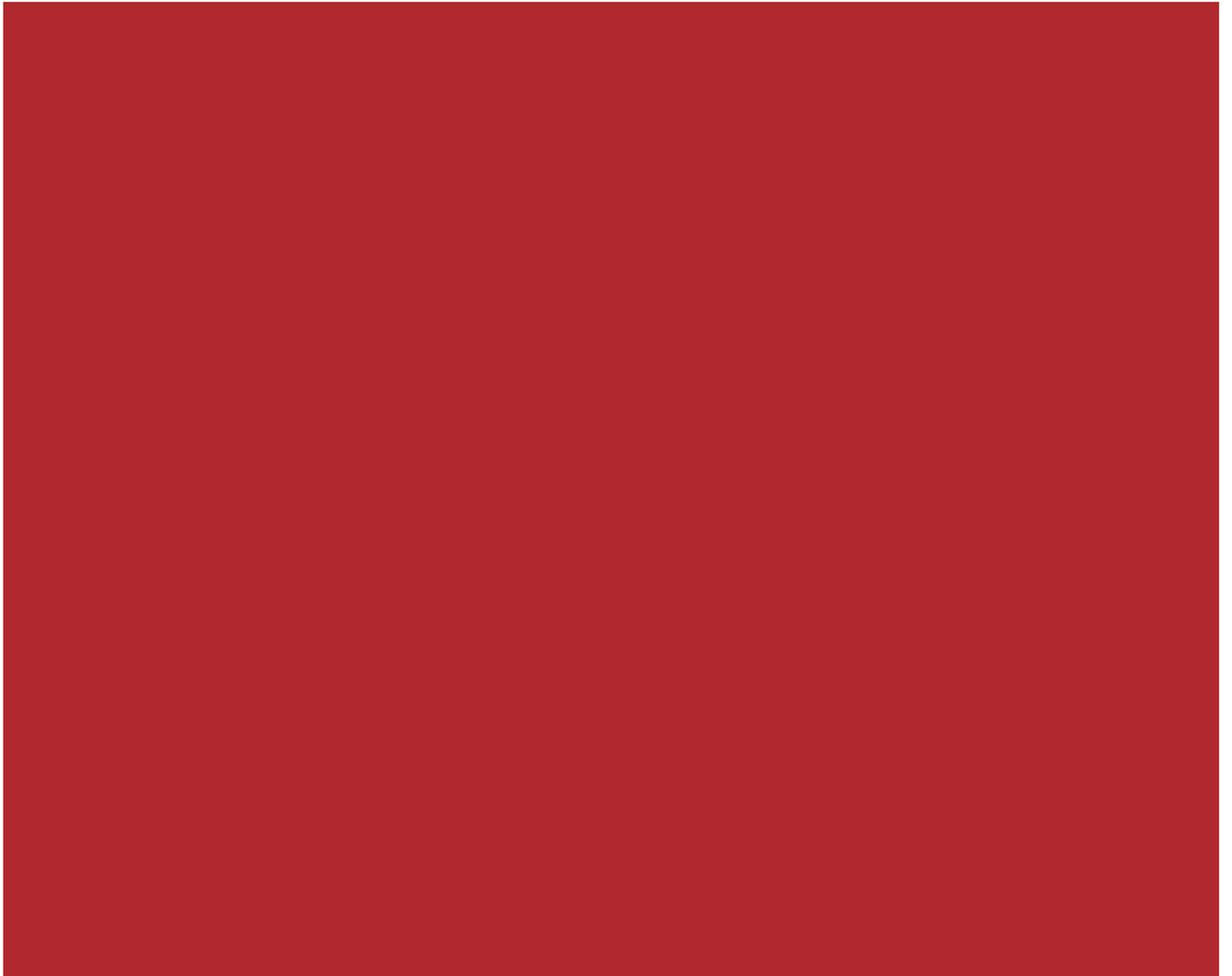




Civil Service
Learning

A devolution toolkit



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Introduction

The toolkit is intended to help you take devolution issues into consideration in your work. Whether a matter is devolved or not, making an effort to develop good relationships with colleagues from across the devolved administrations will help you to better understand the effects of your work. Closer collaboration can lead to reduced burdens, generate savings and enable stronger policymaking.

The toolkit has been designed for civil servants who work in UK Government departments. It provides advice on how you may best work with colleagues in the devolved administrations (DAs) of Scotland, Wales and Northern Ireland. There are aspects of this toolkit that may also be of use to colleagues from the devolved administrations.

The toolkit is not prescriptive. Rather, it provides helpful guidelines and examples of best practice. Its main aim is to encourage you to share information in a timely and appropriate manner.

Policy colleagues may find it particularly helpful. However, others who may come across devolution issues or work closely with colleagues in the devolved administrations may also find this a useful resource (for instance, operational teams, project managers, senior managers, communications teams and so on).

This is an early iteration of the toolkit; we will review how it is used and refine it or add to it as necessary. In the meantime, if you have any comments or suggestions, please contact devolution@cabinetoffice.GOV.UK.

When to use this toolkit

You are not restricted by how and when you use this toolkit. It is intended to increase your awareness of devolution issues but may be particularly helpful in certain scenarios such as when you are:

- reviewing and updating existing policy
- writing ministerial briefings
- working on EU and international issues
- responding to parliamentary questions
- creating new policy
- making a major policy announcement
- publishing statistics and data
- developing stakeholder plans
- publishing guidance
- launching a consultation

How to use this toolkit

Refer to the sections you need. You do not need to read the entire toolkit. It is designed to allow you to dip in and out to access the information most useful to you.

The toolkit does not provide details of the background and history of devolution, which is already extensively available on [GOV.UK](https://www.gov.uk). Information already available there will not be repeated, though if necessary, it has been signposted. Links to further guidance and important contacts can be found at the end of each section and at the end of the toolkit.

Devolved or non-devolved?

For the sake of simplicity, the toolkit refers to matters as either being ‘devolved’ meaning the responsibility of the devolved legislatures or ‘non-devolved’ meaning the responsibility of the UK Government (UKG). The devolution legislation deals with and refers to the respective functions of the devolved legislatures and administrations in different ways. Further details of the different terms used in the legislation can be found [here](#).

The Scottish Government, the Welsh Government and the Northern Ireland Executive are collectively referred to as the ‘devolved administrations’ (DAs) throughout. The Scottish Parliament, the National Assembly for Wales and the Northern Ireland Assembly are referred to as the ‘devolved legislatures.’

The Memorandum of Understanding

There are existing principles that underpin relations between the UK Government and the devolved administrations. These are set out in a [Memorandum of Understanding](#) (MoU) agreed between the 4 administrations.

The MoU affirms that the 4 administrations understand the need for cooperation and the importance of consulting each other in a timely manner. It stipulates that the administrations seek to:

- alert each other as soon as practicable to relevant developments within their areas of responsibility, wherever possible, prior to publication
- to give appropriate consideration to the views of the other administrations
- to establish, where appropriate, arrangements that allow for policies where responsibility is shared to be drawn up and developed jointly between the administrations.

