

Concordat between the UK Government and the Welsh Assembly Government¹ on the Civil Contingencies Act 2004

Section 1

Introduction

1. This concordat is to be read in the light of the Memorandum of Understanding (Cmd 5240) between the UK Government and the Devolved Administrations.²
2. It is not intended for this concordat to be legally binding but there is an expectation that both parties will abide by it wherever practicable. The parties will co-operate to the fullest possible extent to achieve the aims of this concordat.
3. This concordat establishes an agreed framework for co-operation between the UK Government and the Welsh Assembly Government on issues pertaining to Part 2 (Emergency Powers) of the Civil Contingencies Act 2004 (“the Act”), which applies to the United Kingdom. The concordat should be read in conjunction with the Regulations and Guidance supporting Part 1 of the Act, which relates to local civil protection arrangements. These Regulations and Guidance set out in detail how the UK Government and the Welsh Assembly Government will co-operate in taking forward Part 1 of the Act.
4. This concordat is available on the National Assembly for Wales and UK Resilience websites.

(<http://www.wales.gov.uk/index.htm>) & (<http://www.ukresilience.info/>)

Aim

5. The concordat is supplementary to the functions conferred on the Assembly in and under the Act. The aim of this concordat is to clarify the anticipated role(s), in practice, of the Welsh Assembly Government under the Act and, in particular, with regard to handling an emergency in Wales where emergency powers under Part 2 of the Act are used

Review of Concordat

6. The concordat will be reviewed by both parties biennially to see how far its aims have been achieved and in the light of experience. It will also be kept under review in light of any appropriate changes in the functions vested in the National Assembly.

¹ The Welsh Assembly Government is the executive arm of the National Assembly for Wales (“the Assembly”).

² Copies of the Memorandum of Understanding and concordats can be found at <http://www.cabinetoffice.gov.uk/cabsec/previous%20years/1999/memorandum/index.htm> and <http://www.cabinet-office.gov.uk/publicationscheme/concordats/index.asp> and http://www.dca.gov.uk/constitution/devolution/pubs/odpm_dev_600629.pdf

Section 2

Part 2 of the Act – Emergency Powers

Preparedness

7. The UK Government will work with the Welsh Assembly Government in developing and keeping up to date preparations for the possible use of emergency powers. In areas where the Assembly has devolved powers that can be used to deal with emergencies, emergency regulations can be formulated to extend these powers where appropriate. Emergency regulations will reflect and respect normal legislative and executive responsibilities vested in the Assembly.

The Welsh Assembly Government and use of emergency powers

8. Part 2 of the Act enables Her Majesty, acting on the advice of UK Ministers (*or, in extremis, designated UK Ministers themselves*) to make emergency regulations. The Welsh Assembly Government will be able to request the UK Government make emergency regulations for Wales if it believes it is possible and appropriate under the Act.³ The UK Government will consider such a request, and communicate its response to the Welsh Assembly Government, as rapidly as possible.
9. The UK Government will consult the Welsh Assembly Government, prior to the making of emergency regulations that relate to Wales, except where the urgency of the situation does not permit such consultation. The UK Government will also notify the Welsh Assembly Government where other emergency regulations have been made for any other Part of the UK or English Region.
10. Where the UK Government makes emergency regulations closely related to powers or functions transferred to the National Assembly for Wales, the regulations should provide for the Assembly to be responsible for the exercise of any functions under these regulations, where such exercise can be most effective.
11. It is recognised that there will be situations where the Welsh Assembly Government will be better placed than the UK Government to lead the response, or elements of the response, to a particular emergency if emergency regulations are made that apply in Wales. In areas where the Assembly has devolved powers it will be expected to take a leading role in the response in Wales. In reserved areas, such as law and order, the Assembly would play more of a supporting role to the relevant lead UK Government Department which would be the Home Office in this particular case. The UK Government will consider with the Welsh Assembly Government on a case – by – case basis where such a lead would fall to the Welsh Assembly Government. The Assembly's relationship with responders in Wales ensures that it will play an important role in any response to a serious emergency affecting Wales.

³ See Section 33 of the Government of Wales Act 1998.

12. The Welsh Assembly Government recognises that any use of emergency powers is ultimately a matter for the UK Government and that, while every effort will be made to accommodate the needs of Wales and the role of the National Assembly, it is the responsibility of the UK Government to ensure that the powers are used in such a way as to ensure the optimal response for the UK as a whole. In turn, the UK Government recognises the 'constitutional' status of the Government of Wales Act 1998 and would not seek to use emergency powers to make any substantive amendment to it.

Wales Emergency Co-ordinator (WEC)

13. Under any Emergency Regulations having effect in relation to Wales, a senior Minister of the Crown (Senior UK Minister) is required to appoint an Emergency Coordinator in Wales (the Wales Emergency Coordinator). There will be a list jointly compiled by the Welsh Assembly Government and the UK Government of designates for this role for particular emergencies where appropriate.
14. The terms of appointment, conditions of service and functions of the Wales Emergency Coordinator will be set out in the letter of appointment, though additional aspects of the role may be included in the emergency regulations themselves where appropriate.
15. The relevant senior Minister will consult the Assembly before issuing any direction or guidance to the WEC except where he/she is unable to do so for reasons of urgency. In such cases, the senior Minister will provide the Assembly with a copy of any such direction or guidance as soon as possible after it is issued.
16. In the performance of his/her functions the WEC will consult the Welsh Assembly Government, keep the Welsh Assembly Government informed and make regular reports as set out in his/her Terms of Appointment and/or the emergency regulations.
17. While ultimate decision-making responsibility in relation to the WEC under the Act rests with the responsible UK Minister, the unique position of the First Minister to advise on Welsh matters and arrangements creates an imperative that the UK Minister and the First Minister will work closely together and in agreement. The emphasis will be firmly upon co-operation and consultation between the UK Government and the Welsh Assembly Government at both the planning and response stages with the views of Assembly Ministers being taken into account in all phases of the decision-making process.
18. The Welsh Assembly Government will be notified by the UK Government of the appointment of Regional Nominated Coordinators in the English regions on the Welsh border.

Dispute Resolution

19. In the event of a dispute arising over the operation of this concordat, both parties are committed to resolving the issue bilaterally at working levels wherever possible. The UK Government is committed to a post-emergency review of any

use of emergency powers by a senior independent Privy Councillor. He or she will take evidence from relevant parties before issuing a report that will be presented to Parliament no more than one year after the cessation of use of the powers. If the regulations extended to Wales he or she would take evidence from the Assembly as part of this process. This will allow the practical application of the concordat to be considered with a view to ensuring that any areas of difficulty are resolved, and the concordat amended if necessary, to ensure its effective operation in the event emergency regulations are made that apply to Wales in the future.

Signed

Welsh Assembly Government

Position/Date

Rhodri Morgan AM
First Minister

UK Government

Jim Murphy MP
Parliamentary Secretary, Cabinet
Office