:
  - i. Ministers' primary duty of accountability is to the UK Parliament, which retains sole authority for non-devolved matters and reserves the right to legislate on any matter;
  - ii. the relationship between the Minister's responsibilities and the subject of the devolved legislature's enquiry (i.e. how closely linked are the issues? are there ramifications within devolved areas of UK Ministerial decisions?);
  - iii. whether the Minister or another UK Government representative has recently attended to give evidence on the same or a closely related topic; or, where a Minister has recently given, or been invited to give, evidence to a Commons or Lords Select Committee on the same or a closely related subject;
  - iv. whether there are particular aspects of the issue which weigh in favour of attendance (e.g. providing an opportunity for the UK Government to explain its policies or position; a high level of media interest in the devolved area or a specific case which has acquired a high profile);
  - v. whether the devolved legislature might acquire the information by some other means (evidence may have recently been given to a Westminster Select Committee on the subject or if it is seeking mainly factual material might a memorandum be provided, at least in the first instance);
  - vi. the effect on the Minister's other duties and other calls on his or her time.
7. In some cases, where attendance is invited, it may be appropriate for a junior Minister or a senior official to attend even when a Cabinet Minister has been invited. Indeed, in many cases it may be more useful to a Committee for someone other than the original invitee to attend. For instance, some senior officials with geographical responsibility in Scotland, Wales or Northern Ireland for a non-devolved matter may be particularly well placed to provide information to a Committee of a devolved legislature. Alternatively, Ministers may prefer to submit a written statement.

### **Invitations to Civil Servants and other persons**

8. All civil servants working for the UK Government who receive an invitation to give evidence to a Committee of a devolved legislature (in their capacity as a civil servant) should seek the agreement of the relevant UK Government Minister before accepting or declining the invitation. All civil servants will appear before the Committees on behalf of Ministers. Depending on the nature of the subject at issue, it may be necessary to seek more explicit instructions from Ministers on the giving of evidence.

9. As with attendance by UK Ministers it will be important to establish the legal position regarding attendance (see paragraph 3 above and annex A). The considerations on attendance when it is invited (but **not required**) will be similar to those for Ministers as set out in paragraph 5 above. It will be for UK Ministers to decide whether they wish their officials to attend. However invitations to officials to give evidence on politically sensitive issues should be treated with particular caution.
10. Committees of the devolved assemblies may also ask members of non-departmental public bodies to attend hearings. In such cases discussion between the NDPB and the relevant sponsor department will be needed to determine the response to the invitation and the approach to giving evidence. However, NDPBs are free to express their independent views, subject to any statutory or contractual responsibilities and security constraints.

### **General**

11. If an invitation has been accepted (either by a UK Minister or a civil servant) and the subject is one which is currently under consideration by a Westminster Select Committee then that Committee should be informed through the Departmental Select Committee Liaison Officer. Irrespective of the current concerns of Westminster Select Committees, it may prove to be good practice to inform them of approaches from the devolved legislatures.
12. On all occasions, and whatever the intention as regards attendance, Ministers and their officials should deal with devolved Committees with the same courtesy, respect and promptness as they would use in dealing with Westminster Select Committees. The Government wishes the devolved arrangements in Scotland, Wales and Northern Ireland to continue operating effectively within the new constitutional frameworks that have been provided. Behaving in the proper way towards the devolved legislatures' Committees is one way of achieving this aim.

### **Cabinet Office (Last Updated – November 2011)**

## **Annex A**

### **Invitations from Committees of Devolved Legislatures: the legal position**

1. This note is an outline of the legal powers of the devolved legislatures to call for witnesses and documents. It is not comprehensive, particularly with regard to the Scottish Parliament, and in all cases of doubt legal advice should be sought.

#### **The Scottish Parliament**

2. The powers of the Scottish Parliament to call for witnesses and documents are in section 23 of the *Scotland Act 1998*. The general power permits the Scottish Parliament to require persons to attend and give evidence concerning any subject for which the Scottish Executive has “general responsibility”. “General responsibility” is undefined and potentially covers a very large number of subjects, including, functions transferred under or by virtue of section 53 (general transfer of functions to Scottish Ministers), section 63 (executive devolution) and section 89 (cross border bodies). It should be noted that the power is exercisable in relation to subjects and not merely in relation to functions. In addition, it should be noted that a member of the Scottish Executive has general responsibility only in or as regards Scotland.
3. However, the power is then qualified in a number of ways. Most importantly, in the current context, Ministers and officials cannot be required to attend in relation to the exercise of their functions if they are functions which can also be exercised by Scottish Ministers (i.e. concurrent functions) or are exercisable only after obtaining the agreement of or after consultation with Scottish Ministers (subsection 4). The result appears to be that where the Scottish Ministers have some influence over the exercise of functions UK Ministers and officials cannot be required to attend in relation to those functions – thus maintaining an appropriate division of accountability. However, the limitation on functions exercised with agreement or after consultation is limited to reserved matters (subsection 5). So for a devolved subject where a Minister exercises functions with the agreement of or after consultation with Scottish Ministers then a requirement to attend may be imposed. Taking all the above into account, the power of the Scottish Parliament to summon Ministers and civil servants appears to be quite limited.
4. In some cases the other qualifications of the general power may be relevant. For example, witnesses cannot be required to answer questions or produce documents which they would be able to refuse to answer or to produce in court proceedings in Scotland (subsection 9).
5. Section 25 establishes that failure to comply with the requirements of the Scottish Parliament constitutes a criminal offence.

#### **The National Assembly for Wales**

6. The powers of the National Assembly for Wales to call for witnesses and documents are in section 37 of the *Government of Wales Act 2006*. Subject to certain limitations, section 37(1) provides that the National Assembly may

require any person to give evidence before or to produce documents to the National Assembly, its committees or their sub-committees, but only where that person's evidence concerns any matter relevant to the exercise of any of the functions of the Welsh Ministers.

7. The National Assembly may not impose a requirement under section 37(1) on a person who is not involved in the exercise of functions, or the carrying on of activities in relation to Wales.
8. The National Assembly may not impose a requirement on a Minister of the Crown, a former Minister of the Crown or any person who serves or has served in their department. The National Assembly may also not impose a requirement on a person who is a full-time judge of any court or who has been a member of any court or tribunal in connection with the exercise of functions as such a member.
9. Section 39 establishes that where a person is required to attend but fails to comply he or she is guilty of a criminal offence.

### **The Northern Ireland Assembly**

10. The powers of the Northern Ireland Assembly to call for witnesses and documents are in section 44 of the *Northern Ireland Act 1998*. The matters on which witnesses may be required to attend and give evidence or on which documents may be required are set out in subsection (2) (transferred matters and other matters in relation to which statutory functions are exercisable by Northern Ireland Ministers or departments). UK Ministers or officials outside Northern Ireland can only be summoned in connection with the discharge of functions relating to matters falling within subsection (2). A further important exclusion from the requirement is the discharge of functions by Ministers and officials prior to the appointed day – i.e. in advance of devolution to Northern Ireland taking place (subsection 4). Failure to comply is again a criminal offence (section 45).