In addition, the MoU emphasises the significance of sharing information and the administrations agree to provide each other with access to scientific, policy and technical data as appropriate. Despite stressing the importance of information exchange, the MoU does also recognise this has to be subject to cost, practicality, accessibility, confidentiality and statutory considerations, for example, freedom of information.

Revising the MoU

In December 2014, the Prime Minister and leaders of the devolved administrations reaffirmed the importance they each attached to effective intergovernmental relations and commissioned work to revise the MoU. All 4 administrations are jointly reviewing the MoU; the result of this process may have implications for how you work with colleagues in the DAs.

Relevant guidance

[Memorandum of Understanding and Supplementary Agreements](#)

Devolution Guidance Notes:

- DGN 1 [Common working arrangements \[PDF\]](#)
- DGN 2 [Handling correspondence under devolution \[PDF\]](#)
- DGN 3 [Role of the Secretary of State for Scotland \[PDF\]](#)
- DGN 4 [Role of the Secretary of State for Wales \[PDF\]](#)
- DGN 5 [Role of the Secretary of State for Northern Ireland \[PDF\]](#)
- DGN 6 [Circulation of inter-ministerial and inter-departmental correspondence \[PDF\]](#)
- DGN 7 Court proceedings tbc
- DGN 8 [Post-devolution primary legislation affecting Northern Ireland \[PDF\]](#)
- DGN 9 [Post-primary legislation affecting Wales \[PDF\]](#)
- DGN 10 [Post-devolution primary legislation affecting Scotland](#)
- DGN 11 [Ministerial accountability after devolution \[PDF\]](#)
- DGN 12 [Attendance of UK ministers and officials at committees of the devolved legislatures \[PDF\]](#)
- DGN 13 [Handling of parliamentary business in the House of Lords \[PDF\]](#)
- DGN 14 [Use of Scotland Act Section 30\(2\) Orders \[PDF\]](#)
- DGN 15 [Scottish legislative proposals giving devolved powers and functions to UK bodies \[PDF\]](#)
- DGN 16 Superseded by DGN 17
- DGN 17 [Modifying the legislative competence of the National Assembly for Wales \[PDF\]](#)

Working with the Joint Ministerial Committee

The Joint Ministerial Committee (JMC) is established in the [MoU](#) between the UK Government and the devolved administrations in Scotland, Wales and Northern Ireland.

One of the JMC's main purposes is to discuss policy responsibilities that straddle both devolved and non-devolved matters. Its terms of reference are:

- to consider non-devolved matters which impinge on devolved responsibilities and devolved matters which impinge on non-devolved responsibilities
- where the UK Government and the devolved administrations so agree, to consider devolved matters if it is beneficial to discuss their respective treatment in different parts of the UK
- to keep the arrangements for liaison between the UK Government and the devolved administrations under review
- to consider disputes between the administrations

Plenary meetings are held at least once a year, with the Prime Minister; the First Ministers of Scotland and Wales and the First Minister and deputy First Minister of Northern Ireland in attendance.

While contact between the UK Government and the devolved administrations should mostly be on a bilateral basis between departments, the JMC provides central coordination of the overall relationship between the administrations.

The JMC is a consultative rather than an executive body. It is strongly expected that the majority of communications between the administrations take place at official and working level and any disputes be resolved at this stage.

If necessary, disputes should be escalated to ministers and matters only referred to the JMC Secretariat if significant disagreements persist.

Relevant guidance

[Memorandum of Understanding and Supplementary Agreements](#)
[Joint Ministerial Committee Communiqué December 2014](#)
[Joint Ministerial Committee Annual Report 2012 to 2013](#)

Important contacts

[UK Governance and Devolution team](#)

Devolved and non-devolved matters

Officials in the devolved administrations serve their own ministers with their own political priorities and mandates. They do not work for the Prime Minister or for Secretaries of State who form the UK Cabinet. Civil servants working in the devolved administrations of Scotland and Wales – but not Northern Ireland – are however part of the Home Civil Service.

The devolved administrations are not a part of the UK Government and it is not appropriate to treat them as if they were. Yet, the DAs are not solely and respectively responsible for Scotland, Wales and Northern Ireland either – the UK Government is also the Government in those nations.

Due to the historical and administrative differences between Scotland, Wales and Northern Ireland, which matters are devolved and which are non-devolved, varies between each nation:

- for Scotland, everything is devolved unless a matter is specifically reserved to Westminster in [Schedule 5 to the Scotland Act 1998](#) (as amended by the 2012 and 2016 Acts).
- for Wales, only matters identified in [Schedule 7 to the Government of Wales Act 2006](#) are devolved.
- for Northern Ireland:
 - ▶ matters listed under [Schedule 3 to the Northern Ireland Act 1998](#) are reserved meaning that the Northern Ireland Assembly may legislate on these with the consent of the Secretary of State
 - ▶ Matters listed under [Schedule 2 to the Northern Ireland Act 1998](#) are excepted meaning they are the responsibility of the UK Parliament.
 - ▶ Any matter which is not excepted or reserved is transferred which means the NIA may legislate upon these.

Relevant guidance

[Devolution Settlement: Scotland \(1\)](#)
[Devolution Settlement: Scotland \(2\)](#)
[Scotland Act 2016](#)
[Devolution Settlement: Wales](#)
[Wales Act 2014](#)
[Devolution Settlement: Northern Ireland](#)

Devolved matters across the UK

This is a high level summary and does not show the complexity of devolved matters. It is not uncommon for only some elements of a policy area to be devolved. It can also be the case that whilst a policy area is non-devolved, aspects of policy delivery are not. You are advised to use the Territorial Offices and the contacts listed in this guide and to refer to the relevant legislation (the [Scotland Act](#), the [Government of Wales Act](#) and the [Northern Ireland Act](#)) to understand the territorial extent of your policy or service delivery area. Further advice should also be sought from legal advisers if necessary.

| Devolved matters across the UK | | |
|----------------------------------|--|---|
| Scotland | Wales | Northern Ireland |
| Agriculture, fisheries, forestry | Agriculture, fisheries, forestry and rural development | Agriculture, fisheries, forestry |
| Economic development | Economic development | Economic development |
| Education | Education and Training | Education |
| Environment | Environment | Environment |
| Fire and rescue services | Fire and rescue services | Fire and rescue services |
| Housing | Housing | Housing |
| Local government | Local government | Local government |
| NHS and social care | NHS and social care | NHS and social care |
| Some transport | Highways and transport | Some transport |
| Sport and arts | Sport & recreation | Sport |
| Water and flood defence | Water and flood defence | Water and flood defence |
| Tourism | Tourism | Tourism |
| Justice / policing | National Assembly for Wales | Northern Ireland Civil Service |
| | Welsh language | Justice / policing |
| | Food | Employment |
| | Ancient monuments and historic buildings | Reserved matters (may legislate with SoS consent) |
| | Devolved taxes | Firearms |
| | Town and country planning | Financial services regulation |
| | Culture | Broadcasting |
| | | Consumer protection |
| | | Navigation / civil aviation |
| | | International trade |
| | | Postage and telecoms |

Non-devolved matters across the UK

This is a high level summary and does not show the complexity of non-devolved matters. It is not uncommon for only some elements of a policy area to be non-devolved. It can also be the case that whilst a policy area is non-devolved, aspects of policy delivery are not. You are advised to use the Territorial Offices and the contacts listed in this guide and to refer to the relevant legislation (the [Scotland Act](#), the [Government of Wales Act](#) and the [Northern Ireland Act](#)) to understand the territorial extent of your policy or service delivery area. Further advice should also be sought from legal advisers if necessary.

| Non-devolved matters across the UK | | |
|---|-----------------------------------|-----------------------------------|
| Scotland | Wales | Northern Ireland |
| Constitution | Constitution | Constitution |
| Defence & national security | Defence & national security | Defence & national security |
| Energy | Energy | |
| Foreign policy | Foreign policy | Foreign policy |
| Financial & macroeconomic matters | Financial & macroeconomic matters | Financial & macroeconomic matters |
| International development | International development | International development |
| Nuclear energy & installations | Nuclear energy & installations | Nuclear energy & installations |
| UK, EU elections | UK, EU elections | UK, EU elections |
| Broadcasting | Broadcasting | |
| Civil Service | Civil Service | |
| Consumer protection | Consumer protection | |
| Postal services | Postal services | |
| Immigration & nationality | Immigration & nationality | |
| Employment | Employment | |
| | Justice / policing | |

Changing settlements

The [Wales Act 2014](#) devolves a package of tax and borrowing powers to the National Assembly for Wales. You should be aware of these new powers and how they affect your work.

Legislation is also currently passing through the UK Parliament to bring changes to the Welsh settlement. The Wales Bill will amend the Government of Wales Act 2006 and establish a reserved powers model of devolution in Wales, in line with that already in place for Scotland. The Bill also devolves more powers to the National Assembly for Wales in areas such as elections, transport, energy and the environment. Whilst you should be mindful of the new reserved powers model for Wales, you should continue to consider the Assembly's competence as it is set out in Schedule 7 of the Government of Wales Act 2006, until the reserved powers model comes into force.

Similarly, the [Scotland Act 2016](#) sets out new powers for the Scottish Parliament such as new tax raising and welfare powers. These changes to the devolution settlement are likely to have significant impacts on your work.

Relevant guidance

[Devolution Settlement: Scotland \(1\)](#)

[Devolution Settlement: Scotland \(2\)](#)

[Scotland Act 2016](#)

[Devolution Settlement: Wales](#)

[Wales Act 2014](#)

Working with the devolved administrations

The UK Government is committed by the [MoU](#) to work cooperatively with the devolved administrations, and emphasis is placed on early engagement. The DAs have a strong interest in much of what the UK Government does for a variety of reasons.

Matters reserved to the UK Parliament can have implications for the devolved administrations of Scotland, Wales and Northern Ireland, since the DAs may need to be involved in their implementation. Policies can have different geographical effects and there may be particular circumstances in Scotland, Wales or Northern Ireland that could affect how well the policy is implemented.

On devolved issues, new UK Government policy proposals may have implications for the DAs and the DAs may choose to provide a comparable response.

In both cases, the DAs may be able to offer an insight into how effectively the policies might work in Scotland, Wales and Northern Ireland, and how well received they might be. You should therefore consider the implications of both devolved and non-devolved matters when developing or updating your policies, and contact your counterparts in the DAs for their insight early into the policy development process as set out in the MoU.

You should consider carefully when exactly might be the best time to approach the DAs, particularly if your policy impinges on a devolved matter and could require a change in the law, because the parliamentary timetables differ from Westminster and that may have an effect on the ability to obtain legislative consent.

In certain matters, such as national security, early engagement may be more difficult. However, advance notification still remains important where there is an impact on devolved responsibilities (eg national security measures may impact on police and courts). Similarly, there may be instances where you need to do more scoping or research before your policy or the issue you wish to discuss, is fit to share.

If you are unsure about how and when to approach the DAs, you should contact the respective [Territorial Office](#) or your [Departmental Devolution Coordinator](#).

It is worth remembering however that colleagues in the DAs may also need time to explore issues with their immediate colleagues too. Due to differences in the devolution settlements, policy priorities or structural differences, DAs may not have immediately equivalent teams or officials covering your specific policy area. In these cases additional time may be needed to identify the appropriate parallel. This will be particularly important when any announcements are to be made, as clearance processes may differ in each administration. Deadlines for responses to queries or consultations should therefore be set with this in mind.

Outside of particular policy issues, you should cultivate constructive day to day working relationships with your DA colleagues. Where you can, make the effort to have face to face meetings, though, of course, you have many other avenues (telephone, email, Skype) should this not be possible. You can do this through quarterly or more regular catch-ups with your counterpart to understand each other's work and troubleshoot.

Relationships should be developed by all staff across all grades. Having an overall strong relationship with the DA will provide a reliable basis for future collaboration and external communications will also align, for the benefit of citizens.

Relevant guidance

[Memorandum of Understanding and Supplementary Agreements](#)

| | |
|-------|--|
| DGN 1 | <u>Common working arrangements [PDF]</u> |
| DGN 3 | <u>Role of the Secretary of State for Scotland [PDF]</u> |
| DGN 4 | <u>Role of the Secretary of State for Wales [PDF]</u> |
| DGN 5 | <u>Role of the Secretary of State for Northern Ireland [PDF]</u> |

Working across the UK Government

There are many colleagues across UK Government departments who have expert knowledge of the devolution settlements and can help you to negotiate devolution procedures and resolve any issues.

Departments and devolution coordinators

All UK Government departments have a devolution coordinator. They can advise on your department's relationship with the devolved administrations and how devolution affects the department's work.

You should keep your devolution coordinator aware of all your dealings with the DAs as they may often be able to help deal with any issues or queries.

Important contacts

[Departmental devolution coordinators](#)

UK Governance Group

The UK Governance Group was established in June 2015 to lead the UK Government's work on constitutional and devolution issues. It brings together the Cabinet Office Constitution Group, the Scotland Office, the Wales Office and the Office of the Advocate General.

Important contacts

[UK Governance and Devolution team](#)

The [UK Governance and Devolution team](#) is responsible for the Memorandum of Understanding and the JMC secretariat. For any policy matters relating to the MoU and questions on how to engage with the JMC, you should contact the team in the first instance for advice.

The Territorial Offices

Within the UK Government, there are 3 Territorial Offices (TOs) – the Scotland Office (SO), the Wales Office (WO) and the Northern Ireland Office (NIO).

These are UK Government departments, with each represented in cabinet by a territorial Secretary of State, who ensures the smooth running of the devolution settlements and acts as liaison between HM government and the relevant territory.

The Territorial Offices' responsibilities include:

- handling UK legislation as it affects the territory
- representing the territory's interests in the cabinet and cabinet committees
- responding to parliamentary interests in territorial affairs
- transmitting the block grant to the devolved administration
- supporting collaboration between HM government and the devolved administration
- promoting the interests of the territory

Working with the Territorial Offices

The Territorial Offices encourage strong working relations between the UK Government and the DAs, and between the UK Parliament and the Scotland Parliament, the National Assembly for Wales and the Northern Ireland Assembly.

The TOs are not the sole representatives of the UK Government in all dealings with DA officials. You may – and should – approach DA officials yourself. Departments are strongly encouraged to communicate with the DAs directly, whilst keeping the TOs in the loop.

The TOs should particularly be informed of both devolved and non-devolved matters that may have particular handling issues, with all correspondence between UK Ministers and Ministers of the DAs copied to the relevant Secretary of State as a matter of course.

The TOs should also be informed of any major policy changes or announcements, as they will be able to advise on the best handling and process steps if appropriate.

Relevant guidance

| | |
|-------|---|
| DGN 3 | Role of the Secretary of State for Scotland [PDF] |
| DGN 4 | Role of the Secretary of State for Wales [PDF] |
| DGN 5 | Role of the Secretary of State for Northern Ireland [PDF] |

Important contacts

[Territorial Offices](#)

Economic and Domestic Secretariat

The Economic and Domestic Secretariat (EDS) supports effective cabinet government and ensures the Prime Minister, Minister for Government Policy and the Cabinet Secretary have access to high quality advice and briefing. The team also supports the development, coordination and implementation of economic and domestic policy objectives across government.

You should feel able to decide for yourself what you can and cannot share with the DAs. For instances of doubt, EDS can provide advice on the policy issue, but your initial points of contact should be your departmental devolution coordinator.

EDS should be approached for assistance on complicated or high profile issues, especially those involving more than one devolved administration.

In addition, certain matters, such as community relations, may be sensitive. If your policy touches on issues that are unique to the settlement and concern the political context in Northern Ireland, then EDS and the NIO should be consulted as early as possible and their guidance sought on how to best engage with the Northern Ireland Executive.

Important contacts

[Economic and Domestic Secretariat](#)
[Departmental devolution coordinators](#)

Policy making

In developing new policies or amending existing ones, there are various policy steps you should bear in mind to ensure you are giving due consideration to the devolution context of your policy area. A quick summary is provided in the below flowchart:

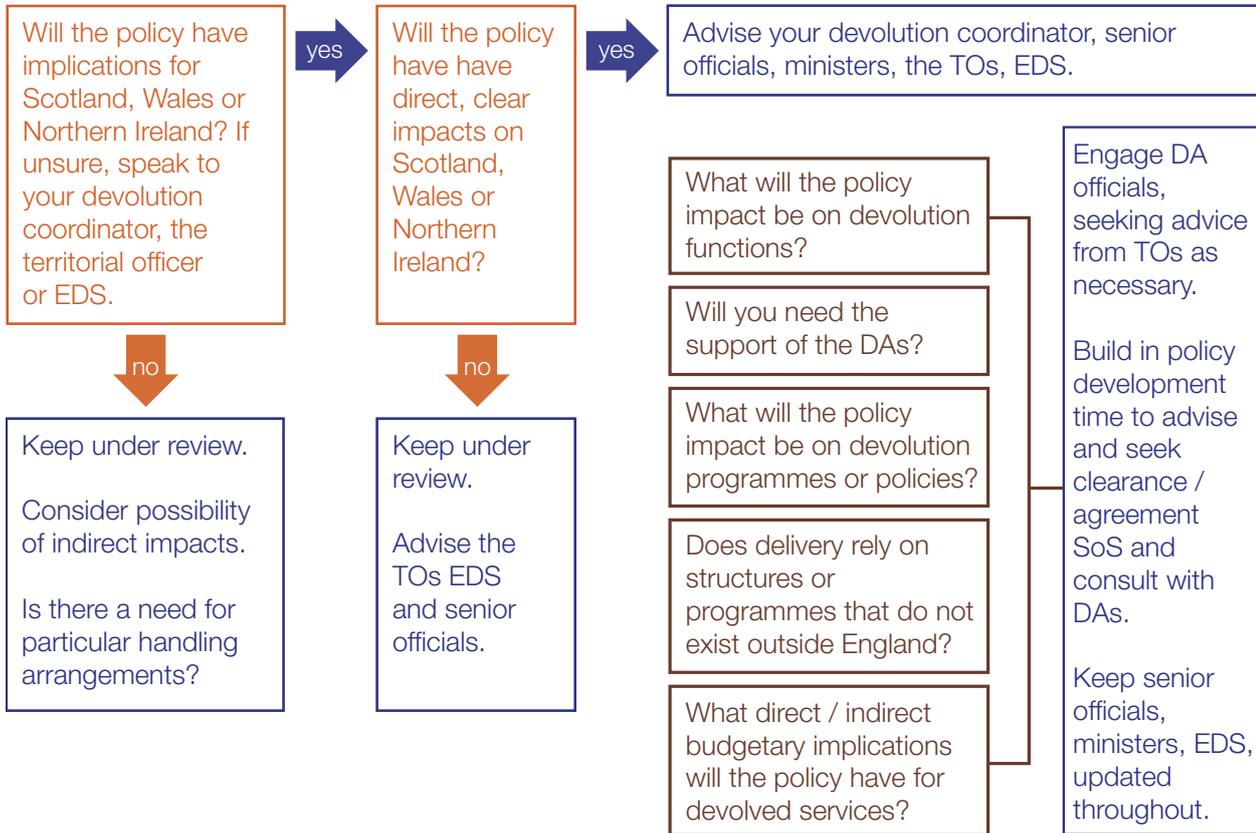


Figure 3: A quick guide to devolution assessment

In the next section, there are some more detailed principles you can apply to your policy development. These principles can act as a test to help assess whether your policy is ‘devolution proof.’¹ These principles are not an exhaustive list of the questions you should be asking yourself when developing policy. Depending on the policy context, there may be further or different questions you might want to explore.

It is worth being aware that, though a policy might not be devolved, it could affect the populations in the different nations of the UK differently, and possibly on the DAs themselves too. Careful handling and early engagement with the DAs, as described in the MoU, are recommended to help mitigate any unexpected effects. You should always consider how you might need to adapt your work for it to be carried out across the UK’s 4 nations.

¹ Adapted from the DWP Devolved administration Impact Assessment Guide which has been developed by the DWP Devolution team

| |
|---|
| <p>Relevant guidance</p> <p>CO devolution guidance Rural proofing guidance Statement of Funding Policy Islands proofing</p> |
|---|

Devolution proof your policy

Some high level principles to consider in policy development:

| |
|---|
| Does the policy relate to a devolved or non-devolved matter? |
| <ul style="list-style-type: none">• Policies on non-devolved matters can impact the DAs, or the DAs might simply have an interest in them (for instance on matters relating to international and EU relations). |
| Does the new policy cut across areas for which the DAs are primarily responsible? |
| <ul style="list-style-type: none">• Is the cooperation of the DAs essential for the successful delivery of your policy?• Have you developed any contingency plans? |
| Have I considered all the practical impacts of the policy, for example, the political, social, legal and economic effects in Scotland, Wales and Northern Ireland? |
| <ul style="list-style-type: none">• Is there political / popular support in the DAs and nations for your policy?• Does it contradict a DA manifesto commitment?• Are there any legal implications arising from Scotland and Northern Ireland having their own legal systems?• Will there be Barnett implications?• Will there be disproportionately greater adverse economic impacts in Scotland, Wales or Northern Ireland than in England as a result of your policy? |
| What is the territorial extent of the policy? |
| <ul style="list-style-type: none">• Is the territorial extent England only, England and Wales, Great Britain, or the United Kingdom?• This may not always be clear and it may be necessary to seek legal advice on this. |
| Will the DAs face a disproportionate or unexpected budgeting request? |
| <ul style="list-style-type: none">• It maybe that the DA will support a policy to the extent that it agrees to meet part or all of the associated costs. You will have to negotiate this with the DA.• Generally however, the Statement of Funding Policy requires that the body whose decision leads to the additional cost will meet that cost. |
| Have I particularly considered the DAs' views / comments? |
| <ul style="list-style-type: none">• Have you consulted the DAs as described in the MoU?• And in consulting the DAs, have you taken steps to ensure their views have been incorporated into the policy as appropriate? |
| Have I considered the views of an appropriate range of stakeholders? |
| <ul style="list-style-type: none">• What you consider a UK-wide stakeholder, may not necessarily be so. You should aim to also seek out and consult stakeholders that are based in Scotland, Wales and Northern Ireland when seeking to assess the policy impact on those nations. |

Have I used research / evidence pertinent to Scotland, Wales and Northern Ireland too, to develop the various policy options and justify any recommendations?

- It is rarely sufficient to only consider evidence relevant to England to support your policy making.
- Your DA colleagues may be able to supply more relevant data or research. You should check how that data is collated, as any differences in process will make comparisons difficult.

Is the necessary implementation and delivery infrastructure in place in Scotland, Wales and Northern Ireland?

- For instance, health, education and local government services operate differently in Scotland, Wales and Northern Ireland, and you should understand and take account of these differences when developing policies or implementation strategies.
- Are there any pre-existing contractual obligations that might affect new commercial contracts or implementation in Scotland, Wales or Northern Ireland?
- Are there any geographical limitations you need to be aware of?
- You may find it helpful to also refer to the '[rural proofing](#)' and the '[islands proofing](#)' guidelines.

How and when to seek formal policy clearance

The Territorial Offices

The TOs will not be required to clear your policy (unless the policy requires Cabinet Committee clearance) but should be engaged early on so they may support you across the nations of the UK and endorse or defend the policy if required.

In particular, the Secretaries of State and the TOs may be able to provide presentational or handling assistance if major announcements are to be made on non-devolved matters that will also impinge on Scotland, Wales or Northern Ireland.

The devolved administrations and cabinet committee

With the exception of the Civil Contingencies Committee, the devolved administrations are not members of UK Cabinet Committees and should not have access to Cabinet Committee papers, nor be required to formally clear a policy proposal.

However, in preparation for write rounds you should have already cleared the policy with officials in other departments and, where there appear to be policy impacts on the DAs, with officials in the devolved administrations too.

Any particular DA or Scotland, Wales and Northern Ireland involvement or interest, whether the devolved administrations have been or are yet to be consulted, should be explicitly stated when circulating proposals for collective consideration. The territorial extent of the policy should also be referenced. Best practice also demands that you explicitly state whether no effect on the DAs is perceived.

At the time of Cabinet Committee clearance therefore, you should make separate arrangements to inform ministers of the devolved administrations of the policy proposals relevant to them (as is described in the DGNs). Any formal letters must be copied to the relevant Secretary of State. You should already have consulted with officials in the devolved administrations during the policy development.

You should also be aware that it is UK Government policy that the devolved administrations should be fully involved in discussions regarding the UK's policy position on EU issues which touch on matters falling within the responsibility of the devolved administrations.

The DAs must be given an opportunity to share their views on EU matters before the UK Government has reached its own policy conclusions.

Relevant guidance

[Guidance on the Collective Agreement Process](#)

DGN 6 [Circulation of inter-ministerial and inter-departmental correspondence \[PDF\]](#)

[Cabinet Manual](#)

Legislation and the devolved administrations

If you are involved in drafting or taking legislation through the UK Parliament, it is crucial that you understand how that legislation can also affect the DAs. Parliamentary timetables differ and are subject to strict controls and procedures which you will need to accommodate.

It is, therefore, vital that early engagement takes place to understand, not merely when a Legislative Consent Motion (LCM) is needed, but what other effects your legislation might have for the devolved administrations including any cross-border issues might arise.

Legislative consent motions

Although the UK Parliament retains the authority to legislate on any issue, the UK Government will not normally invite Parliament to legislate with regard to devolved matters except with the agreement of the relevant devolved legislature.

Such consent is given by the Scottish Parliament, the National Assembly for Wales and the Northern Ireland Assembly through legislative consent motions. The guidance below sets out the circumstances in which these should be sought.

The express agreement of the devolved legislatures is only required for legislation that specifically makes provisions relating to devolved matters. However, even if legislation only incidentally touches on devolved matters, it is still good practice to consult the devolved administration. The UK Government will be required to demonstrate, during the passage of the Bill, that it has consulted and received agreement to the proposed policy and provisions from the devolved administration. You should therefore resolve devolution issues before a Bill is brought to the Parliamentary Business and Legislation Committee and certainly in advance of introduction.

If an LCM is required, the devolved administration will need to plan time for the relevant legislature to scrutinise and vote on the proposal and this needs to be accounted for in timetabling the Bill. You should be aware that late amendments to Bills on devolved matters can cause timing difficulties.

Relevant guidance

[Memorandum of Understanding](#)

[Guide to Making Legislation](#)

DGN 8 [Post-devolution primary legislation affecting Northern Ireland \[PDF\]](#)

DGN 9 [Parliamentary and Assembly Primary Legislation Affecting Wales \[PDF\]](#)

DGN 10 [Post-devolution primary legislation affecting Scotland](#)

It will be the responsibility of the relevant Secretary of State to steer through Parliament any clauses in legislation relating solely to a devolved matter. For further information, refer to:

DGN 3 [Role of the Secretary of State for Scotland \[PDF\]](#)

DGN 4 [Role of the Secretary of State for Wales \[PDF\]](#)

DGN 5 [Role of the Secretary of State for Northern Ireland \[PDF\]](#)

Orders in council

The Scotland Act 1998, Section 30(2) Orders

The Scottish Parliament may not amend the enactments listed under Schedule 4 to the Scotland Act 1998. However, Schedule 4 itself, and Schedule 5, which sets out the matters reserved to the UK Parliament, may be modified by an Order in council, made under Section 30(2) of the 1998 Act.

Orders in council are issued "by and with the advice of Her Majesty's Privy council". They are used for functions such as transferring responsibilities between government departments, which would be inappropriate to do by an ordinary Statutory Instrument. However, whilst Orders in council might typically be used in this way, in the context of section 30, an Order in council is used to change the competence of a legislature as well as another administration.

Although a need to make amendments to Schedule 4 is unlikely to arise often, you may find that your policy aim can be best delivered by amending the schedule of non-devolved matters. Seeking to amend Schedule 5 via this method is a significant step, as you will be altering the legislative competence of the Scottish Parliament and will require the approval of both the Scottish and UK Parliaments to proceed. It will therefore be essential that you engage with Scottish Government officials, the Scotland Office, the Office of the Advocate General and your legal team from a very early stage.

Relevant guidance

You should refer to DGN 14 [Use of Scotland Act Section 30\(2\) Orders \[PDF\]](#) for more information and potential alternatives to Section 30(2).

The Government of Wales Act 2006, Section 109 Orders

Orders in council made under Section 109 of the Government of Wales Act 2006 may modify the legislative competence of the National Assembly for Wales by amending Schedule 7, which sets out the subjects on which the Assembly may legislate.

Section 109 Orders must be approved in draft by both Houses of Parliament and the National Assembly before they are made (at a meeting of the Privy council). The Standing Orders of the National Assembly for Wales requires them to be scrutinised by an Assembly Committee before they can be approved. You must, therefore, coordinate any proposals with Welsh Government officials, the Wales Office and your legal team as soon as possible.

Relevant guidance

You should refer to DGN 17 [Modifying the legislative competence of the National Assembly for Wales \[PDF\]](#) for more information and potential alternatives to Section 109.

Private Members' Bills

Private Members Bills supported by the UK Government are subject to the same LCM process as Bill proposed by the UK Government. You must consult and seek agreement from the relevant devolved administration if it wishes to support – or not support – provisions on devolved matters within a Private Members' Bill.

Where legislation has no DA involvement, it is best practice to inform the DAs of this fact too.

Relevant guidance

[Memorandum of Understanding and Supplementary Agreements](#)

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|--------|---|
| DGN 3 | Role of the Secretary of State for Scotland [PDF] |
| DGN 4 | Role of the Secretary of State for Wales [PDF] |
| DGN 5 | Role of the Secretary of State for Northern Ireland [PDF] |
| DGN 8 | Post-devolution primary legislation affecting Northern Ireland [PDF] |
| DGN 9 | Parliamentary and Assembly Primary Legislation Affecting Wales [PDF] |
| DGN 10 | Post-devolution primary legislation affecting Scotland |
| DGN 13 | Handling of parliamentary business in the House of Lords [PDF] |
| DGN 14 | Use of Scotland Act Section 30(2) Orders [PDF] |
| DGN 17 | Modifying the legislative competence of the National Assembly for Wales [PDF] |

English votes for English laws

What is English votes for English laws?

English votes for English Laws (EVEL) addresses the so-called ‘West Lothian Question’ - the position whereby English MPs cannot vote on matters which have been devolved to other parts of the UK, but Scottish, Welsh and Northern Ireland MPs can vote on those same matters when the UK Parliament is legislating solely for England.

As devolution to Scotland, Wales and Northern Ireland has strengthened, a question of fairness for England became more acute. In response, a new legislative process has been introduced, whereby only MPs with constituencies in England (and where relevant, England and Wales) are asked to consent to legislation that only affects England (or England and Wales). Only those MPs will therefore have the opportunity to veto such legislation. These changes strengthen England’s voice, just as devolution has strengthened the voices of Scotland, Wales and Northern Ireland within the Union, so that the legislative process is fair.

Why does this affect me?

English Votes has changed the way we need to think about legislation. For the first time we need to be actively considering the English territorial application of our legislation.

The new process requires a certification decision from the Speaker about a Bill’s territorial application and devolution of the subject matter.

Departments are now required to provide an assessment of a Bill’s application and whether the subject matter is devolved. The needs to be set out in the SI Explanatory Memorandum or a Bill’s Explanatory Notes to assist the Speaker’s decision. The Speaker’s decision is reached by applying a new two-part test:

- Does the clause, Bill, or SI relate exclusively to England or England and Wales only?
- Is the subject matter within the legislative competence of one or more of the devolved legislatures?

Both parts need to apply for the test to be met. You can read more about the new process in the [Guide to Making Legislation](#).

What help is available?

Whilst it will be for departments to undertake the analysis and be satisfied that they can articulate their rationale, a Certification Team has been established in the Cabinet Office to support on production of explanatory notes and advice to the Speaker. The team also provide workshops for departments on the English votes process. The team can be contacted at englishvotes@cabinetoffice.GOV.UK.

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|---|
| Relevant guidance |
| Guide to Making Legislation Evel Process Map |

Ministerial visits

Normally, ministerial visits to Scotland, Wales or Northern Ireland do not require formal clearance from the centre.

It is, however, UK Government policy that if UKG Ministers are planning official visits to Scotland, Wales or Northern Ireland, the relevant Secretary of State should be informed.

Similarly, UKG Ministers must inform, in advance, the relevant MPs and members of the Scottish Parliament, the National Assembly for Wales and the Northern Ireland Assembly, whose constituencies are to be included within the itinerary.

A note of ministerial visits should also feature in departmental engagement plans and, of course, the relevant TO should be kept updated. The TOs are best placed to provide local insights as well as handling advice. They may also advise on briefing topics and any presentational or media issues that ministers should be aware of.

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|----------------------------------|
| Relevant guidance |
| Ministerial Code |

Case studies

A number of case studies have been provided below as examples of strong collaboration, cooperation, and joint policy delivery. These are not intended as recommended ways of working, but are instead illustrative examples of how strong relationships can be built and used to produce favourable outcomes for all stakeholders.

Devolving stamp duty land tax and landfill tax to Scotland

In 2012, the UK Parliament passed legislation to devolve Stamp Duty Land Tax (SDLT) and Landfill Tax (LfT) to Scotland, enabling the Scottish Government to introduce, from April 2015, replacement taxes on land and property transactions and disposals of waste to landfill. There was no established process to follow for switching off UK taxes and introducing replacement taxes in Scotland. HM Revenues and Customs (HMRC) and the Scottish Government worked closely to help introduce the first new national taxes introduced by a Scottish Parliament in 300 years.

HMRC, the Scottish Government and Revenue Scotland (the non-ministerial Scottish Government Department set up to oversee the administration of the replacement taxes) developed a strong and open dialogue, encouraging transparency and knowledge transfer. This included the secondment of personnel to Revenue Scotland; helping develop new tax legislation and processes and sharing specialist tax skills and best practice. Scottish Government and Revenue Scotland worked very closely with professional bodies and taxpayer representatives in Scotland, and collaboratively with Registers of Scotland (the Scottish equivalent of HM Land Registry) and the Scottish Environment Protection Agency to ensure that the arrangements made as much use as possible of existing expertise and systems within Scotland and that the new taxes would meet Scottish needs.

A Joint Communications Group of core stakeholders in both the Scottish and UK administrations was set up to take forward an integrated plan for delivery of important shared communications which recognised the importance of separate and joint messaging. The group drew up clear and consistent messages about the changes, published joint transitional guidance to ensure tax customers understood their obligations to the respective tax authorities and worked closely with external stakeholders to help communicate important aspects of the changes.

A formal Intergovernmental Assurance Board including HMRC, Scottish Government, Scotland Office and HM Treasury focussed on stakeholder management to ensure a successful outcome supported by regular contact at project delivery level. Representation on respective Revenue Scotland and HMRC Programme and Project Boards ensured visibility and management of shared project risks and dependencies.

This collaborative, innovative approach resulted in successful implementation of this unique and challenging project, including the development of new IT systems delivered on time and to budget.

On 1 April 2015, Revenue Scotland began the collection and management of Land and Buildings Transaction Tax and Scottish Landfill Tax. Having set up a new tax authority, HMRC, the Scottish Government and Revenue Scotland continue to work closely together on the effective collection of tax and preparations for further devolution.

Prevalence of mobile phone use while driving

The Department for Transport (DfT) decided that it was time we did some research into the prevalence of mobile telephone use while driving and the degree to which seatbelts are actually being worn.

We were aware that this was an issue of concern and that the last research into this issue was in 2009. Both Policy and Statistical teams in DfT concurred on the need to do some sampling and establish the scale of the problem.

Officials from Transport Scotland (the Scottish Government's agency for transport) had previously expressed an interest in conducting research to explore the degree to which seatbelts are being worn so DfT contacted the devolved administrations to ask whether they also wanted to be involved in the research.

Scottish Government researchers confirmed that they would be interested in participating in the research project. They shared our concerns over the growing use of texting by drivers and recommended that a seatbelt survey was carried out in conjunction, DfT officials agreed with this. We also agreed with the Scottish Government that they would sit on the tender panel and be part of the team managing the research implementation.

The Scottish Government agreed to make a financial contribution to the research and the DfT agreed to manage the tendering and analysis for the project as a whole, with Transport Scotland officials performing a vital advisory and supporting role. We accordingly shared the tender documents with Scottish counterparts in draft.

This meant that they were able to ensure it reflected their concerns and expressly stipulated that some of the sites for surveying be in Scotland. Scottish Government officials participated in the tendering process including attending all meetings. When there was need for clarification questions, these were agreed between DfT and Transport Scotland officials.

As a result of the cooperation between DfT and Transport Scotland, the contract was let so research could start at sites in England and Scotland. Both DfT and Scottish Government officials were kept updated by the research company on the progress of the work through regular teleconferences and were able to visit the survey locations to see how these were managed.

DfT for England and GB undertook the analysis, with Transport Scotland officials producing a standalone publication for the data collected in Scotland. The 2 publications were developed in conjunction with analysis quality assured and commentary mutually agreed by officials in each administration. The completed project provided officials in the UK and Scottish Governments with a cohesive picture of the levels of mobile phone use (both for talking and texting) and also the degree to which seatbelts are being worn.

The research contract has been a success and we have retained an open dialogue with the Scottish Government throughout, including sharing reflections on the successes and challenges of the research, which should help to encourage and enhance future joint-working. The main benefit of the collaboration is that we will all have a more granular and detailed picture of the state of mobile phone and seatbelt use which will inform future policy development north and south of the border.

Red tape in Northern Ireland

The UK Government and the Northern Ireland Executive agreed an economic pact in June 2013 to help rebalance the Northern Ireland economy and encourage investment ([‘Building a Prosperous and United Community’](#)). One of the measures of the agreement required the Executive to conduct a review of business red tape in Northern Ireland and make recommendations for dealing with regulatory burdens. The UK Government worked with the Executive on this by sharing best practice from its Red Tape Challenge and Better Regulation initiatives.

In February 2014, the Department for Business, Innovation and Skills (BIS) seconded a member of its Better Regulation Executive’s EU Team (BRE) to the Northern Ireland Department for the Economy (DETI), to share their knowledge of Whitehall initiatives and experience of the EU Better Regulation plan. In addition, Lord Curry of Kirkharle, Chair of the UK Government’s Better Regulation Executive joined an Advisory Panel set up to support the work of the review. The review deadline was June 2014.

The BRE official seconded to DETI split her time between London and Belfast, using her time in Belfast for stakeholder meetings and site visits. DETI aided her working arrangements by providing a DETI laptop and access to the NI Civil Service intranet, a DETI personal email address and the project’s shared mailbox. Team meetings were also held via video conferencing and teleconferencing to ensure greater participation.

By co-locating and sharing access to internal systems, BIS and DETI officials were both able to develop a better understanding of each other’s working practices. The NI Civil Service, although not a part of the home Civil Service, is nonetheless very similar. Systems and processes generally complement those in the UK Civil Service and much of the legislation is similar. NI departments implementing EU regulations work closely with their counterparts in Whitehall, Edinburgh and Cardiff. Much of the EU regulation is applied within six to nine months of Whitehall implementation and largely along the same lines.

However, there are significant differences in many policies, as well as legislative processes and timetables. Understanding these differences highlighted that it was not possible to simply transpose UK Government initiatives into a Northern Ireland context.

This did not mean that the 2 administrations could not still learn from each other’s experiences. As the NI Executive benefited from the UK Government’s more developed work on better regulation, working closely with DETI also allowed BRE to better explore policies that do not have UK counterparts, such as carrier bags legislation or landlord registration.

The strong working relationships meant the [report](#) was produced on time. Its recommendations are now being considered by NI Permanent Secretaries and senior officials with a view to producing a proposed way forward for Executive ministers to consider.

The Scottish rate of income tax

The Scotland Act 2012 provides for the introduction of a Scottish rate of income tax (SRIT), which commenced in April 2016. HMRC was responsible for implementing and operates the tax: SRIT is not a devolved tax. The tax base and any changes to it, along with tax bands and thresholds, remain under the control of the UK Government. However, the Scottish Parliament set a single Scottish rate by Resolution for the 2016/17 tax year and the Scottish Government met all the start-up and running costs of SRIT.

The 2 administrations worked together to deliver this project. The Scottish Government was represented on the relevant HMRC programme and project boards, with access to all project papers and background information. HMRC consulted the Scottish Government on options and decisions that had a potential impact on Scottish taxpayers and employers, and/or on the costs of the project. In doing so HMRC and the Scottish Government formed an effective working relationship – the Scottish Government's Deputy First Minister John Swinney has characterised it as “very co-operative and productive”. SRIT was introduced on time and within budget.

Accurately identifying Scottish taxpayers was key to successfully implementing SRIT and remains crucial to its ongoing administration. HMRC developed a detailed identification strategy, including carrying out work to test the association between taxpayers and postcode addresses held on their database. HMRC also used third party data where possible, including the Scottish Electoral Register, to corroborate address details held. Scottish Government were closely involved with this work and the key decisions around it.

HMRC also developed and delivered a communications strategy for SRIT. Employers were provided with the right information at the right time to help ensure that they were ready to implement SRIT from April 2016. Communications were also developed for Scottish taxpayers to ensure they knew what changes were happening when and what this meant for them. . Work was also undertaken to specify the management information required to support performance reporting and forecasting once SRIT is in operation. Again, Scottish Government have been involved in this work.

Discussions took place between HMRC, the National Audit Office (NAO) and Audit Scotland on how best to satisfy the requirements of financial reporting to the Scottish Parliament. The NAO regularly audit HMRC's work and have a Memorandum of Understanding with Audit Scotland on arrangements for audit of SRIT.

Other sources of information

Guidance

You can access the relevant guidance through the following links (please be aware that certain documents might require you to sign into your Civil Service Learning account).

[Cabinet Office guidance devolution and you](#)
[Cabinet Office guidance on devolution](#)
[Cabinet manual](#)
[Civil Service code](#)
[Devolution settlement: Scotland \(1\)](#)
[Devolution settlement: Scotland \(2\)](#)
[Scotland act 2016](#)
[Devolution settlement: Wales](#)
[Wales act 2014](#)
[Devolution settlement: Northern Ireland](#)
[Evel process map](#)
[Guidance on the collective agreement process](#)
[Guide to making legislation](#)
[Islands proofing guidance](#)
[Ministerial code](#)
[Memorandum of understanding and supplementary agreements](#)
[Rural proofing guidance](#)
[Statement of funding policy](#)
[Working with ministers, a practical handbook](#)

Devolution guidance notes:

DGN 1 [Common working arrangements \[PDF\]](#)
DGN 2 [Handling correspondence under devolution \[PDF\]](#)
DGN 3 [Role of the Secretary of State for Scotland \[PDF\]](#)
DGN 4 [Role of the Secretary of State for Wales \[PDF\]](#)
DGN 5 [Role of the Secretary of State for Northern Ireland \[PDF\]](#)
DGN 6 [Circulation of inter-ministerial and inter-departmental correspondence \[PDF\]](#)
DGN 7 Court proceedings tbc
DGN 8 [Post-devolution primary legislation affecting Northern Ireland \[PDF\]](#)
DGN 9 [Parliamentary and Assembly Primary Legislation Affecting Wales \[PDF\]](#)
DGN 10 [Post-devolution primary legislation affecting Scotland](#)
DGN 11 [Ministerial accountability after devolution \[PDF\]](#)
DGN 12 [Attendance of UK ministers and officials at committees of the devolved legislatures \[PDF\]](#)
DGN 13 [Handling of parliamentary business in the House of Lords \[PDF\]](#)
DGN 14 [Use of Scotland Act Section 30\(2\) Orders \[PDF\]](#)
DGN 15 [Scottish legislative proposals giving devolved powers and functions to UK bodies \[PDF\]](#)
DGN 16 Superseded by DGN 17
DGN 17 [Modifying the legislative competence of the National Assembly for Wales \[PDF\]](#)

Relevant legislation

Links to the relevant devolution legislation:

[Government of Wales Act 1998](#)

[Government of Wales Act 2006](#)

[Wales Act 2014](#)

[Scotland Act 1998](#)

[Scotland Act 2012](#)

[Scotland Act 2016](#)

[Northern Ireland Act 1998](#)

Glossary

Barnett formula

The formula that allocates a population share of changes in planned expenditure on comparable services by departments of the UK Government to the devolved administrations in Scotland, Wales and Northern Ireland.

Concordats

Formal but not legally binding agreements, for example those between the UK Government and the devolved administrations.

Devolved administration

The Scottish Government, the Welsh Government and the Northern Ireland Executive.

Devolved legislature

The Scottish Parliament, the National Assembly for Wales and the Northern Ireland Assembly.

Devolved matters

Policy areas within the competence of one or more of the 3 devolved legislatures. In the Northern Ireland Assembly, these are also referred to as 'transferred matters.'

Excepted matters

Those areas that the Northern Ireland Assembly cannot legislate on unless the matter is ancillary to a reserved or transferred matter.

First minister and deputy first minister of Northern Ireland

The Northern Ireland Executive is structured to ensure power-sharing and inclusivity. It is chaired by a First Minister and deputy First Minister who hold office jointly and are required to act jointly (see also Northern Ireland Executive).

First minister of Scotland

Head of the Scottish Government.

First minister of Wales

Head of the Welsh Government.

Legislative consent motions (LCMS)

The process by which a devolved legislature may give its consent to the inclusion of provisions in a UK bill which also fall within the legislative competence of the devolved Assembly (see also Sewel Convention).

Memorandum of Understanding

A non-legislative framework of concordats and agreements.

Northern Ireland Executive

The devolved administration in Northern Ireland.

Reserved matters

Policy areas that are not within the competence of the Scottish Parliament or the Northern Ireland Assembly (unless the NI Secretary of State consents).

Scotland act orders

Scotland Act Orders in the UK Parliament enable amendments to be made to UK legislation

affecting Scotland, to enable Scottish legislation to have full effect, or additional powers to be transferred to Scottish ministers. (See also legislative consent motions and Sewel convention).

Secretary of State

Within the UK Government, Scotland, Wales and Northern Ireland are each represented in cabinet by a Secretary of State, who ensures the smooth running of the devolution settlements and supports the relationship between the territory and the UK Government.

Sewel convention

The Sewel Convention applies when the UK Parliament legislates on a matter which is normally dealt with by the Scottish Parliament as part of its work. This will normally happen only if the Scottish Parliament has given its consent.

Territorial Offices

The Territorial Offices (TOs) are part of the UK Government and are responsible for liaising between the UK Government and the territories. The TOs are the Scotland Office, the Wales Office and the Northern Ireland Office. Each is led by a Secretary of State.

Transferred matters

The non-excepted and non-reserved matters on which the Northern Ireland Assembly has full legislative competence.